

BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAX EXPENDITURES; PROVIDING FOR REVIEW OF CERTAIN  
HEALTH CARE AND HEALTH INSURANCE TAX EXPENDITURES; PROVIDING  
DELAYED REPEAL IN 2020 UNLESS EXTENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 7-1-6.46 NMSA 1978 (being Laws 2004,  
Chapter 116, Section 1, as amended) is amended to read:

"7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR  
FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES  
DEDUCTION.--

A. A distribution pursuant to Section 7-1-6.1 NMSA  
1978 shall be made to a municipality in an amount, subject to  
any increase or decrease made pursuant to Section 7-1-6.15 NMSA  
1978, equal to the sum of:

(1) for a municipality having a population of

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1 less than ten thousand according to the most recent federal  
2 decennial census and having per capita taxable gross receipts  
3 for the previous calendar year that are less than the average  
4 per capita taxable gross receipts for all municipalities for  
5 that same calendar year:

6 (a) the total deductions claimed  
7 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
8 from business locations attributable to the municipality  
9 multiplied by the sum of the combined rate of all municipal  
10 local option gross receipts taxes in effect in the municipality  
11 for the month plus one and two hundred twenty-five thousandths  
12 percent; and

13 (b) the total deductions claimed  
14 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to  
15 July 1, 2020 by taxpayers from business locations attributable  
16 to the municipality multiplied by the sum of the combined rate  
17 of all municipal local option gross receipts taxes in effect in  
18 the municipality for the month plus one and two hundred twenty-  
19 five thousandths percent; or

20 (2) for a municipality not described in  
21 Paragraph (1) of this subsection:

22 (a) the total deductions claimed  
23 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
24 from business locations attributable to the municipality  
25 multiplied by the sum of the combined rate of all municipal

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1 local option gross receipts taxes in effect in the municipality  
2 on January 1, 2007 plus one and two hundred twenty-five  
3 thousandths percent; and

4 (b) the total deductions claimed  
5 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to  
6 July 1, 2020 by taxpayers from business locations attributable  
7 to the municipality multiplied by the sum of the combined rate  
8 of all municipal local option gross receipts taxes in effect in  
9 the municipality on January 1, 2007 plus one and two hundred  
10 twenty-five thousandths percent.

11 B. The distribution pursuant to Subsection A of  
12 this section is in lieu of revenue that would have been  
13 received by the municipality but for the deductions provided by  
14 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall  
15 be considered gross receipts tax revenue and shall be used by  
16 the municipality in the same manner as gross receipts tax  
17 revenue, including payment of gross receipts tax revenue bonds.

18 C. For the purposes of this section, "business  
19 locations attributable to the municipality" means business  
20 locations:

- 21 (1) within the municipality;
- 22 (2) on land owned by the state, commonly known  
23 as the "state fairgrounds", within the exterior boundaries of  
24 the municipality;
- 25 (3) outside the boundaries of the municipality

1 on land owned by the municipality; and

2 (4) on an Indian reservation or pueblo grant  
3 in an area that is contiguous to the municipality and in which  
4 the municipality performs services pursuant to a contract  
5 between the municipality and the Indian tribe or Indian pueblo  
6 if:

7 (a) the contract describes an area in  
8 which the municipality is required to perform services and  
9 requires the municipality to perform services that are  
10 substantially the same as the services the municipality  
11 performs for itself; and

12 (b) the governing body of the  
13 municipality has submitted a copy of the contract to the  
14 secretary.

15 D. A distribution pursuant to this section may be  
16 adjusted for a distribution made to a tax increment development  
17 district with respect to a portion of a gross receipts tax  
18 increment dedicated by a municipality pursuant to the Tax  
19 Increment for Development Act."

20 SECTION 2. Section 7-1-6.47 NMSA 1978 (being Laws 2004,  
21 Chapter 116, Section 2, as amended) is amended to read:

22 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD  
23 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA  
25 1978 shall be made to a county in an amount, subject to any

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1 increase or decrease made pursuant to Section 7-1-6.15 NMSA  
2 1978, equal to the sum of:

3 (1) for a county having a population of less  
4 than forty-eight thousand according to the most recent federal  
5 decennial census:

6 (a) the total deductions claimed  
7 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
8 from business locations within a municipality in the county  
9 multiplied by the combined rate of all county local option  
10 gross receipts taxes in effect for the month that are imposed  
11 throughout the county;

12 (b) the total deductions claimed  
13 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
14 from business locations in the county but not within a  
15 municipality multiplied by the combined rate of all county  
16 local option gross receipts taxes in effect for the month that  
17 are imposed in the county area not within a municipality;

18 (c) the total deductions claimed  
19 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to  
20 July 1, 2020 by taxpayers from business locations within a  
21 municipality in the county multiplied by the combined rate of  
22 all county local option gross receipts taxes in effect for the  
23 month that are imposed throughout the county; and

24 (d) the total deductions claimed  
25 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to

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1 July 1, 2020 by taxpayers from business locations in the county  
2 but not within a municipality multiplied by the combined rate  
3 of all county local option gross receipts taxes in effect for  
4 the month that are imposed in the county area not within a  
5 municipality; or

6 (2) for a county not described in Paragraph  
7 (1) of this subsection:

8 (a) the total deductions claimed  
9 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
10 from business locations within a municipality in the county  
11 multiplied by the combined rate of all county local option  
12 gross receipts taxes in effect on January 1, 2007 that are  
13 imposed throughout the county;

14 (b) the total deductions claimed  
15 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
16 from business locations in the county but not within a  
17 municipality multiplied by the combined rate of all county  
18 local option gross receipts taxes in effect on January 1, 2007  
19 that are imposed in the county area not within a municipality;

20 (c) the total deductions claimed  
21 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to  
22 July 1, 2020 by taxpayers from business locations within a  
23 municipality in the county multiplied by the combined rate of  
24 all county local option gross receipts taxes in effect on  
25 January 1, 2007 that are imposed throughout the county; and

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1 (d) the total deductions claimed  
2 pursuant to Section 7-9-93 NMSA 1978 for ~~[the]~~ a month prior to  
3 July 1, 2020 by taxpayers from business locations in the county  
4 but not within a municipality multiplied by the combined rate  
5 of all county local option gross receipts taxes in effect on  
6 January 1, 2007 that are imposed in the county area not within  
7 a municipality.

8 B. The distribution pursuant to Subsection A of  
9 this section is in lieu of revenue that would have been  
10 received by the county but for the deductions provided by  
11 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall  
12 be considered gross receipts tax revenue and shall be used by  
13 the county in the same manner as gross receipts tax revenue,  
14 including payment of gross receipts tax revenue bonds.

15 C. A distribution pursuant to this section may be  
16 adjusted for a distribution made to a tax increment development  
17 district with respect to a portion of a gross receipts tax  
18 increment dedicated by a county pursuant to the Tax Increment  
19 for Development Act."

20 SECTION 3. Section 7-2-18.22 NMSA 1978 (being Laws 2007,  
21 Chapter 361, Section 2) is amended to read:

22 "7-2-18.22. TAX CREDIT--RURAL HEALTH CARE PRACTITIONER  
23 TAX CREDIT.--

24 A. For a taxable year beginning on or after January  
25 1, 2012 but before January 1, 2021, a taxpayer who files an

1 individual New Mexico tax return, who is not a dependent of  
2 another individual, who is an eligible health care practitioner  
3 and who has provided health care services in New Mexico in a  
4 rural health care underserved area in a taxable year may claim  
5 a credit against the tax liability imposed by the Income Tax  
6 Act. The credit provided in this section may be referred to as  
7 the "rural health care practitioner tax credit".

8 B. The rural health care practitioner tax credit  
9 may be claimed and allowed in an amount that shall not exceed  
10 five thousand dollars (\$5,000) for all eligible physicians,  
11 osteopathic physicians, dentists, clinical psychologists,  
12 podiatrists and optometrists who qualify pursuant to the  
13 provisions of this section, except the credit shall not exceed  
14 three thousand dollars (\$3,000) for all eligible dental  
15 hygienists, physician assistants, certified nurse-midwives,  
16 certified registered nurse anesthetists, certified nurse  
17 practitioners and clinical nurse specialists.

18 C. To qualify for the rural health care  
19 practitioner tax credit, an eligible health care practitioner  
20 shall have provided health care during a taxable year for at  
21 least two thousand eighty hours at a practice site located in  
22 an approved, rural health care underserved area. An eligible  
23 rural health care practitioner who provided health care  
24 services for at least one thousand forty hours but less than  
25 two thousand eighty hours at a practice site located in an



1 approved rural health care underserved area during a taxable  
2 year is eligible for one-half of the credit amount.

3 D. Before an eligible health care practitioner may  
4 claim the rural health care practitioner tax credit, the  
5 practitioner shall submit an application to the department of  
6 health that describes the practitioner's clinical practice and  
7 contains additional information that the department of health  
8 may require. The department of health shall determine whether  
9 an eligible health care practitioner qualifies for the rural  
10 health care practitioner tax credit and shall issue a  
11 certificate to each qualifying eligible health care  
12 practitioner. The department of health shall provide the  
13 taxation and revenue department appropriate information for all  
14 eligible health care practitioners to whom certificates are  
15 issued.

16 E. A taxpayer claiming the credit provided by this  
17 section shall submit a copy of the certificate issued by the  
18 department of health with the taxpayer's New Mexico income tax  
19 return for the taxable year. If the amount of the credit  
20 claimed exceeds a taxpayer's tax liability for the taxable year  
21 in which the credit is being claimed, the excess may be carried  
22 forward for three consecutive taxable years.

23 F. As used in this section:

24 (1) "eligible health care practitioner" means:

25 (a) a certified nurse-midwife licensed

1 by the board of nursing as a registered nurse and licensed by  
2 the public health division of the department of health to  
3 practice nurse-midwifery as a certified nurse-midwife;

4 (b) a dentist or dental hygienist  
5 licensed pursuant to the Dental Health Care Act;

6 (c) an optometrist licensed pursuant to  
7 the provisions of the Optometry Act;

8 (d) an osteopathic physician licensed  
9 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978  
10 or an osteopathic physician assistant licensed pursuant to the  
11 provisions of the Osteopathic Physicians' Assistants Act;

12 (e) a physician or physician assistant  
13 licensed pursuant to the provisions of Chapter 61, Article 6  
14 NMSA 1978;

15 (f) a podiatrist licensed pursuant to  
16 the provisions of the Podiatry Act;

17 (g) a clinical psychologist licensed  
18 pursuant to the provisions of the Professional Psychologist  
19 Act; and

20 (h) a registered nurse in advanced  
21 practice who has been prepared through additional formal  
22 education as provided in Sections 61-3-23.2 through 61-3-23.4  
23 NMSA 1978 to function beyond the scope of practice of  
24 professional registered nursing, including certified nurse  
25 practitioners, certified registered nurse anesthetists and

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1 clinical nurse specialists;

2 (2) "health care underserved area" means a  
3 geographic area or practice location in which it has been  
4 determined by the department of health, through the use of  
5 indices and other standards set by the department of health,  
6 that sufficient health care services are not being provided;

7 (3) "practice site" means a private practice,  
8 public health clinic, hospital, public or private nonprofit  
9 primary care clinic or other health care service location in a  
10 health care underserved area; and

11 (4) "rural" means an area or location  
12 identified by the department of health as falling outside of an  
13 urban area."

14 SECTION 4. Section 7-9-73.1 NMSA 1978 (being Laws 1991,  
15 Chapter 8, Section 3, as amended) is amended to read:

16 "7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--Prior  
17 to July 1, 2020, fifty percent of the receipts of hospitals  
18 licensed by the department of health may be deducted from gross  
19 receipts; provided, this deduction may be applied only to the  
20 taxable gross receipts remaining after all other appropriate  
21 deductions have been taken."

22 SECTION 5. Section 7-9-93 NMSA 1978 (being Laws 2004,  
23 Chapter 116, Section 6, as amended) is amended to read:

24 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR  
25 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

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1           A. Prior to July 1, 2020, receipts from payments by  
2 a managed health care provider or health care insurer for  
3 commercial contract services or medicare part C services  
4 provided by a health care practitioner that are not otherwise  
5 deductible pursuant to another provision of the Gross Receipts  
6 and Compensating Tax Act may be deducted from gross receipts,  
7 provided that the services are within the scope of practice of  
8 the person providing the service. Receipts from fee-for-  
9 service payments by a health care insurer may not be deducted  
10 from gross receipts. The deduction provided by this section  
11 shall be separately stated by the taxpayer.

12           B. For the purposes of this section:

13                   (1) "commercial contract services" means  
14 health care services performed by a health care practitioner  
15 pursuant to a contract with a managed health care provider or  
16 health care insurer other than those health care services  
17 provided for medicare patients pursuant to Title 18 of the  
18 federal Social Security Act or for medicaid patients pursuant  
19 to Title 19 or Title 21 of the federal Social Security Act;

20                   (2) "health care insurer" means a person that:

21                           (a) has a valid certificate of authority  
22 in good standing pursuant to the New Mexico Insurance Code to  
23 act as an insurer, health maintenance organization or nonprofit  
24 health care plan or prepaid dental plan; and

25                           (b) contracts to reimburse licensed

1 health care practitioners for providing basic health services  
2 to enrollees at negotiated fee rates;

3 (3) "health care practitioner" means:

4 (a) a chiropractic physician licensed  
5 pursuant to the provisions of the Chiropractic Physician  
6 Practice Act;

7 (b) a dentist or dental hygienist  
8 licensed pursuant to the Dental Health Care Act;

9 (c) a doctor of oriental medicine  
10 licensed pursuant to the provisions of the Acupuncture and  
11 Oriental Medicine Practice Act;

12 (d) an optometrist licensed pursuant to  
13 the provisions of the Optometry Act;

14 (e) an osteopathic physician licensed  
15 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978  
16 or an osteopathic physician's assistant licensed pursuant to  
17 the provisions of the Osteopathic Physicians' Assistants Act;

18 (f) a physical therapist licensed  
19 pursuant to the provisions of the Physical Therapy Act;

20 (g) a physician or physician assistant  
21 licensed pursuant to the provisions of Chapter 61, Article 6  
22 NMSA 1978;

23 (h) a podiatrist licensed pursuant to  
24 the provisions of the Podiatry Act;

25 (i) a psychologist licensed pursuant to

1 the provisions of the Professional Psychologist Act;

2 (j) a registered lay midwife registered  
3 by the department of health;

4 (k) a registered nurse or licensed  
5 practical nurse licensed pursuant to the provisions of the  
6 Nursing Practice Act;

7 (l) a registered occupational therapist  
8 licensed pursuant to the provisions of the Occupational Therapy  
9 Act;

10 (m) a respiratory care practitioner  
11 licensed pursuant to the provisions of the Respiratory Care  
12 Act;

13 (n) a speech-language pathologist or  
14 audiologist licensed pursuant to the Speech-Language Pathology,  
15 Audiology and Hearing Aid Dispensing Practices Act;

16 (o) a professional clinical mental  
17 health counselor, marriage and family therapist or professional  
18 art therapist licensed pursuant to the provisions of the  
19 Counseling and Therapy Practice Act who has obtained a master's  
20 degree or a doctorate;

21 (p) an independent social worker  
22 licensed pursuant to the provisions of the Social Work Practice  
23 Act; and

24 (q) a clinical laboratory that is  
25 accredited pursuant to 42 U.S.C. Section 263a but that is not a

laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(4) "managed health care provider" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by contracting with selected or participating health care providers. "Managed health care provider" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

- (a) health maintenance organizations;
  - (b) preferred provider organizations;
  - (c) individual practice associations;
  - (d) competitive medical plans;
  - (e) exclusive provider organizations;
  - (f) integrated delivery systems;
  - (g) independent physician-provider organizations;
  - (h) physician hospital-provider organizations; and
  - (i) managed care services organizations;
- and

(5) "medicare part C services" means services performed pursuant to a contract with a managed health care

1 provider for medicare patients pursuant to Title 18 of the  
2 federal Social Security Act."

3 SECTION 6. Section 7-9-96.1 NMSA 1978 (being Laws 2007,  
4 Chapter 361, Section 7) is amended to read:

5 "7-9-96.1. CREDIT--GROSS RECEIPTS TAX--RECEIPTS OF  
6 CERTAIN HOSPITALS.--

7 A. A hospital licensed by the department of health  
8 may claim a credit for each reporting period against the gross  
9 receipts tax due for that reporting period as follows:

10 (1) for a hospital located in a municipality:

11 (a) on or after July 1, 2007 but before  
12 July 1, 2008, in an amount equal to seven hundred fifty-five  
13 thousandths percent of the hospital's taxable gross receipts  
14 for that reporting period after all applicable deductions have  
15 been taken;

16 (b) on or after July 1, 2008 but before  
17 July 1, 2009, in an amount equal to one and fifty-one  
18 hundredths percent of the hospital's taxable gross receipts for  
19 that reporting period after all applicable deductions have been  
20 taken;

21 (c) on or after July 1, 2009 but before  
22 July 1, 2010, in an amount equal to two and two hundred sixty-  
23 five thousandths percent of the hospital's taxable gross  
24 receipts for that reporting period after all applicable  
25 deductions have been taken;

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1 (d) on or after July 1, 2010 but before  
2 July 1, 2011, in an amount equal to three and two hundredths  
3 percent of the hospital's taxable gross receipts for that  
4 reporting period after all applicable deductions have been  
5 taken; and

6 (e) on or after July 1, 2011 but before  
7 July 1, 2020, in an amount equal to three and seven hundred  
8 seventy-five thousandths percent of the hospital's taxable  
9 gross receipts for that reporting period after all applicable  
10 deductions have been taken; and

11 (2) for a hospital located in the  
12 unincorporated area of a county:

13 (a) on or after July 1, 2007 but before  
14 July 1, 2008, in an amount equal to one percent of the  
15 hospital's taxable gross receipts for that reporting period  
16 after all applicable deductions have been taken;

17 (b) on or after July 1, 2008, but before  
18 July 1, 2009, in an amount equal to two percent of the  
19 hospital's taxable gross receipts for that reporting period  
20 after all applicable deductions have been taken;

21 (c) on or after July 1, 2009 but before  
22 July 1, 2010, in an amount equal to three percent of the  
23 hospital's taxable gross receipts for that reporting period  
24 after all applicable deductions have been taken;

25 (d) on or after July 1, 2010 but before

1 July 1, 2011, in an amount equal to four percent of the  
2 hospital's taxable gross receipts for that reporting period  
3 after all applicable deductions have been taken; and

4 (e) on or after July 1, 2011 but before  
5 July 1, 2020, in an amount equal to five percent of the  
6 hospital's taxable gross receipts for that reporting period  
7 after all applicable deductions have been taken.

8 B. For the purposes of this section, "hospital"  
9 means a facility providing emergency or urgent care, inpatient  
10 medical care and nursing care for acute illness, injury,  
11 surgery or obstetrics and includes a facility licensed by the  
12 department of health as a critical access hospital, general  
13 hospital, long-term acute care hospital, psychiatric hospital,  
14 rehabilitation hospital, limited services hospital and special  
15 hospital."

16 SECTION 7. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 102, as amended) is amended to read:

18 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

19 A. Prior to July 1, 2020, the premium tax provided  
20 for in this section shall apply as to the following taxpayers:

21 (1) each insurer authorized to transact  
22 insurance in New Mexico;

23 (2) each insurer formerly authorized to  
24 transact insurance in New Mexico and receiving premiums on  
25 policies remaining in force in New Mexico, except that this

1 provision shall not apply as to an insurer that withdrew from  
2 New Mexico prior to March 26, 1955;

3 (3) each plan operating under provisions of  
4 Chapter 59A, Articles 46 through 49 NMSA 1978;

5 (4) each property bondsman, as that person is  
6 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
7 received as security or surety for a bail bond in connection  
8 with a judicial proceeding, which consideration shall be  
9 considered "gross premiums" for the purposes of this section;  
10 and

11 (5) each unauthorized insurer that has assumed  
12 a contract or policy of insurance directly or indirectly from  
13 an authorized or formerly authorized insurer and is receiving  
14 premiums on such policies remaining in force in New Mexico,  
15 except that this provision shall not apply if a ceding insurer  
16 continues to pay the tax provided in this section as to such  
17 policy or contract.

18 B. Each such taxpayer shall pay in accordance with  
19 this subsection a premium tax of three and three-thousandths  
20 percent of the gross premiums and membership and policy fees  
21 received or written by it, as reported in Schedule T and  
22 supporting schedules of its annual financial statement on  
23 insurance or contracts covering risks within this state during  
24 the preceding calendar year, less all return premiums,  
25 including dividends paid or credited to policyholders or

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1 contract holders and premiums received for reinsurance on New  
2 Mexico risks.

3 C. In addition to the premium tax imposed pursuant  
4 to Subsection B of this section and prior to July 1, 2020, each  
5 taxpayer described in Subsection A of this section that  
6 transacts health insurance in New Mexico or is a plan described  
7 in Chapter 59A, Article 46 or 47 NMSA 1978 shall pay a health  
8 insurance premium surtax of one percent of the gross health  
9 insurance premiums and membership and policy fees received by  
10 it on hospital and medical expense incurred insurance or  
11 contracts; nonprofit health care service plan contracts,  
12 excluding dental or vision only contracts; and health  
13 maintenance organization subscriber contracts covering health  
14 risks within this state during the preceding calendar year,  
15 less all return health insurance premiums, including dividends  
16 paid or credited to policyholders or contract holders and  
17 health insurance premiums received for reinsurance on New  
18 Mexico risks. Except as provided in this section, all  
19 references in the Insurance Code to the premium tax shall  
20 include both the premium tax and the health insurance premium  
21 surtax.

22 D. For each calendar quarter, an estimated payment  
23 of the premium tax and the health insurance premium surtax  
24 shall be made on April 15, July 15, October 15 and the  
25 following January 15. The estimated payments shall be equal to  
  
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1 at least one-fourth of either the payment made during the  
2 previous calendar year or eighty percent of the actual payment  
3 due for the current calendar year, whichever is greater. The  
4 final adjustment for payments due for the prior year shall be  
5 made with the return, which shall be filed on April 15 of each  
6 year, at which time all taxes for that year are due. Dividends  
7 paid or credited to policyholders or contract holders and  
8 refunds, savings, savings coupons and similar returns or  
9 credits applied or credited to payment of premiums for  
10 existing, new or additional insurance shall, in the amount so  
11 used, constitute premiums subject to tax under this section for  
12 the year in which so applied or credited.

13 E. Exempted from the taxes imposed by this section  
14 are:

15 (1) premiums attributable to insurance or  
16 contracts purchased by the state or a political subdivision for  
17 the state's or political subdivision's active or retired  
18 employees; and

19 (2) payments received by a health maintenance  
20 organization from the federal secretary of health and human  
21 services pursuant to a contract issued under the provisions of  
22 42 U.S.C. Section 1395 mm(g)."

23 SECTION 8. Section 59A-6-6 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 106, as amended) is amended to read:

25 "59A-6-6. PREEMPTION AND IN LIEU PROVISION.--

1           A. The state government of New Mexico preempts the  
2 field of taxation of insurers, nonprofit health care plans,  
3 health maintenance organizations, prepaid dental plans,  
4 prearranged funeral plans and insurance agents and solicitors  
5 as such, and payment of the taxes, licenses and fees provided  
6 for in the Insurance Code shall be in lieu of all other taxes,  
7 licenses and fees of every kind now or hereafter imposed by  
8 this state or any political subdivision thereof on any of the  
9 foregoing specified entities, ~~[excepting]~~ except:

10                   (1) the regular state, county and city taxes  
11 on property located in New Mexico; ~~[excepting]~~ and

12                   (2) the income tax on agents and solicitors.

13           B. If the premium taxes imposed in Section 59A-6-2  
14 NMSA 1978 are terminated or otherwise repealed, the taxpayers  
15 listed in Subsection A of Section 59A-6-2 NMSA 1978 shall be  
16 required to pay all taxes from which they are exempted pursuant  
17 to Subsection A of this section.

18           C. No provisions of law enacted after January 1,  
19 1985 shall be deemed to modify the provisions of this section  
20 except by amendment inserted into this section and adopted  
21 pursuant to the provisions of Article 4 of the constitution of  
22 New Mexico.

23           D. As used in this section, "agent" does not  
24 include insurance adjusters. ~~[No provision of law enacted~~  
25 ~~after January 1, 1985 shall be deemed to modify this provision~~

1 ~~except by express reference to this section]."~~

2       SECTION 9. Section 59A-54-10 NMSA 1978 (being Laws 1987,  
3 Chapter 154, Section 10, as amended) is amended to read:

4       "59A-54-10. ASSESSMENTS.--

5           A. Following the close of each fiscal year, the  
6 pool administrator shall determine the net premium, being  
7 premiums less administrative expense allowances, the pool  
8 expenses and claim expense losses for the year, taking into  
9 account investment income and other appropriate gains and  
10 losses. The assessment for each insurer shall be determined by  
11 multiplying the total cost of pool operation by a fraction, the  
12 numerator of which equals that insurer's premium and subscriber  
13 contract charges or their equivalent for health insurance  
14 written in the state during the preceding calendar year and the  
15 denominator of which equals the total of all premiums and  
16 subscriber contract charges written in the state; provided that  
17 premium income shall include receipts of medicaid managed care  
18 premiums but shall not include any payments by the secretary of  
19 ~~[health and]~~ human services pursuant to a contract issued under  
20 Section 1876 of the Social Security Act, as amended. The board  
21 may adopt other or additional methods of adjusting the formula  
22 to achieve equity of assessments among pool members, including  
23 assessment of health insurers and reinsurers based upon the  
24 number of persons they cover through primary, excess and stop-  
25 loss insurance in the state.

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1           B. If assessments exceed actual losses and  
2 administrative expenses of the pool, the excess shall be held  
3 at interest and used by the board to offset future losses or to  
4 reduce pool premiums. As used in this subsection, "future  
5 losses" includes reserves for incurred but not reported claims.

6           C. The proportion of participation of each member  
7 in the pool shall be determined annually by the board based on  
8 annual statements and other reports deemed necessary by the  
9 board and filed with it by the member. Any deficit incurred by  
10 the pool shall be recouped by assessments apportioned among the  
11 members of the pool pursuant to the assessment formula provided  
12 by Subsection A of this section; provided that the assessment  
13 for any pool member shall be allowed prior to January 1, 2021  
14 as a fifty-percent credit on the premium tax return for that  
15 member and a seventy-five-percent credit on the premium tax  
16 return for that member for the assessments attributable to pool  
17 policy holders that receive premiums, in whole or in part,  
18 through the federal Ryan White CARE Act, the Ted R. Montoya  
19 hemophilia program at the university of New Mexico health  
20 sciences center, ~~[the]~~ children's medical services of the  
21 family health bureau of the public health division of the  
22 department of health or other program receiving state funding  
23 or assistance.

24           D. The board may abate or defer, in whole or in  
25 part, the assessment of a member of the pool if, in the opinion



1 of the board, payment of the assessment would endanger the  
2 ability of the member to fulfill its contractual obligation.  
3 In the event an assessment against a member of the pool is  
4 abated or deferred in whole or in part, the amount by which  
5 such assessment is abated or deferred may be assessed against  
6 the other members in a manner consistent with the basis for  
7 assessments set forth in Subsection A of this section. The  
8 member receiving the abatement or deferment shall remain liable  
9 to the pool for the deficiency for four years."

10 SECTION 10. APPLICABILITY.--The provisions of Section 3  
11 of this act apply to taxable years beginning on or after  
12 January 1, 2012 but before January 1, 2021.

13 SECTION 11. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2012.

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