

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 394

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO STATE REVENUE; IMPOSING A HEALTH INSURANCE PREMIUM
SURTax ON CERTAIN INSURANCE PREMIUMS; RECONCILING CONFLICTING
AMENDMENTS TO A CERTAIN SECTION OF THE NMSA 1978; CHANGING THE
APPLICABILITY DATE OF CERTAIN PROVISIONS OF THE PREMIUM TAX.

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

Section 1. Section 29-13-3 NMSA 1978 (being Laws 1983,
Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE [~~DEPARTMENT~~]
DIVISION COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND

CREATED.--There is created in the state treasury the "law
enforcement protection fund". Ten percent of all money
received for fees, licenses, penalties and taxes from life,
general casualty and title insurance business pursuant to the
New Mexico Insurance Code, except for money received from the

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1 health insurance premium surtax imposed by Subsection C of
2 Section 59A-6-2 NMSA 1978, shall be paid monthly to the state
3 treasurer and [~~by him~~] credited to the fund. On or before June
4 30 of each year, the state treasurer shall transfer to the
5 general fund any balance in the law enforcement protection fund
6 in excess of one hundred thousand dollars (\$100,000) that is
7 not obligated and that is in excess of the amount certified by
8 the division to be distributed from that fund."

9 Section 2. Section 59A-6-2 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 102, as amended by Laws 2003, Chapter 14,
11 Section 18 and by Laws 2003, Chapter 58, Section 1) is amended
12 to read:

13 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX--

14 A. The premium tax provided for in this section
15 shall apply as to the following taxpayers:

16 (1) each insurer authorized to transact
17 insurance in New Mexico;

18 (2) each insurer formerly authorized to
19 transact insurance in New Mexico and receiving premiums on
20 policies remaining in force in New Mexico, except that this
21 provision shall not apply as to an insurer that withdrew from
22 New Mexico prior to March 26, 1955;

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

25 (4) each property bondsman, as that person is

1 defined in Section 59A-51-2 NMSA 1978, as to any consideration
2 received as security or surety for a bail bond in connection
3 with a judicial proceeding, which consideration shall be
4 considered "gross premiums" for the purposes of this section;
5 and

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

13 B. Each such taxpayer shall pay in accordance with
14 this subsection [~~three~~] a premium tax of three and three-
15 thousandths percent of the gross premiums and membership and
16 policy fees received by it on insurance or contracts covering
17 risks within this state during the preceding calendar year,
18 less all return premiums, including dividends paid or credited
19 to policyholders or contract holders and premiums received for
20 reinsurance on New Mexico risks.

21 C. In addition to the premium tax imposed pursuant
22 to Subsection B of this section, each taxpayer described in
23 Subsection A of this section that transacts health insurance in
24 New Mexico or is a plan described in Chapter 59A, Article 46 or
25 47 NMSA 1978 shall pay a health insurance premium surtax of one

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1 percent of the gross health insurance premiums and membership
2 and policy fees received by it on health insurance or contracts
3 covering health risks within this state during the preceding
4 calendar year, less all return health insurance premiums,
5 including dividends paid or credited to policyholders or
6 contract holders and health insurance premiums received for
7 reinsurance on New Mexico risks. Except as provided in this
8 section, all references in the Insurance Code to the premium
9 tax shall include both the premium tax and the health insurance
10 premium surtax.

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

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1 the year in which so applied or credited. [~~except that:~~

2 ~~(1) as to every insurer that throughout such~~
 3 ~~preceding calendar year had at least forty percent of its~~
 4 ~~admitted assets invested in New Mexico investments, as the same~~
 5 ~~are defined in Subsection C of this section, the rate of such~~
 6 ~~tax shall be nine-tenths percent in lieu of three percent; and~~

7 ~~(2) effective January 1, 1992, the rate shall~~
 8 ~~be one and four-tenths percent; effective July 1, 1992, the~~
 9 ~~rate shall be one and nine-tenths percent; effective January 1,~~
 10 ~~1993, the rate shall be two and four-tenths percent; and~~
 11 ~~effective July 1, 1993 and thereafter, the rate shall be three~~
 12 ~~percent.~~

13 ~~C. New Mexico investments for the purpose of~~
 14 ~~Subsection B of this section are defined as follows:~~

15 ~~(1) real estate located within New Mexico;~~

16 ~~(2) bonds or obligations of New Mexico or of~~
 17 ~~any county or other subdivision thereof;~~

18 ~~(3) bonds, debentures or secured obligations~~
 19 ~~of any corporation that has fifty percent of its assets located~~
 20 ~~within New Mexico;~~

21 ~~(4) first mortgages secured by real estate~~
 22 ~~located within New Mexico;~~

23 ~~(5) deposits in state banks, national banks~~
 24 ~~and trust companies having their principal place of business~~
 25 ~~within New Mexico;~~

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1 ~~(6) policy loans to residents of New Mexico;~~
2 and

3 ~~(7) preferred and common stock of corporations~~
4 ~~having at least fifty percent of their assets located within~~
5 ~~New Mexico.~~

6 ~~D. Nothing contained in Subsection C of this~~
7 ~~section shall be construed to affect any provision of Chapter~~
8 ~~59A, Article 9 NMSA 1978.]~~

9 E. Exempted from the ~~[tax]~~ taxes imposed by
10 ~~[Subsection B of]~~ this section are:

11 (1) premiums attributable to insurance or
12 contracts purchased by the state or a political subdivision for
13 the state's or political subdivision's active or retired
14 employees; and

15 (2) payments received by a health maintenance
16 organization from the federal secretary of health and human
17 services pursuant to a contract issued under the provisions of
18 42 U.S.C. Section 1395 mm(g)."

19 Section 3. Laws 2003, Chapter 58, Section 3 is amended to
20 read:

21 "Section 3. APPLICABILITY.--The provisions of ~~[this act]~~
22 Laws 2003, Chapter 58, Section 1 apply to premiums received in
23 the 2003 and subsequent calendar years; provided, however, that
24 with respect to premiums received prior to March 20, 2003, the
25 provisions of Subsection E of Section 59A-6-2 NMSA 1978 in

1 effect prior to the effective date of Laws 2003, Chapter 58,
2 Section 1 shall be applicable."

3 Section 4. APPLICABILITY.--

4 A. Unless an earlier surtax payment is required by
5 the operation of Subsection B of this section, the health
6 insurance premium surtax imposed by this act is applicable to
7 all health insurance premiums and membership and policy fees
8 received on or after October 1, 2004.

9 B. The health insurance premium surtax imposed by
10 this act is also applicable to all health insurance premiums
11 and membership and policy fees received for contracts issued or
12 renewed on or after July 1, 2004.

13 Section 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2004.

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