



Premium Tax Update

**Presented to
Revenue Stabilization and Tax Policy
Committee**

July 17, 2012

By

John G. Franchini, Superintendent of Insurance

Jolene M. Gonzales, Deputy Superintendent of Insurance

Insurance Division, Public Regulation Commission

Overview

2

- Taxpayers (Insurance Companies) Subject to Premium Tax **Slide 3**
- Premium Tax Rate (Insurance) **Slide 4**
- Health Insurance Premium Surtax **Slide 5**
- Combined Premium Tax Rates for Health Insurers **Slide 6**
- Premiums Exempt from Premium Tax **Slide 7**
- Premium Tax In Lieu of Other Taxes **Slide 8**
- Premium Tax & Health Insurance Premium Surtax Due Dates **Slide 9**
- How Premium Taxes and Surtaxes are Filed/Paid **Slide 10**
- Premium Tax Return Deductions **Slide 11**
- Premium Tax Credits **Slide 12**
- Premium Tax Refunds/Overpayments **Slide 13**
- Flow Chart on Premium Taxes and Surtax **Slide 14**
- Collection of Premium Taxes and Surtaxes: Fiscal Years 2007 – 2012 **Slide 15**
- Consideration of Potential Legislation **Slide 16**

Taxpayers (Insurance Companies) Subject to Premium Tax

3

Basically, premium taxes are applicable to Insurance Companies, HMO's, Mexican Casualty Companies, Non-Profit Health Care Plans, Prepaid Dental Plans, Property Bail Bond Agents, Purchasing Groups, Risk Retention Groups, Self-Insured's, and Title Insurance Companies.

Section 59A-6-2
NMSA 1978 (Items 1-5)

3: Chapter 59A
Articles 46-49
NMSA 1978

4: Section 59A-51-2
NMSA 1978

5: Section 59A-55-6
NMSA 1978

According to statute, the following are subject to premium taxes.

- 1) Each insurer authorized to transact insurance in New Mexico
- 2) Each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in NM
- 3) Each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978 (Health Maintenance Organizations (HMOs), Nonprofit Health Care Plans, Prepaid Dental Plans, or Prearranged Funeral Plans
- 4) Each property bondsman, as defined in statute
- 5) Each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in NM, except if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

Premium Tax Rate (Insurance)

4

Section 59A-6-2(B)

3.003%

of the gross premiums and membership and policy fees received or written by it, as reported in Schedule T and supporting schedules of its annual financial statement **on insurance contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on NM risks.**

Section 59A-14-12
NMSA1978

Premiums specifically include any additional amount charged the insured, including policy fees, risk purchasing group fees, and inspection fees, but do not include any additional amounts charged the insured for local, state, or federal tax, regulatory authority fees, or examination fees.

Health Insurance Premium Surtax (In addition to Premium Tax)

5

Section 59A-6-2(C)
NMSA 1978

1.0%

Each taxpayer that is authorized to transact **health insurance in New Mexico or is an HMO or nonprofit health care plan is subject to a surtax of 1%** of the gross health insurance premiums and membership and policy fees received by it on health insurance or contracts, covering health risks within New Mexico during the preceding calendar year,

- excluding dental or vision only contracts, (notable difference between the premium tax and surtax calculations)
- **less all return health insurance premiums, including dividends paid or credited to policyholders or contract holders and health insurance premiums received for reinsurance on New Mexico risks**

Combined Premium Tax Rates for Health Insurers

6

- Insurance Premium Tax 3.003%
- Insurance Premium Surtax 1.0%
- Combined Tax Rate 4.003%

Premiums Exempt from Premium Tax

7

Section 59A-6-2 (E)
NMSA 1978

Annotation of
Section 59A-6-2
NMSA 1978

Attorney General
Opinion No. 79-38,
November 8, 1979

Exempted from the New Mexico insurance premiums tax and health insurance premiums surtax are:

- 1) premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees; and
 - 2) payments received by a health maintenance organization from the federal secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g) (e.g. Federal Employee Programs)
- ❖ Self-insured employer under Workmen's Compensation Act is not an insurance company transacting insurance business and therefore is not subject to the premium tax.

Premium Tax In Lieu of Other Taxes

8

Section 59A-6-6
NMSA 1978

Attorney General
Opinion No. 47-5038,
June 11, 1947

The state government of New Mexico preempts the field of taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, prearranged funeral plans and insurance agents and solicitors as such; and payment of the taxes, licenses and fees provided for in the Insurance Code shall be in lieu of all other taxes, licenses and fees of every kind now or hereafter imposed by this state or any political subdivision thereof on any of the foregoing specified entities, excepting the regular state, county and city taxes on property located in New Mexico excepting the income tax on agents and solicitors. As used in this section, "agent" does not include insurance adjusters.

The state's insurance premiums tax on an insurance company is in lieu of all other taxes, except a tax on property located in New Mexico.

Premium Tax & Health Insurance Premium Surtax Due Dates

9

Section 59A-6-2(D)
NMSA 1978

All Premium Taxes including the Surtaxes are to be paid quarterly based on at least 25% of either the preceding calendar years tax paid or 80 % of the actual payment due for the current calendar year, whichever is greater. (Final adjustments are made on the April 15th final return.)

- **April 15th:** Premium Tax Final (from the preceding calendar year) & Premium Tax 1st quarter (current year)
- **July 15th:** Premium Tax 2nd quarter (current year)
- **October 15th** Premium Tax 3rd quarter (current year)
- **January 15th** Premium Tax 4th quarter (current year)

How Premium Taxes and Surtaxes are Filed/Paid

10

Premium Tax Forms of Insurance Division:

Form 306	Quarterly for Life and Health, Casualty, Property, and Vehicle
Form 300	Final Life & Health (Section 59A-7-2 & 3 NMSA 1978)
Form 301	Final Casualty (Section 59A-7-4 NMSA 1978)
Form 302	Final Property (Section 59A-7-6 NMSA 1978)
Form 303	Final Vehicle Section (59A-7-7 NMSA 1978)
Form 308	Quarterly for Self-Procured (Section 59A-15-4 NMSA 1978)
Form 309	Quarterly for Self-Insured (Section 59A-6-2(5) NMSA 1978)

- ✓ Annual Return Filed
- ✓ Tax Deductions
- ✓ Tax Credits
- ✓ Tax Payments

Premium Tax Return Deductions

11

Section 59A -6-2 (B)
NMSA 1978

- Return Premiums
- Political Subdivisions
 - Federal Health Benefits Program Premiums
 - Other State Funded Program Premium (e.g. cities and counties)
- Dividends paid/credited to policyholders
- Premiums received from authorized companies for reinsurance on NM risks

Premium Tax Credits

12

Section 59A-54-10(A)
NMSA 1978

- The New Mexico Comprehensive Health Insurance Pool Administrator will annually assess an insurer for the losses and administrative expenses of the state's **Medical Insurance Pool**.

Section 59A-54-10(C)
NMSA 1978

- **Premium Tax Credits for Pool Payments**
 - **Medical Insurance Pool Payment – 50% tax credit**
 - **Medical Insurance Pool Payment – 75% tax credit** (for the assessments attributable to pool policy holders that receive premiums, in whole or in part through the federal Ryan White Care Act, the Ted R. Montoya hemophilia program of UNM Health Sciences Center, the children's medical services bureau of the public health division of the Department of Health or other program receiving state funding or assistance.)
 - **Health Alliance Pool Payments – 50% tax credit**

Section 59A-56-11(F)
NMSA 1978

Premium Tax Refunds / Overpayments

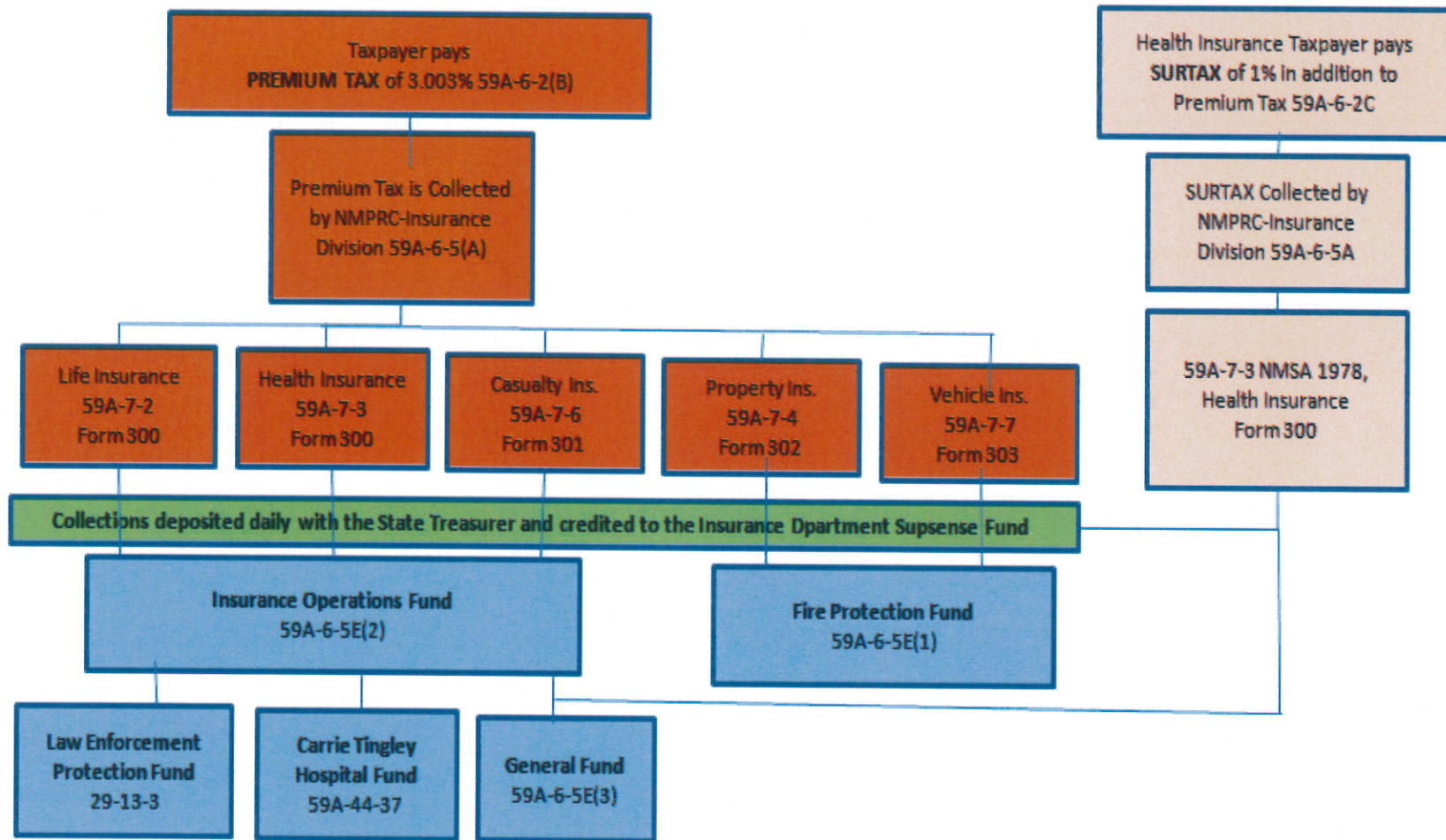
13

Section 59A-6-5(B)
NMSA 1978

- The Superintendent of Insurance may authorize a refund of money erroneously paid as fees, licenses, penalties, or taxes from the state's Insurance Department Suspense Fund upon a request for refund made within three years after the erroneous payment
- In the case of a premium tax erroneously paid or overpaid, a refund may also be requested as a credit against the state insurance premium tax due in any annual or quarterly premiums tax return filed within three years of the erroneous or excess payment

Flow Chart on Premium Tax and Surtax

14



Insurance Division Suspense Fund & Collection of Premium Taxes and Surtaxes

Fiscal Years 2007 - 2011

15

	FY2007	FY2008	FY2009	FY2010	FY2011
INSURANCE SUSPENSE FUND*	\$190,304,008.49	\$196,682,074.00	\$206,613,666.29	\$231,848,534.56	\$226,836,581.77
LESS CHARGEBACKS	(\$9,681.89)	(\$33,796.00)	(\$1,828.16)	(\$10,941.00)	(\$15,523.26)
LESS REFUNDS	(\$967,347.65)	(\$1,026,752.78)	(\$1,446,085.18)	(\$3,514,749.57)	(\$3,030,979.88)
LESS TRANSFER TO SECY OF STATE	(\$682,028.36)	(\$100,818.00)	(\$876,390.03)	(\$800.00)	(\$192,000.00)
INSURANCE SUSPENSE FUND SUB-TOTAL	\$188,644,950.59	\$195,520,707.22	\$204,289,362.92	\$228,322,043.99	\$223,598,078.63
INSURANCE OPERATION FUND	(\$6,799,607.06)	(\$7,552,664.21)	(\$8,264,136.95)	(\$8,275,775.03)	(\$8,947,111.36)
FIRE PROTECTION FUND	(\$62,169,362.42)	(\$64,815,369.60)	(\$68,224,527.94)	(\$66,430,881.98)	(\$67,452,200.20)
CARRIE TINGLEY	(\$12,490.00)	(\$18,170.00)	(\$23,713.00)	(\$33,223.00)	(\$25,673.00)
NM FINANCE AUTHORITY	(\$1,395,203.00)	(\$1,681,413.91)	(\$1,761,417.00)		
INSURANCE SUSPENSE FUND LESS DIST.	\$118,268,288.11	\$121,453,089.50	\$126,015,568.03	\$153,582,163.98	\$147,173,094.07
X 10% TO LAW ENFORCEMENT FUND (LEF)	(\$11,826,828.93)	(\$12,145,309.07)	(\$12,601,556.93)	(\$15,358,216.55)	(\$14,717,309.55)
INSURANCE SUSPENSE FUND LESS LEF	\$106,441,459.18	\$109,307,780.43	\$113,414,011.10	\$138,223,947.43	\$132,455,784.52
REVERSION TO GENERAL FUND	\$106,441,459.18	\$109,307,780.43	\$113,414,011.10	\$138,223,947.43	\$132,455,784.52
<p>*The figures below are included in Ins. Sus. Fund. Note: Premium taxes are only a portion what is received into the Insurance Suspense Fund.</p> <p>There are other fees, penalties, etc. that are included in the numbers above and impact the various transfers.</p>					
PREMIUM TAX AND SURTAX FOR INSURANCE	FY2007	FY2008	FY2009	FY2010	FY2011
PREMIUM TAX (Insurance) Line Item 54	\$94,004,901.25	\$95,888,341.86	\$94,520,801.05	\$116,090,692.33	\$109,832,775.93
SURTAX Health Insurance Line Item 53	\$21,828,222.87	\$22,955,163.16	\$28,382,370.99	\$36,876,183.34	\$36,061,780.31
PREMIUM TAX FIRE FUND Line Item 78	\$56,581,609.44	\$59,165,662.60	\$60,413,287.15	\$59,686,311.45	\$60,080,801.97
Totals	\$172,414,733.56	\$178,009,167.62	\$183,316,459.19	\$212,653,187.12	\$205,975,358.21

Consideration of Potential Legislation

16

- ✓ Estimated Tax Payments
 - Calculated on Gross Tax Due vs. Net Tax Due
 - Written vs. Earned vs. Received Premiums (Example: Write policy in December, Earn in January, Receive payment in February)
 - Permanent overpayment balance issue
- ✓ If the Insurance Pool is no longer required as a result of healthcare reform, both the assessment and the corresponding deduction should be addressed.
- ✓ Section 59A-14-12 Surplus Line Insurance
- ✓ Section 59A-6-2B: too vague, “received or written” premiums;
- ✓ Section 59A-6-5B: too vague, refund for “erroneous payment”
- ✓ Premium Tax Credits
 - Calculation of the 50% and 75% tax credit