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**Bulletin 2018-004**  
**April 12, 2018**

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**TO: ALL PERSONS TRANSACTING BUSINESS IN NEW MEXICO THAT ARE SUBJECT TO THE REQUIREMENT TO PAY NEW MEXICO PREMIUM TAX, HEALTH INSURANCE SURTAX, OR FEES, LICENSES, OR PENALTIES**

**RE: REFUNDS, CREDITS, AND TRANSFERS OF PREMIUM TAX AND HEALTH INSURANCE SURTAX, AND FEES, LICENSES, AND PENALTIES**

**THIS BULLETIN** is issued pursuant to Sections 59A-2-8, 59A-2-10, 59A-6-2, and 59A-6-5, NMSA 1978 and pursuant to 13.1.2.1 to 13.1.2.10 NMAC. This Bulletin is effective immediately, and it is issued to clarify the parameters for requesting refunds, credits, and transfers relating to premium tax or to health insurance surtax payments.

Section 59A-6-5(B), NMSA 1978 provides:

The superintendent may authorize the refund of money erroneously paid as fees, licenses, penalties or 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.

All refunds and credits must correspond to the revenue source of the premium tax that was paid. OSI will not allow transfers of the proceeds of any refund or credit between or among Kinds of Insurance, as set forth in NMSA 1978, Section 59A-7-1 (also known as Lines Of Authority (“LOA”) or Lines Of Business). Refund and credit requests must be consistent with the LOA as reported in the original tax filing.

The reason for this is that OSI revenues from different LOAs are allocated to different revenue streams for the State of New Mexico. See, Section 59A-6-5 NMSA 1978. As such, they must be kept separate.

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### No Transfers of Credit between Premium Tax and Health Insurance Surtax

No transfers of credits will be allowed from premium tax to the health insurance surtax, or vice versa. The reason for this is that the tax basis for premium tax is intrinsically different from the tax basis for the health insurance surtax. See, NMSA 1978, § 59A-6-2(B)-(D).

See also, OSI Bulletin No. 2018-001, "Application of Medical Insurance Pool (MIP) Credits to Premium Tax Liability, Section 59A-54-10 NMSA 1978."

#### *Examples*

- 1) When a credit is requested from premium tax that was paid on the basis of property insurance premiums, that credit may not be applied to the premium tax balance for vehicle insurance.
- 2) When a credit is requested from premium tax that was paid on the basis of health insurance premiums, that credit may not be applied to the health insurance surtax balance.

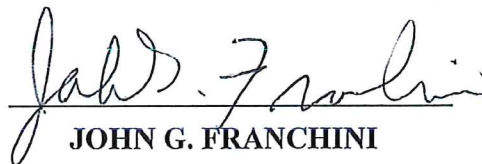
### Preparation for Implementation of House Bill 223

The "Insurance Premium Tax Act," enacted and passed as House Bill 223 in the 2018 Legislative Session, has an effective date of January 1, 2020. Regarding fees, licenses, and penalties, H.B. 223 shortens the time within which a refund may be requested, from three years to one year. (See, H.B. 223, Section 16, 59A-6-5, "Distribution of Office Collections.") Therefore, in preparation for the implementation of H.B. 223, those planning to request refunds of fees, licenses, or penalties are encouraged to file such requests within one year of any erroneous payment. This practice will also allow for clean accounting based on year-end reports.

In contrast, as to premium tax, the current 3-year refund request deadline remains. (See, H.B. 223, Section 9, "Distribution Of Premium Tax—Refunds.")

Any questions regarding this Bulletin may be directed to Leatrice Geckler, Financial Examiner Supervisor, at [Leatrice.Geckler@state.nm](mailto:Leatrice.Geckler@state.nm) or at (505) 827-6904.

**DONE AND ORDERED** this 12<sup>th</sup> day of April, 2018.



**JOHN G. FRANCHINI**

**Superintendent of Insurance**