

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION

DATE: July 11, 2011

REGULATION FILE: REG-2007-00002

SUBJECT OF PROPOSED RULEMAKING

The California Department of Insurance (“CDI”) proposes to adopt the regulations described below, after considering comments from the public.

Title 10, Chapter 5, Subchapter 3, Article 6.2, “Reporting and Filing Premium Taxes.” The CDI is considering adopting 10 California Code of Regulations sections 2327, 23427.1, and 2327.2 to provide a framework for an admitted insurer to transition from filing its return for premium taxes on an accrual basis to a cash basis.

These regulations would be added to existing regulations based on the authority set forth in Revenue & Taxation Code section 13170 and the references set forth in Article XIII, Section 28 of the California Supreme Court, Revenue and Taxation Code sections 12001, 12003, 12201, 12221, 12231, 12232, 12302, 12303, 12304, 12421, and 12422, and Insurance Code Sections 19, 20, 21, 24, 28, 47, 736, 1530, and 12740 and State Board of Equalization Memorandum Opinion in California Automobile Insurance Company (December 12, 2006).

The proposed regulations are intended to facilitate an admitted carrier’s transition from filing and paying premium taxes on an accrual basis to a cash basis as provided in Article XIII, Section 28 of the California Constitution and Revenue and Taxation Code section 12221.

PUBLIC HEARING - DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows

Date and Time	September 8, 2011 11:00 A.M.
Location	Department of Insurance 45 Fremont Street, 22nd Floor Hearing Room San Francisco, CA 94105

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on September 8, 2011**. Please direct all written comments to the following contact person:

Laszlo Komjathy, Jr.
Staff Counsel IV
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, California 94105

(415) 538-4413
(415) 904-5896 (facsimile)
Laszlo.Komjathy@insurance.ca.gov

George Teekell
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, California 94105

(415) 538-4390
(415) 904-5490 (facsimile)
George.Teekell@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed regulations should be addressed to the contact person listed above.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on September 8, 2011**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: Laszlo.Komjathy@insurance.ca.gov. The Commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (415) 904-5896**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. **Comments sent by e-mail or facsimile are subject to the 5:00 P.M., September 8, 2011 deadline.**

AUTHORITY AND REFERENCE

The proposed regulations Title 10, Chapter 5, Subchapter 3, Article 6.2, “Reporting and Filing Premium Taxes” will implement State Board of Equalization Memorandum Opinion in *California Automobile Insurance Company* (December 12, 2006) and its interpretation of Revenue and Taxation Code section 12221, and the California Constitution Article XIII, Section 28, and the references set forth in Revenue Code and Taxation sections 12001, 12003, 12201, 12221, 12231, 12232, 12302, 12303, 12304, 12421, and 12422, and Insurance Code Sections 19, 20, 21, 24, 28, 47, 736, 1530, and 12740.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

An annual tax on premiums is imposed on each insurer and surplus line broker doing business in this State. With respect to insurers, the basis of the annual tax is the amount of gross premiums, less return premiums, received in such year by such insurer other than premiums received for reinsurance and for ocean marine insurance.

The annual tax on premiums is required to be paid based on premiums received. Historically, the California Department of Insurance interpreted the statute to require that insurers report and file premium taxes based on premiums written pursuant to NAIC Annual Statement Schedule T rather than on premiums received or cash basis. Relying on the California Department of Insurance’s mandates, many insurers set up their accounting and reporting systems to comport with California Department of Insurance policy on reporting and paying premium taxes.

The State Board of Equalization in a Memorandum Opinion adopted on December 12, 2006 in *Matter of the Petitions for Redetermination Under the Tax on Insurers Law of California Automobile Insurance Company* held that an insurer must pay taxes on premiums received and not on premiums written. The payment of taxes by an insurer on premiums written rather than premiums received results in an advance payment of taxes due. Because insurers have relied on the directives of the California Department of Insurance, the State Board of Equalization concluded that it would be unfair and inequitable to mandate that all insurers immediately revise their accounting and reporting systems to report and pay taxes on premiums received. To avoid this inequitable result, an insurer may elect to continue reporting its premium taxes to the California Department of Insurance on an accrual basis so long as the taxes paid on an accrual basis are not less than the amount that would be due if reported pursuant to the requirements of Revenue and Taxation Code Section 12221.

The Insurance Commissioner is required to examine the tax return and determine the correct amount of tax to be paid by insurers, home protection companies and surplus line brokers. If the Commissioner determines that the amount of tax disclosed by the insurer’s tax return and assessed by the State Board of Equalization is less than the amount of tax disclosed by his or her examination, he or she shall propose in writing to the State Board of Equalization a deficiency assessment for the difference.

Pursuant to California Revenue and Taxation Code Section 13170, these regulations relate to the administration and enforcement of insurance taxation by the Insurance Commissioner of the State of California.

The California Department of Insurance intends to implement the proposed regulations to assist admitted insurers in transitioning from filing and paying premium taxes on an accrual basis to a cash basis. These regulations meet that purpose.

Proposed regulations Title 10, Chapter 5, Subchapter 3, Article 6.2, “Reporting and Filing Premium Taxes”

Existing law, Revenue & Taxation Code section 13170 provides that the Insurance Commissioner (“Commissioner”) may prescribe, adopt, and enforce rules and regulations related to the administration and enforcement of the premium tax statutes as granted to the Insurance Commissioner by the legislature in overseeing the filing and collection of premium taxes as provided by California Constitution Article XIII, Section 28 and Revenue & Taxation Code section 12221.

Finally, the proposed regulations would also provide for an effective date and for exemptions.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code. There are no nondiscretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California.

The Commissioner also invites interested parties to comment on these issues.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the proposed regulations apply to businesses.

IMPACT ON SMALL BUSINESS

The Commissioner has determined the proposed action will not affect small business since the regulations only applies to the payment of premium taxes by insurers doing business in California and pursuant to Gov. Code § 11342.61(b)(2) an insurer by definition is not a small business.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has been otherwise identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations.

The Commissioner invites public comment on alternatives to the regulations.

DEADLINE FOR WRITTEN COMMENTS

All written comments, whether submitted at the hearing or by U.S. Postal Service or any other delivery service, or by e-mail or facsimile, must be received by the Commissioner, c/o the contact person at the address listed above, **no later than 5:00 P.M. on September 8, 2011.**

All persons are invited to submit statements, arguments, or contentions relating to the proposed regulations by submitting them in writing to the contact person **no later than 5:00 P.M. on September 8, 2011.** In the alternative, statements, arguments, or contentions may be presented orally at the public hearing.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the CCR in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures.

California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for additional information.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an Initial Statement of Reasons (“ISOR”) that sets forth the reasons for the proposed regulations. Upon request, the ISOR and the text of the proposed regulations will be made available for inspection and copying. Requests for the ISOR and the text of the proposed regulations should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the ISOR, and any supplemental information, is contained in the Rulemaking File: REG-2007-00002 and is available for inspection and copying by prior appointment at 45 Fremont Street, 23rd Floor, San Francisco, California 94105, between the hours of 9:00 A.M. and 4:30 P.M., Monday through Friday.

Final Statement of Reasons

After it has been prepared, and upon request, the Final Statement of Reasons (“FSOR”) will be made available for inspection and copying. Requests for the FSOR should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to all persons who have previously filed a request to receive notice of proposed rulemaking with the Commissioner.

WEBSITE POSTINGS

Documents concerning these proposed regulations are available on the CDI’s website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to ‘Section 2340 Reporting and Filing Premium Taxes’ and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2007-00002" (the CDI’s regulation file number for these regulations) in the

search field. Alternatively, search by keyword ("reporting and filing premium taxes," for example). Then, click on the 'Submit' button to display links to the various filing documents.

MODIFIED LANGUAGE

If the Commissioner adopts regulations which differ from those which have originally been made available but are sufficiently related to the original proposed regulations, the amended regulations will be made available to the public for at least 15 days prior to the date of adoption of the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.