



# Premium Tax Update

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

**August 5, 2014**

By

**Office of Superintendent of Insurance**

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# Revenues - Overall

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- The OSI collects approximately \$200 million in annual revenues
  - 90% of revenues are from premium taxes and surtaxes levied on insurance companies that write policies in New Mexico.
  - Most of the remaining revenues are derived from annual licensing fees levied on insurance agents, insurance carriers and other insurance licensees.
  - Approximately 95% of collected revenues are transferred to the general fund, the fire protection fund, the law enforcement protection fund, the public election fund (ends July 1, 2014), the Carrie Tingley fund as well as used to fund the operations of the OSI.

# Sources of Revenues & Distributions

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## Sources of Revenues:

Licenses, Renewals and Appointments  
Premium Taxes  
Fines and Penalties  
Surplus Line Taxes  
Insurance Premium Surtaxes  
Assessments  
Patients' Compensation Fund  
Continuing Education  
Miscellaneous (i.e copies)

## Distributions/Transfers

- ✓ State General Fund
- ✓ Fire Protection Fund
- ✓ Law Enforcement Protection Fund
- ✓ Carrie Tingley
- ✓ Public Election Fund
- ✓ Insurance Operating Fund

# Taxpayers (Insurance Companies) Subject to Premium Tax

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**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)

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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)

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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

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

# Premiums Exempt from Premium Tax

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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

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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

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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 15<sup>th</sup> final return.)

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

# How Premium Taxes and Surtaxes are Filed/Paid

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## Premium Tax Forms of Insurance Division:

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

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

# Premium Tax Return Deductions

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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

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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

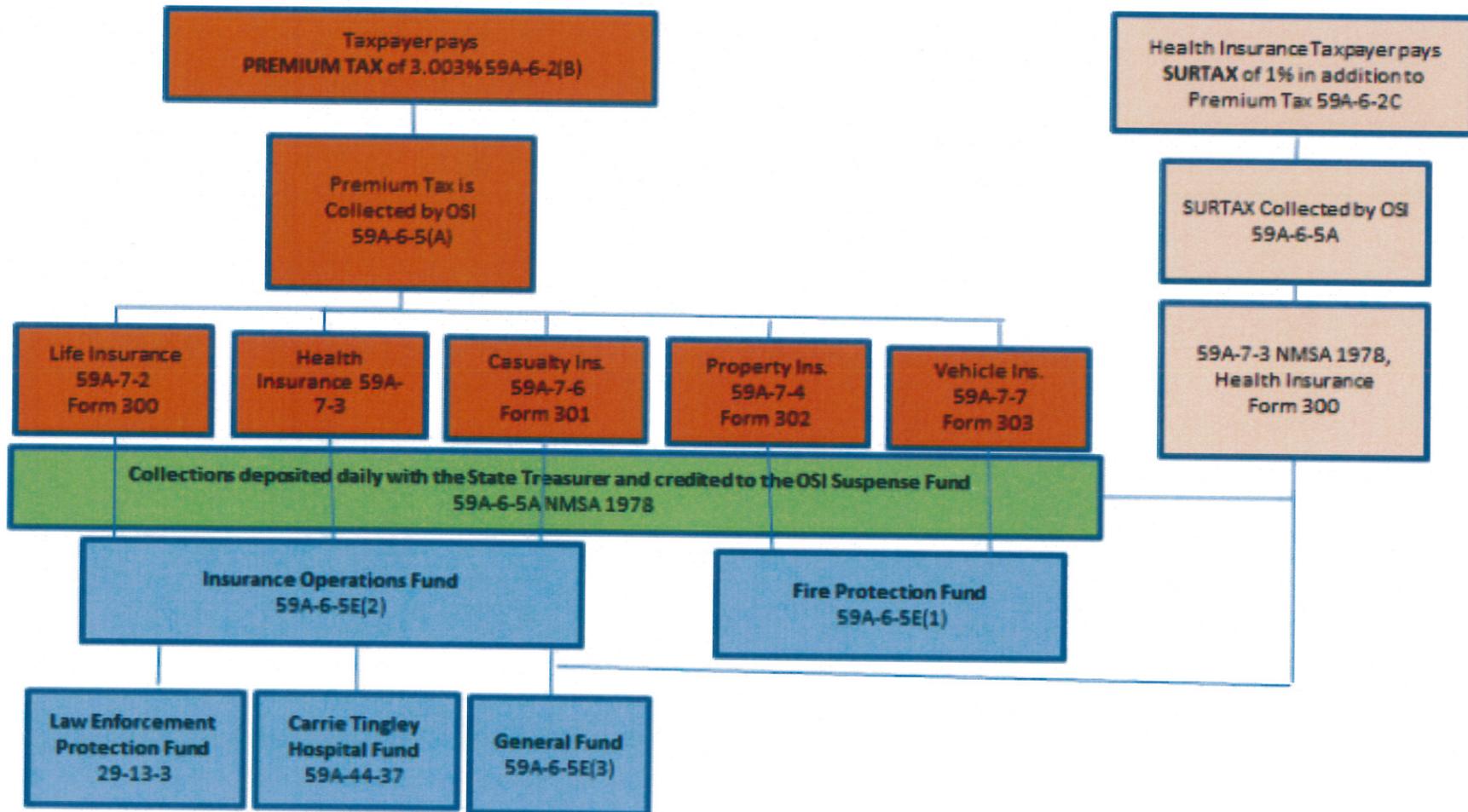
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Section 59A-6-5(B)  
NMSA 1978

- 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

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# Revenue Processed Fiscal Years 2010 – 2014

| TYPE OF REVENUE                   | FY10                    | FY 11                   | FY 12                   | FY 13                   | FY 14                   |
|-----------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Licenses, Renewals & Appointments | \$16,243,529.85         | \$16,758,130.50         | \$19,112,366.71         | \$19,178,370.50         | \$20,798,640.54         |
| Premium Taxes                     | \$175,777,003.78        | \$169,341,739.67        | \$158,244,626.84        | \$141,387,833.53        | \$153,118,490.18        |
| Fines & Penalties                 | \$310,673.68            | \$231,044.54            | \$958,488.66            | \$843,126.59            | \$819,303.56            |
| Surplus Line Taxes                | \$2,445,902.27          | \$2,704,626.30          | \$2,757,858.76          | \$2,689,433.16          | \$2,983,228.42          |
| Insurance Premium Surtax          | \$36,876,183.34         | \$36,049,652.90         | \$32,686,568.82         | \$30,445,982.31         | \$30,456,607.77         |
| Assessments                       | \$1,365,835.97          | \$810,861.95            | \$1,682,720.43          | \$2,142,551.11          | \$1,338,205.13          |
| Patient's Compensation Fund       | \$12,733,122.99         | \$10,855,690.27         | \$12,188,092.37         | \$11,134,060.45         | \$12,433,743.99         |
| Continuing Education              | \$107,803.40            | \$106,418.10            | \$98,563.60             | \$97,167.00             | \$95,243.00             |
| Deductions *                      | (\$3,528,756.34)        | (\$3,038,003.51)        | (\$499,326.16)          | (\$634,670.34)          | \$0.00                  |
| Miscellaneous                     | \$55,316.32             | \$23,389.38             | \$55,113.67             | \$3,780.15              | \$44,042.33             |
| <b>Grand Total:</b>               | <b>\$242,386,615.26</b> | <b>\$233,843,550.10</b> | <b>\$227,285,073.70</b> | <b>\$207,287,634.46</b> | <b>\$222,087,504.92</b> |

Note: \* Each revenue category is net of dishonored checks, credits and adjustments for FY 14.

## Revenue Collections and Distributions Fiscal Years 2007 – 2010

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|  | FY2007 **               | FY2008 **               | FY2009 **               | FY2010 **               |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>INSURANCE SUSPENSE FUND*</b>                  | <b>\$190,304,008.49</b> | <b>\$196,682,074.00</b> | <b>\$206,613,666.29</b> | <b>\$231,848,534.56</b> |
| LESS DISHONORED CHECKS                           | (\$9,681.89)            | (\$33,796.00)           | (\$1,828.16)            | (\$10,941.00)           |
| LESS REFUNDS                                     | (\$967,347.65)          | (\$1,026,752.78)        | (\$1,446,085.18)        | (\$3,514,749.57)        |
| LESS SPECIAL APPROPRIATIONS/OTHER                | \$0.00                  | \$0.00                  | \$0.00                  | \$0.00                  |
| LESS ADJUSTMENTS & TRANSFERS ***                 | (\$682,028.36)          | (\$100,818.00)          | (\$876,390.03)          | (\$800.00)              |
| <b>INSURANCE SUSPENSE FUND SUB-TOTAL</b>         | <b>\$188,644,950.59</b> | <b>\$195,520,707.22</b> | <b>\$204,289,362.92</b> | <b>\$228,322,043.99</b> |
| INSURANCE OPERATION FUND                         | (\$6,799,607.06)        | (\$7,552,664.21)        | (\$8,264,136.95)        | (\$8,275,775.03)        |
| FIRE PROTECTION FUND                             | (\$62,169,362.42)       | (\$64,815,369.60)       | (\$68,224,527.94)       | (\$66,430,881.98)       |
| CARRIE TINGLEY                                   | (\$12,490.00)           | (\$18,170.00)           | (\$23,713.00)           | (\$33,223.00)           |
| NM FINANCE AUTHORITY                             | (\$1,395,203.00)        | (\$1,681,413.91)        | (\$1,761,417.00)        | \$0.00                  |
| <b>INSURANCE SUSPENSE FUND LESS DISTRIBUTION</b> | <b>\$118,268,288.11</b> | <b>\$121,453,089.50</b> | <b>\$126,015,568.03</b> | <b>\$153,582,163.98</b> |
| X 10% TO LAW ENFORCEMENT FUND (LEF)              | (\$11,826,828.93)       | (\$12,145,309.07)       | (\$12,601,556.93)       | (\$15,358,216.55)       |
| <b>REVERSION TO GENERAL FUND **</b>              | <b>\$106,441,459.18</b> | <b>\$109,307,780.43</b> | <b>\$113,414,011.10</b> | <b>\$138,223,947.43</b> |

Note: Premium taxes are only a portion what is received into the Insurance Suspense Fund.

\*The figures below are included in Insurance Suspense Fund

\*\* Unaudited Numbers by OSI

\*\*\* Includes transfers for Voter Election Fund. Note: No longer required by Statute for FY 15

There are other fees, penalties, etc. that are included in the numbers above and impact the various transfers.

| PREMIUM TAX AND SURTAX FOR INSURANCE * | FY2007                  | FY2008                  | FY2009                  | FY2010                  |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| PREMIUM TAX (Insurance)                | \$94,004,901.25         | \$95,888,341.86         | \$94,520,801.05         | \$116,090,692.33        |
| SURTAX (Health Insurance)              | \$21,828,222.87         | \$22,955,163.16         | \$28,382,370.99         | \$36,876,183.34         |
| PREMIUM TAX (Fire Fund)                | \$56,581,609.44         | \$59,165,662.60         | \$60,413,287.15         | \$59,686,311.45         |
| <b>Totals</b>                          | <b>\$172,414,733.56</b> | <b>\$178,009,167.62</b> | <b>\$183,316,459.19</b> | <b>\$212,653,187.12</b> |

# Revenue Collections and Distributions Fiscal Years 2011 – 2014

|   | FY2011 **               | FY2012 **               | FY2013 **               | FY2014                  |
|---|-------------------------|-------------------------|-------------------------|-------------------------|
| <b>REVENUE PROCESSED (Less Dishonored Checks &amp; Credits)</b> | \$223,617,723.18        | \$227,204,011.39        | \$205,737,878.63        | \$222,087,504.92        |
| <b>AGENCY FUND ACCOUNTS (Direct)</b>                            |                         |                         |                         |                         |
| <b>TITLE INSURANCE</b>  | \$0.00                  | (\$596,351.29)          | (\$133,591.78)          | (\$682,200.00)          |
| <b>PATIENT'S COMPENSATION FUND</b>                              | \$0.00                  | (\$12,188,092.37)       | (\$11,134,060.45)       | (\$12,433,743.99)       |
| <b>INSURANCE FRAUD FUND</b>                                     | (\$667,078.15)          | (\$1,086,369.14)        | (\$2,008,959.33)        | (\$656,005.13)          |
| <b>INSURANCE LICENSING CONTINUING EDUCATION FUND</b>            | (\$109,103.10)          | (\$98,563.60)           | (\$97,167.00)           | (\$95,243.00)           |
| <b>WORKING CAPITAL- REPRODUCTION FUND</b>                       | (\$23,537.53)           | (\$57.00)               | (\$3,210.15)            | (\$42,837.33)           |
| <b>LESS</b>   |                         |                         |                         |                         |
| <b>REFUNDS</b>  | \$0.00                  | \$0.00                  | \$0.00                  | (\$989,417.85)          |
| <b>SPECIAL APPROPRIATIONS/OTHER</b>                             | \$0.00                  | \$0.00                  | \$0.00                  | (\$1,340,000.00)        |
| <b>ADJUSTMENTS &amp; TRANSFER ***</b>                           | \$0.00                  | \$0.00                  | \$0.00                  | (\$100,000.00)          |
| <b>FUND DISTRIBUTIONS</b>                                       |                         |                         |                         |                         |
| <b>INSURANCE OPERATION FUND</b>                                 | (\$8,947,111.36)        | (\$9,338,127.58)        | (\$9,619,969.35)        | (\$10,496,238.79)       |
| <b>FIRE PROTECTION FUND</b>                                     | (\$67,452,200.20)       | (\$68,576,625.55)       | (\$71,006,406.59)       | (\$74,345,228.77)       |
| <b>CARRIE TINGLEY</b>   | (\$25,673.00)           | (\$27,514.00)           | (\$30,220.00)           | (\$39,573.00)           |
| <b>LAW ENFORCEMENT FUND</b>                                     | (\$14,733,311.42)       | (\$13,537,337.32)       | (\$8,280,806.75)        | (\$9,041,040.93)        |
| <b>GENERAL FUND **</b>  | <b>\$131,659,708.42</b> | <b>\$121,754,973.54</b> | <b>\$103,423,487.23</b> | <b>\$111,825,976.13</b> |

\*\* Unaudited Numbers by OSI

\*\*\* Includes transfers for Voter Election Fund. Note: No longer required by Statute for FY 15

# Premium Taxes Collected: Fiscal Years 2011 – 2014

## Credits: Medical Insurance Pool, Calendar Years 2012 – 2014

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| PREMIUM TAX AND SURTAX FOR INSURANCE | FY2011                  | FY2012                  | FY2013                  | FY2014                  |
|--------------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| PREMIUM TAX (Insurance)              | \$109,832,775.93        | \$98,392,182.53         | \$78,752,491.94         | \$87,325,518.99         |
| SURTAX (Health Insurance)            | \$36,061,780.31         | \$32,686,568.82         | \$30,445,982.31         | \$30,456,607.77         |
| PREMIUM TAX (Fire Fund)              | \$60,080,801.97         | \$59,852,444.31         | \$62,635,341.59         | \$65,824,699.18         |
| <b>Totals</b>                        | <b>\$205,975,358.21</b> | <b>\$190,931,195.66</b> | <b>\$171,833,815.84</b> | <b>\$183,606,825.94</b> |

| MEDICAL INSURANCE POOL CREDITS                                       | Calendar Year<br>2012                         | Calendar Year<br>2013                          | Calendar Year<br>2014 (Jan – June)             |
|--|---|--|--|
| <b>Total Enrollment</b>  | Jan – 8,501<br>Dec – 8,507<br>High: 8,507 Dec | Jan – 8,533<br>Dec – 8,680<br>High: 8,946 July | Jan – 8,327<br>June – 6,057<br>High: 8,327 Jan |
| <b>FULL PREMIUM PLANS</b> (50% Prem Tax Credit) 35-37% of total loss | \$35,692,248                                  | \$43,596,737                                   | \$20,762,849                                   |
| <b>LOW INCOME PLANS</b> (50% Prem Tax Credit) 40-44% of total loss   | \$44,667,389                                  | \$47,958,576                                   | \$23,326,415                                   |
| <b>STATE PAID PLANS</b> (75% Prem Tax Credit) 21-24% of total loss   | \$21,607,149                                  | \$28,367,058                                   | \$11,705,469                                   |
| <b>TOTAL LOSS</b>  | <b>\$101,966,786</b>                          | <b>\$119,922,371</b>                           | <b>\$55,794,733</b>                            |
| <b>TOTAL CREDITS BASED UPON MIP LOSSES*</b>                          | <b>\$56,385,180</b>                           | <b>\$67,052,950</b>                            | <b>\$30,823,734</b>                            |

\*Unaudited Numbers

Note: Health Alliance Credits Account for an Additional approx. \$2.3 Million/year

# Consideration of Potential Legislation

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- ✓ 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”

# Consideration of Potential Legislation

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## ✓ REVISIONS FROM TAX CONSULTANT

- Presumption of correctness for assessment, calculation and demand, e.g. NMSA §7-1-17(C): ***Any assessment of taxes or demand for payment made by the department is presumed to be correct.***
- ✓ statutory interest on late payments and underpayments
- ✓ clarification of credit carry forward for claim for refund §59A-6-5
- ✓ clarification of calculation for estimated tax payments under §59A-6-2(D):
  - "...The estimated payments shall be equal to at least one-fourth of either the payment made during the previous calendar year or eighty percent of the actual payment due for the current calendar year, whichever is greater."