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**REGULATIONS PERTAINING TO THE
INSURANCE PREMIUM TAX ACT
Sections 7-40-1 through 7-40-10 NMSA 1978**

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NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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**REGULATIONS PERTAINING TO THE
INSURANCE PREMIUM TAX
SECTIONS 7-7-1 to 7-7-12 NMSA 1978**

7-40-1. SHORT TITLE.

Sections 1 through 10 of this act [7-40-1 through 7-40-10 NMSA 1978] may be cited as the "Insurance Premium Tax Act".

(Effective January 1, 2020.)

7-40-2. DEFINITIONS. - As used in the Insurance Premium Tax Act:

A. "authorized insurer" means an insurer holding a valid and subsisting certificate of authority to transact insurance in this state;

B. "certificate of authority" means the certificate of authority required to transact insurance in this state pursuant to Section 59A-5-10 NMSA 1978;

C. "department" means the taxation and revenue department;

D. "health maintenance organization" means "health maintenance organization" as that term is used in Chapter 59A, Article 46 NMSA 1978;

E. "home state" means "home state" as that term is used in Chapter 59A, Article 14 NMSA 1978;

F. "insurance" means a contract whereby a person undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit in connection with ascertainable risk contingencies, or to act as surety;

G. "insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance;

H. "nonprofit health care plan" means "health care plan" as that term is used in Chapter 59A, Article 47 NMSA 1978;

I. "secretary" means the secretary of taxation and revenue or the secretary's authorized designee;

J. "self-insured group" means "group" as that term is used in Chapter 52, Article 6 NMSA 1978;

K. "state" means, when used in context indicating a jurisdiction other than New Mexico, any state, district, commonwealth, territory or possession of the United States of America;

L. "superintendent" means the superintendent of insurance or the superintendent's duly authorized representative acting in official capacity;

M. "surplus lines broker" means "surplus lines broker" as that term is used in Section 59A, Article 14 NMSA 1978;

N. "taxpayer" means:

(1) an authorized insurer;

(2) an insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except an insurer that withdrew from New Mexico prior to March 26, 1955;

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

(4) a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978;

(5) an 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 New Mexico; provided that the ceding insurer does not continue to pay the taxes imposed pursuant to the Insurance Premium Tax Act as to such

policy or contract;

(6) an insured who in this state procures, continues or renews insurance with a non-admitted insurer pursuant to Section 59A-15-4 NMSA 1978; or

(7) members of the same bone fide trade or professional association that has been in existence for five years or more and that have entered into agreements to pool the members' liabilities for workers' compensation benefits; provided that an employer that is a public hospital shall

segregate the employer's accounting records and investment accounts from those of the other members, in accordance with applicable law; and

O. "transact insurance" with respect to an insurance contract or a business of insurance includes any of the following, by mail or otherwise or whether or not for profit:

(1) solicitation or inducement;

(2) negotiation;

(3) effectuation of an insurance contract;

(4) transaction of matters subsequent to effectuation and arising out of such a contract;

(5) maintenance in this state of an office or personnel performing any function in furtherance of an insurer's business of insurance; or

(6) maintenance by an insurer of assets in trust in this state for the benefit, security or protection of its policyholders or its policyholders and creditors.

(Laws 2021, Chapter 65, Section 34)

7-40-3. IMPOSITION AND RATE OF TAX; DENOMINATION OF "PREMIUM TAX", "HEALTH INSURANCE PREMIUM SURTAX" AND "SELF-INSURED GROUP TAX".

A. The tax imposed pursuant to this subsection may be referred to as the "premium tax". The premium tax is imposed at a rate of three and three-thousandths percent of the gross premiums and membership and policy fees received or written by a taxpayer or, with respect to a taxpayer that is an insured that procures, continues or renews insurance with a non-admitted insurer, paid by the taxpayer, on insurance or contracts covering risks within the state during the preceding calendar year. The premium tax shall not be imposed on self-insured groups or on return premiums, dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks.

B. For a taxpayer that is an insurer lawfully organized pursuant to the laws of the Republic of Mexico, the premium tax shall apply solely to the taxpayer's gross premium receipts from insurance policies issued by the taxpayer in New Mexico that cover residents of New Mexico or property or risks principally domiciled or located in New Mexico.

C. With respect to a taxpayer that is a property bondsman, "gross premiums" shall be considered any consideration received as security or surety for a bail bond in connection with a judicial proceeding.

D. The premium tax provided in Subsection A of this section is imposed on the gross premiums received of a surplus lines broker, less return premiums, on surplus lines insurance where New Mexico is the home state of the insured transacted under the surplus lines broker's license, as reported by the surplus lines broker to the department on forms and in the manner prescribed by the department. For purposes of this subsection, "gross premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal taxes; regulatory authority fees; or examination fees, if any. For a surplus lines policy issued to an insured whose home state is New Mexico and where only a portion of the risk is located in New Mexico, the entire premium tax shall be paid in accordance with this section.

E. In addition to the premium tax, except as provided in Subsection F of this section, a health insurance premium surtax is imposed at a rate of three and seventy-five hundredths percent of the gross health insurance premiums and membership and policy fees received by the taxpayer on hospital and medical expense incurred insurance or contracts; nonprofit health care plan contracts, excluding dental or vision only contracts; and health maintenance organization subscriber contracts covering health risks within this state during the preceding calendar year. The surtax shall not apply to return health insurance premiums, dividends paid or credited to policyholders or contract holders and health insurance premiums received for reinsurance on New

Mexico risks. The surtax imposed pursuant to this subsection may be referred to as the "health insurance premium surtax".

F. If an act of the United States congress is signed into law that imposes the annual fee on health insurance providers pursuant to Section 9010 of the federal Patient Protection and Affordable Care Act, or that imposes a substantially similar fee on the same class of taxpayers, the rate of the health insurance premium surtax shall be decreased at a rate equal to the rate of the annual fee imposed; provided that the rate of the health insurance premium surtax shall not be less than one percent. A reduction in the health insurance premium surtax pursuant to this subsection shall go into effect on the later of the effective date of the imposition of the federal annual fee or ninety days after the congressional act imposing the federal annual fee is signed into law.

G. A tax is imposed at a rate of nine-tenths percent on the net premiums, as defined in the Group Self- Insurance Act, received or written by a self-insured group within the state during the preceding calendar year. The tax imposed pursuant to this subsection may be referred to as the "self-insured group tax".

(Laws 2023, Chapter 85, Section 21)

7-40-4. - RECIPROCITY PROVISION.

A. When by or pursuant to the laws of any other state or foreign country or province, any taxes, in the aggregate, are or would be imposed upon New Mexico insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers or adjusters, which are in excess of such taxes, in the aggregate, directly imposed upon similar insurers, or upon the agents or representatives of such insurers, or upon brokers, or upon adjusters, of such other state, country or province under the statutes of this state, so long as such laws of such other state, country or province continue in force or are so applied, the same taxes, in the aggregate, may be imposed by the secretary upon the insurers, or upon the agents or representatives of such insurers, or upon brokers of such other state, country or province, doing business or seeking to do business in New Mexico. Any tax imposed by any city, county or other political subdivision or agency of such other state, country or province on New Mexico insurers or their agents, representatives, brokers or adjusters shall be deemed to be imposed by such state, country or province within the meaning of this section.

B. This section does not apply as to:

- (1) personal income taxes;
- (2) ad valorem taxes on real or personal property; or
- (3) special purpose obligations or assessments, or assessments under insurance guaranty fund laws, imposed by another state in connection

with particular kinds of insurance, except that assessment of insurers for financing of public safety, health and protection purposes is not exempt under this subsection. Except that deductions from premium taxes or other taxes otherwise payable, allowed on account of real or personal property taxes paid shall be taken into consideration by the secretary in determining propriety and extent of reciprocity action under this section.

C. For purposes of this section, domicile of an alien insurer, other than Canadian insurer, shall be that state designated by the insurer in writing filed with the secretary at time of authorization in this state or within six months after the effective date of the New Mexico Insurance Code [Chapter 59A NMSA 1978, except for Articles 30A and 42A], whichever date is the later, and may be any one of the following states:

(1) that in which the insurer was first authorized to transact insurance;

(2) that in which is located the insurer's principal place of business in the United States; or

(3) that in which is held the largest deposit of trusteed assets of the insurer for protection of its policyholders in the United States.

D. If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

E. The domicile of a Canadian insurer shall be Canada and the province of Canada in which its head office is located.

(Laws 2018, Chapter 57, Section 4)

7-40-5.- EXEMPTIONS. - Exempted from the taxes imposed pursuant to the Insurance Premium Tax Act are:

A. 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;

B. payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a risk-sharing contract issued under the provisions of 42 U.S.C. Section 1395mm(g);

C. any business transacted pursuant to the provisions of the Service Contract Regulation Act [Chapter 59A, Article 58 NMSA 1978];

D. the premiums from each policy or plan issued or offered pursuant to the Minimum Healthcare Protection Act [Chapter 59A, Article 23B NMSA 1978] during the first three years of the issuance of the master policy or individual policy; and

E. the money collected and placed in trust pursuant to Section 59A 49-6 NMSA 1978.

(Laws 2018, Chapter 57, Section 5)

7-40-6. - CREDIT; MEDICAL INSURANCE POOL ASSESSMENTS.--

The assessment for any New Mexico medical insurance pool member pursuant to Section 59A-54-10 NMSA 1978 shall be allowed as a fifty percent credit on the tax return for that member and a seventy-five percent credit on the tax return for that member for the assessments attributable to pool policyholders that receive premiums, in whole or in part, through the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990, the Ted R. Montoya hemophilia program at the university of New Mexico 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. That portion of credit that exceeds a member's premium tax liability in the taxable period in which the credit is claimed shall not be refunded and shall not be carried forward to subsequent taxable periods.

(Laws 2023, Chapter 85, Section 22)

7-40-7. - DATE PAYMENT DUE.

A. Except as provided in Subsections B and C of this section, for each calendar quarter, an estimated payment of the premium tax and the health insurance premium surtax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of the payment made during the previous calendar year or one-fifth of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return filed on April 15, at which time all taxes for that year are due.

B. Within sixty days after expiration of a calendar quarter, a surplus lines broker shall pay the premium tax due on surplus lines insurance where New Mexico is the home state of the insured transacted under the surplus lines broker's license during such calendar quarter, as reported to the department.

C. For each calendar quarter, an estimated payment of the self-insured group tax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of the payment made during the previous calendar year. The final adjustment for payments due for the prior year shall be made with the return filed on April 15, at which time all taxes for that year are due.

(Laws 2021, Chapter 65, Section 36)

***Repealed Effective January 1, 2020)*

7-40-8. - REPEALED. - PENALTY FOR FAILURE TO PAY TAX; SERVING PROCESS; APPOINTMENT OF SECRETARY AS PROCESS AGENT.

A. Every taxpayer and surplus lines broker subject to the provisions of the Insurance Premium Tax Act that fail to file when due any report for taxation, regardless of whether tax is due, or to pay when due any tax as required by the Insurance Premium Tax Act shall be liable to the state for the amount thereof and for penalty of one thousand dollars (\$1,000) for each month or part thereof the taxpayer or surplus lines broker has failed to file the report or pay the tax after demand therefor. Services of process in any action against a person to recover the tax, fee or penalty may be made upon the secretary as attorney for service of process as provided in Subsection B of this section.

B. Service of process against a taxpayer or surplus lines broker for whom the secretary is attorney shall be made by delivering to and leaving with the secretary two copies of the process.

C. Upon such service, the secretary shall forthwith forward by prepaid registered or certified mail, return receipt requested, one of the copies of such process showing date and time of service on the secretary to the person currently designated by the taxpayer or surplus lines broker to receive the copy as provided in Subsections F through H of this section. Service of process on the taxpayer or surplus lines broker shall be complete upon receipt or, in the event of refusal to accept, the date of such refusal.

D. Process served as provided in this section shall for all purposes constitute valid and binding personal service within this state upon the taxpayer or surplus lines broker. If summons is served under this section, the time within which the taxpayer or surplus lines broker is required to appear shall be extended an additional ten days beyond that otherwise allowed by New Mexico rules of civil procedure.

E. The secretary shall keep a record of the day and time of service of legal process under this section.

F. Before the superintendent of insurance authorizes a taxpayer or surplus lines broker to transact insurance in this state, each taxpayer and surplus lines broker shall appoint the secretary as the taxpayer's or surplus lines broker's attorney to receive service of legal process issued against the taxpayer and surplus lines broker in this state. The appointment shall be on a form as designated and furnished by the department, accompanied by a copy of resolution of the board of directors or like governing body of the taxpayer and surplus lines broker, if applicable, or other appropriate instrument acceptable to the secretary, showing that those who executed the appointment were duly authorized to do so on behalf of the taxpayer and surplus lines broker.

G. The appointment shall be irrevocable, shall bind the taxpayer and surplus lines broker and any successor in interest to the assets or liabilities of the taxpayer or surplus lines broker, as applicable, and shall remain in effect as long as there exists any contract of the taxpayer or surplus lines broker in this state or any obligation of the taxpayer and surplus lines broker arising out of the taxpayer's or surplus lines broker's transactions in this state.

H. The taxpayer or surplus lines broker shall file the appointment with the secretary as part of the taxpayer's or surplus lines broker's application for certificate of authority, together with a designation of the person to whom the secretary shall forward process against the taxpayer or surplus lines broker served upon the secretary. The taxpayer or surplus lines broker may change such designation by a new filing.

(Laws 2018, Chapter 57, Section 8)

REPEALED (Laws 2019, Chapter 47, Section 4)

***Repealed Effective January 1, 2020)*

*7-40-9. - REPEALED. - DISTRIBUTION OF PREMIUM TAX; REFUNDS.
(Effective January 1, 2020.)*

A. All money received by the department for premium taxes shall be paid daily by the secretary to the state treasurer and credited to the insurance department suspense fund.

B. The department may authorize the refund of money erroneously paid as taxes from the insurance department suspense fund under request for refund made within three years after the erroneous payment. In the case of premium taxes erroneously paid or overpaid in accordance with law, refund may also be requested as a credit against premium taxes due in any annual or quarterly premium tax return filed within three years of the erroneous or excess payment.

C. At the end of every month, after applicable refunds are made pursuant to Subsection B of this section, the state treasurer shall make the following transfers from the balance remaining in the insurance department suspense fund:

(1) to the fire protection fund, that part of the balance derived from property and vehicle insurance business; and

(2) to the general fund, the balance remaining in the insurance department suspense fund.

(Laws 2018, Chapter 57, Section 9)

REPEALED (Laws 2019, Chapter 47, Section 4)

7-40-10. - DEPARTMENT SHALL PROMULGATE RULES. - The department shall promulgate rules to carry out the provisions of the Insurance Premium Tax Act.

(Laws 2018, Chapter 57, Section 10)
