

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the tax law, in relation to establishing a
healthcare insurance windfall profit fee (Part DD);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1

PART DD

2 Section 1. The tax law is amended by adding a new section 1521 to read
3 as follows:

4 § 1521. Healthcare insurance windfall profit fee. (a) In addition to
5 all taxes, surcharges, and fees imposed under this chapter, the insur-
6 ance law, the financial services law, and the public health law, there
7 is hereby imposed for each taxable year beginning after December thir-
8 ty-first, two thousand seventeen, a fourteen percent surcharge on the
9 net underwriting gain from the sale of health insurance written on risks
10 located or resident within this state and the net underwriting gain from
11 the operation of a Medicaid managed care organization business regulated
12 by the department of health of every corporation (1) authorized to tran-
13 sact an insurance business in this state, or (2) that is a health main-
14 tenance organization required to obtain a certificate of authority under
15 article forty-four of the public health law.

16 (b) For purposes of this section, the term "health insurance" shall
17 mean comprehensive hospital and medical expense insurance including,
18 without limitation, comprehensive coverage issued by a health mainte-
19 nance organization, disability income insurance, accident insurance,

1 medicare supplement insurance, specified disease insurance, dental
2 insurance, vision insurance, stop-loss insurance, fixed indemnity insur-
3 ance, and hospital indemnity insurance.

4 (c)(1) For each taxable year, the "net underwriting gain from the sale
5 of health insurance written on risks located or resident within this
6 state" shall equal a corporation's gross receipts from the sale of
7 health insurance written on risks located or resident within New York
8 less the corporation's claims and administrative expenses related to the
9 gross receipts. The computation of "gross receipts from the sale of
10 health insurance written on risks located or resident within New York"
11 and "claims and administrative expenses related to gross receipts" shall
12 be made pursuant to the rules set forth in regulations to be promulgated
13 by the superintendent of financial services.

14 (2) For each taxable year, the "net underwriting gain from the opera-
15 tion of a managed care organization business regulated by the department
16 of health" shall equal a corporation's gross receipts from the operation
17 of a managed care organization business regulated by the department of
18 health less the corporation's claims and administrative expenses related
19 to such gross receipts. The computation of "gross receipts from the
20 operation of a managed care organization business regulated by the
21 department of health" and "claims and administrative expenses related to
22 gross receipts" shall be made pursuant to the rules set forth in regu-
23 lations to be promulgated by the superintendent of financial services.

24 (d) Notwithstanding any law to the contrary, the surcharge imposed by
25 this section shall not be deductible by a corporation in determining its
26 liability for any other tax, surcharge, or fee imposed under any law.

27 (e) Notwithstanding any law to the contrary, the surcharge imposed by
28 this section shall not be considered by any corporation, and shall not

1 be deemed to be an expense, cost, or liability, for purposes of estab-
2 lishing or setting the rate to be charged for any health insurance poli-
3 cy.

4 (f) The surcharge imposed by this section shall be calculated by each
5 corporation on an annual basis without regard to the items of gain or
6 loss from any other period.

7 (g) (1) The superintendent of financial services shall, on behalf of
8 the commissioner, have the power, duty and responsibility to examine
9 returns of a corporation filed with him or her pursuant to this section
10 and, together with any other information within his or her possession or
11 that may come into his or her possession, to ascertain the correct
12 amount of surcharge imposed under this section of any corporation. For
13 the purpose of ascertaining the correctness of any such surcharge
14 imposed under this section or for the purpose of making an estimate of
15 the surcharge liability under this section of any corporation, the
16 superintendent of financial services shall have the power to examine or
17 cause to have examined by any agent or representative designated by him
18 or her for that purpose, any books, papers, records or memoranda bearing
19 upon the matters required to be included in the return.

20 (2) If the superintendent of financial services ascertains that the
21 amount of surcharge imposed under this section as shown on the return of
22 any corporation is less than the amount of surcharge disclosed by his or
23 her examination, he or she shall propose, in writing, to the commission-
24 er the issuance of a notice of deficiency for the amount due. If a
25 corporation fails to file a return with the superintendent of financial
26 services within the time required for the filing of such return (with
27 regard to any extension of time for the filing thereof), the superinten-
28 dent of financial services shall make an estimate of the amount of

1 surcharge due for the period in respect to which such corporation failed
2 to file the return. The estimate shall be made from any available infor-
3 mation which is in the possession or may come into the possession of the
4 superintendent of financial services and he or she shall propose, in
5 writing, to the commissioner the issuance of a notice of deficiency for
6 the amount of such estimated surcharge. Any proposal pursuant to this
7 paragraph shall set forth the basis thereof and the details of its
8 computation.

9 (3) The commissioner shall, on receipt of a proposal from the super-
10 intendent of financial services pursuant to paragraph two of this subdi-
11 vision, take appropriate action under this chapter for the assessment
12 and collection of the amount of surcharge, together with interest and
13 penalties, shown by such proposal to be due. The superintendent of
14 financial services shall be required to assist the commissioner in
15 defending the correctness of the amount assessed at any conference at
16 the bureau of conciliation and mediation services and at the division of
17 tax appeals.

18 (4) Subject to the consent of the superintendent of financial services
19 and notwithstanding any other provisions of law to the contrary, the
20 commissioner may delegate such other of his or her powers and duties
21 with respect to the administration and collection of the surcharge
22 imposed under this section to the superintendent of financial services,
23 as the commissioner finds necessary in order to facilitate such adminis-
24 tration and collection.

25 (5) The superintendent of financial services and the commissioner
26 shall each have the authority to issue such rules and regulations that
27 are necessary to implement the provisions of this section.

1 (6) The provisions of this subdivision shall not in any way be deemed
2 to limit the power of the commissioner to conduct an examination or
3 investigation as he or she deems necessary in order to carry out his or
4 her duties with respect to the surcharge imposed under this section.

5 (h) (1) Every corporation subject to the surcharge in subdivision (a)
6 of this section, shall annually, on or before the fifteenth day of the
7 third month following the close of its taxable year, transmit to the
8 commissioner a return in a form prescribed by the commissioner setting
9 forth such information as the commissioner may prescribe and every
10 corporation which ceases to be subject to the surcharge imposed by this
11 section shall transmit to the commissioner a return on the date of such
12 cessation or at such other time as the commissioner may require covering
13 each year or period for which no return was theretofore filed. A copy of
14 each return required under this subdivision shall also be transmitted to
15 the superintendent of financial services at or before the times speci-
16 fied for filing such returns with the commissioner.

17 (2) Every corporation shall also transmit such other returns and such
18 facts and information as the commissioner may require in the adminis-
19 tration of this section.

20 (3) The commissioner may grant a reasonable extension of time for
21 filing returns whenever good cause exists. An automatic extension of
22 four months for the filing of its return shall be allowed any corpo-
23 ration, if within the time prescribed by paragraph one of this subdivi-
24 sion, such corporation files with the commissioner an application for
25 extension in such form as the commissioner may prescribe and pays on or
26 before the date of such filing the amount properly estimated as its
27 surcharge.

1 (4) Every return shall have annexed thereto a certification by the
2 president, vice president, treasurer, assistant treasurer, chief
3 accounting officer or any other officer of the corporation duly author-
4 ized so to act to the effect that the statements contained therein are
5 true. The fact that an individual's name is signed on a certification of
6 the return shall be prima facie evidence that such individual is author-
7 ized to sign and certify the return on behalf of the corporation.

8 (5) Each corporation subject to the surcharge in subdivision (a) of
9 this section shall file a separate return for each year such corporation
10 is subject to the surcharge.

11 (6) In case it shall appear to the commissioner that any agreement,
12 understanding or arrangement exists between the corporation and any
13 other entity, person or firm whereby the activity, business, income or
14 capital of the corporation is improperly or inaccurately reflected, the
15 commissioner is authorized and empowered in his or her discretion and in
16 such manner as he or she may determine, to adjust items of income,
17 deductions and capital so as equitably to determine the surcharge. Where

18 (A) any corporation conducts its activity or business under any agree-
19 ment, arrangement or understanding in such manner as either directly or
20 indirectly to benefit its members or stockholders, or any of them, or
21 any person or persons directly or indirectly interested in such activity
22 or business, by entering into any transaction at more or less than a
23 fair price which, but for such agreement, arrangement or understanding,
24 might have been paid or received therefor, or (B) any corporation, a
25 substantial portion of whose capital stock is owned either directly or
26 indirectly by another corporation, enters into any transaction with such
27 other corporation on such terms as to create an improper gain or loss
28 amount, the commissioner may include in the corporation's gain subject

1 to the surcharge the fair amounts, which, but for such agreement,
2 arrangement or understanding, the corporation might have derived from
3 such transaction.

4 (i) (1) To the extent the surcharge imposed by this section shall not
5 have been previously paid, the surcharge, or the balance thereof, shall
6 be payable to the commissioner in full at the time the corporation's
7 return is required to be filed.

8 (2) If the corporation, within the time prescribed by subdivision (f)
9 of this section, shall have applied for an automatic extension of time
10 to file its annual return and shall have paid to the superintendent of
11 financial services on or before the date such application is filed an
12 amount properly estimated as provided by said subdivision, the only
13 amount payable in addition to the surcharge shall be interest at the
14 underpayment rate set by the commissioner pursuant to subsection (e) of
15 section one thousand ninety-six of this chapter or, if no rate is set,
16 at the rate of six percent per annum upon the amount by which the
17 surcharge, or portion thereof payable on or before the date the return
18 was required to be filed, exceeds the amount so paid. For the purposes
19 of the preceding sentence:

20 (A) an amount so paid shall be deemed properly estimated if it is
21 either (i) not less than ninety percent of the surcharge as finally
22 determined, or (ii) not less than the surcharge shown on the corpo-
23 ration's return for the preceding taxable year, if such preceding year
24 was a taxable year of twelve months; and

25 (B) the time when a return is required to be filed shall be determined
26 without regard to any extension of time for filing such return.

1 (3) The commissioner may grant a reasonable extension of time for
2 payment of any surcharge imposed by this section under such conditions
3 as he or she deems just and proper.

4 (j) All surcharges, interest and penalties collected or received by
5 the commissioner under this section shall be deposited into the health
6 care reform act (HCRA) resources fund pursuant to section ninety-two-dd
7 of the state finance law.

8 (k) The provisions of article twenty-seven of this chapter shall apply
9 to the provisions of this section in the same manner and with the same
10 force and effect as if the language of such article twenty-seven had
11 been incorporated in full into this article and had expressly referred
12 to the surcharge under this section, except to the extent that any such
13 provision is either inconsistent with a provision of this section or is
14 not relevant to this section.

15 § 2. This act shall take effect immediately.