

STATE OF CALIFORNIA

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

AMENDED TEXT OF REGULATIONS

DATE: October 10, 2011

REGULATION FILE REG-2007-00002

**Reporting and Filing Premium Taxes**

**Note:** Insertions into the originally noticed text are indicated by double underline and deletions are indicated by ~~strikethrough~~.

**Adopt Article 6.2**

**Adopt Section 2327. Definitions.**

Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

- (a) Accrual basis. Accrual basis accounting is a method of calculating premium tax based upon premiums, as identified on Schedule T of the insurer's Annual Statement, that are written by the insurer during a given tax year.
- (b) Cash Basis. Cash basis accounting is a method of calculating premium tax based upon premiums that are received and collected by the insurer during a given tax year, less any premiums returned during the same tax year.
- (c) Collected Direct Premiums. For purposes of this Article, the term Collected Direct Premiums or premiums received is defined as that portion of premiums directly written by the Insurer, including any consideration that was due on or before the end of the tax year for which the insurer is filing, and for which the insurer has received payment.
- (d) Direct Premiums. Direct Premiums means premiums written and/or received in transactions conducted directly with the insured, but does not include premiums written on reinsurance business.
- (e) Gross Premiums. For purposes of this Article, the term gross premiums as referenced in California Revenue and Taxation Code section 12221, does not include premiums received for reinsurance, ocean marine insurance, title insurance, or surplus line transactions.

- (f) Insurer. For purposes of this Article, the term Insurer is defined by California Insurance Code Section 23, and includes those listed in California Revenue and Taxation Code Section 12003, however, it does not include those transacting ocean marine insurance or title insurance.
- (g) NAIC. The NAIC is the National Association of Insurance Commissioners, which is an organization of insurance regulators from the 50 states, the District of Columbia and the five U.S. territories.
- (h) NAIC Annual Statement Schedule T. The NAIC Annual Statement Schedule T is an NAIC schedule found in the NAIC Annual Statement Blanks that is intended to exhibit the amount of premiums written, allocated by states and territories, and any successor NAIC Schedule T is hereby incorporated by reference.
- (i) Open tax year. An open tax year is any taxable year that is not covered by the limitations found in California Revenue and Taxation Code Section 12978.
- (j) Premium Collection Activity. For purposes of this Article, the term Premium Collection Activity includes any or all of the following: insurance lines and types, billing plans, payment plans, and bad debt percentage.
- (k) Uncollected Direct Premiums. For purposes of this Article, the term Uncollected Direct Premiums is defined as that portion of premiums and consideration that was directly written by the Insurer and was due on or before the end of the tax year for which the insurer is filing, but for which the insurer has not received payment.

NOTE: Authority cited: Section 13170, Revenue and Taxation Code. Reference: Article XIII, Section 28, California Constitution; Sections 12001, 12003, 12201, 12221, 12231, 12232, 12302, 12303, 12304, 12421, and 12422, Revenue and Taxation Code; Sections 19, 20, 21, 24, 28, 47, 736, 1530 and 12740, Insurance Code.

#### **Adopt Section 2327.1 Selection of Cash or Accrual Basis**

- (a) An insurer is required to pay taxes on all premiums received during the tax year.
- (b) An insurer may file its return for premium taxes on either a cash basis or accrual basis so long as the amount of taxes paid is equivalent to or greater than the amount of taxes that would be due for premiums received by the insurer.
- (c) If an insurer elects to file on an accrual basis the insurer must pay premium taxes on all Direct Premium reported on its return and the State must receive said premium taxes at the same time or earlier than if the premium taxes would have been paid by the insurer if it would have filed using a cash basis, and such a filing results in the State receiving an amount greater than or equal to the amount it would have received in premium taxes had the insurer filed using a cash basis.

- (d) An insurer is permitted, but not required, to switch from an accrual basis to a cash basis under which it files its premium taxes for any open tax year. However, once an insurer elects to switch from an accrual basis to a cash basis the insurer thereafter is always required to file on a cash basis.
- (e) Except in the case of a merger completed during the tax year in question between an accrual basis taxpayer and a cash basis taxpayer, it shall not be permitted for an insurer to file its premium taxes in part on an accrual and in part on a cash basis. Under such circumstances, the surviving insurer shall be permitted to file its premium taxes in part on an accrual and in part on a cash basis only for the tax year in which the merger occurred. The Commissioner, in his or her sole discretion, may allow the surviving insurer to file its premium taxes in part on an accrual basis and in part on a cash basis for a particular subsequent tax year.

NOTE: Authority cited: Section 13170, Revenue and Taxation Code. Reference: Article XIII, Section 28, California Constitution; Sections 12001, 12201, 12221, 12231, 12232, 12302, 12303, 12304, 12421, and 12422, Revenue and Taxation Code; Sections 19, 20, 21, 28, 47, 736, 1530 and 12740, Insurance Code. State Board of Equalization Memorandum Opinion in California Automobile Insurance Company (December 12, 2006)

### **Adopt Section 2327.2 Insurers Filing on a Cash Basis**

In addition to any other insurance tax premium filing requirements or instructions, any insurer that files on a cash basis shall do the following:

- (a) Calculate its taxes on Collected Direct Premiums in accordance with Revenue and Taxation Code section 12221; or,
- (b) For tax year 2012 and/or earlier open tax years, As an alternative method for calculating its taxes in accordance with Revenue and Taxation Code section 12221, an insurer may calculate its taxes on Direct Premiums, subject to the requirements of Revenue and Taxation Code Section 12221, using a ratio of the insurer's Direct Premiums written upon business transacted in this State to the insurer's total Direct Premiums written, as reported on the insurer's NAIC Annual Statement Schedule T, and apply it to either the insurer's Collected Direct Premiums or the insurer's Uncollected Direct Premiums,  
~~as long as at the time of the filing the insurer provides sufficient information, in the Commissioner's sole discretion, that establishes the following:~~
  - ~~(1) That the Insurer without undue hardship cannot readily provide the data necessary to calculate its taxes in accordance with section 2327.2(a), and that the Insurer provides the Commissioner with an attestation affirming that the same is true; and,~~
  - ~~(2) That the insurers' Premium Collection Activity on business transacted in this State is substantially similar to the insurers' Premium collection Activity on business transacted in all states.~~

NOTE: Authority cited: Section 13170, Revenue and Taxation Code. Reference: Article XIII, Section 28, California Constitution; Sections 12001, 12201, 12221, 12231, 12232, 12302, 12303,

12304, 12421, and 12422, Revenue and Taxation Code; Sections 19, 20, 21, 28, 47, 736, 1530 and 12740, Insurance Code; State Board of Equalization Memorandum Opinion in *California Automobile Insurance Company* (December 12, 2006)