

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1138

Short Title: HMO Tax Parity.

(Public)

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Sponsors: Senator Kerr.

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Referred to: Finance.

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April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT HEALTH MAINTENANCE ORGANIZATIONS PAY  
2 THE SAME PREMIUM TAX AND REGULATORY CHARGE AS MOST OTHER  
3 INSURERS AND SELF-INSURERS.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-228.5 reads as rewritten:

7 "**§ 105-228.5. Taxes measured by gross premiums.**

8 (a) Tax Levied. – A tax is levied in this section on insurers, Article 65  
9 corporations, health maintenance organizations, and self-insurers. An ~~insurer~~insurer,  
10 health maintenance organization, or Article 65 corporation that is subject to the tax levied  
11 by this section is not subject to franchise or income taxes imposed by Articles 3 and 4,  
12 respectively, of this Chapter.

13 (b) Tax Base. –

14 (1) Insurers. – The tax imposed by this section on an insurer or a health  
15 maintenance organization shall be measured by gross premiums from  
16 business done in this State during the preceding calendar year.

17 (2) Additional Local Fire and Lightning Rate. – The additional tax imposed  
18 by subdivision (d)(4) of this section shall be measured by gross  
19 premiums from business done in fire districts in this State during the

1 preceding calendar year. For the purpose of this section, the term "fire  
2 district" has the meaning provided in G.S. 58-84-5.

3 (3) Article 65 Corporations. – The tax imposed by this section on an Article  
4 65 corporation shall be measured by gross collections from membership  
5 dues, exclusive of receipts from cost plus plans, received by the  
6 corporation during the preceding calendar year.

7 (4) Self-insurers. – The tax imposed by this section on a self-insurer shall  
8 be measured by the gross premiums that would be charged against the  
9 same or most similar industry or business, taken from the manual  
10 insurance rate then in force in this State, applied to the self-insurer's  
11 payroll for the previous calendar year as determined under Article 2 of  
12 Chapter 97 of the General Statutes modified by the self-insurer's  
13 approved experience modifier.

14 (b1) Calculation of Tax Base. – In determining the amount of gross premiums from  
15 business in this State, all gross premiums received in this State, credited to policies  
16 written or procured in this State, or derived from business written in this State shall be  
17 deemed to be for contracts covering persons, property, or risks resident or located in this  
18 State unless one of the following applies:

19 (1) The premiums are properly reported and properly allocated as being  
20 received from business done in some other nation, territory, state, or  
21 states.

22 (2) The premiums are from policies written in federal areas for persons in  
23 military service who pay premiums by assignment of service pay.

24 Gross premiums from business done in this State in the case of life insurance  
25 contracts, including supplemental contracts providing for disability benefits, accidental  
26 death benefits, or other special benefits that are not annuities, means all premiums  
27 collected in the calendar year, other than for contracts of reinsurance, for policies the  
28 premiums on which are paid by or credited to persons, firms, or corporations resident in  
29 this State, or in the case of group policies, for contracts of insurance covering persons  
30 resident within this State. The only deductions allowed shall be for premiums refunded  
31 on policies rescinded for fraud or other breach of contract and premiums that were paid in  
32 advance on life insurance contracts and subsequently refunded to the insured, premium  
33 payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for  
34 the amounts as provided in the policy contracts for the time in force during the year,  
35 whether satisfied by cash payment, notes, loans, automatic premium loans, applied  
36 dividend, or by any other means except waiver of premiums by companies under a  
37 contract for waiver of premium in case of disability.

38 Gross premiums from business done in this State for all other health care plans and  
39 contracts of insurance, including contracts of insurance required to be carried by the  
40 Workers' Compensation Act, means all premiums written during the calendar year, or the  
41 equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for  
42 contracts covering property or risks in this State, other than for contracts of reinsurance,  
43 whether the premiums are designated as premiums, deposits, premium deposits, policy

1 fees, membership fees, or assessments. Gross premiums shall be deemed to have been  
2 written for the amounts as provided in the policy contracts, new and renewal, becoming  
3 effective during the year irrespective of the time or method of making payment or  
4 settlement for the premiums, and with no deduction for dividends whether returned in  
5 cash or allowed in payment or reduction of premiums or for additional insurance, and  
6 without any other deduction except for return of premiums, deposits, fees, or assessments  
7 for adjustment of policy rates or for cancellation or surrender of policies.

8 (c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of  
9 the following from the gross amount of ~~premiums~~ premiums, and the gross amount of  
10 excluded premiums is exempt from the tax imposed by this section:

- 11 (1) All premiums received on or after July 1, 1973, from policies or  
12 contracts issued in connection with the funding of a pension, annuity, or  
13 profit-sharing plan qualified or exempt under section 401, 403, 404,  
14 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- 15 (2) Premiums or considerations received from annuities, as defined in G.S.  
16 58-7-15.
- 17 (3) Funds or considerations received in connection with funding  
18 agreements, as defined in G.S. 58-7-16.

19 ~~The gross amount of the excluded premiums, funds, and considerations shall be~~  
20 ~~exempt from the tax imposed by this section.~~

21 (d) Tax Rates; Disposition. –

- 22 (1) Workers Compensation. – The tax rate to be applied to gross premiums,  
23 or the equivalent thereof in the case of self-insurers, on contracts  
24 applicable to liabilities under the Workers' Compensation Act ~~shall be~~ is  
25 two and five-tenths percent (2.5%). The net proceeds shall be credited to  
26 the General Fund.
- 27 (2) Other Insurance Contracts. – The tax rate to be applied to gross  
28 premiums on all other ~~insurance-taxable~~ contracts issued by insurers shall  
29 ~~be and health maintenance organizations is~~ one and nine-tenths percent  
30 (1.9%). The net proceeds shall be credited to the General Fund.
- 31 (3) Additional Statewide Fire and Lightning Rate. – An additional tax shall  
32 be applied to gross premiums on contracts of insurance applicable to fire  
33 and lightning coverage, except in the case of marine and automobile  
34 policies, at the rate of one and thirty-three hundredths percent (1.33%).  
35 Twenty-five percent (25%) of the net proceeds of this additional tax  
36 shall be deposited in the Volunteer Fire Department Fund established in  
37 Article 87 of Chapter 58 of the General Statutes. The remaining net  
38 proceeds shall be credited to the General Fund.
- 39 (4) Additional Local Fire and Lightning Rate. – An additional tax shall be  
40 applied to gross premiums on contracts of insurance applicable to fire  
41 and lightning coverage within fire districts at the rate of one-half of one  
42 percent (1/2 of 1%). The net proceeds shall be credited to the  
43 Department of Insurance for disbursement pursuant to G.S. 58-84-25.

1 (5) Article 65 Corporations. – The tax rate to be applied to gross premiums  
2 and/or gross collections from membership dues, exclusive of receipts  
3 from cost plus plans, received by Article 65 corporations shall be one-  
4 half of one percent (1/2 of 1%). The net proceeds shall be credited to the  
5 General Fund.

6 (e) Report and Payment. – Each ~~insurer, Article 65 corporation, and self-insurer~~  
7 taxpayer doing business in this State shall, within the first 15 days of March, file with the  
8 Secretary of Revenue a full and accurate report of the total gross premiums as defined in  
9 this section, the payroll and other information required by the Secretary in the case of a  
10 self-insurer, or the total gross collections from membership dues exclusive of receipts  
11 from cost plus plans collected in this State during the preceding calendar year. The report  
12 shall be verified by the oath of the official or other representative responsible for  
13 transmitting it; the taxes imposed by this section shall be remitted to the Secretary with  
14 the report.

15 In the case of an insurer liable for the additional local fire and lightning tax, the report  
16 shall include the information required under G.S. 58-84-1.

17 (f) Installment Payments Required. — ~~Insurers, Article 65 corporations, and self-~~  
18 ~~insurers-~~Taxpayers that are subject to the tax imposed by this section and have a premium  
19 tax liability, not including the additional local fire and lightning tax, of ten thousand  
20 dollars (\$10,000) or more for business done in North Carolina during the immediately  
21 preceding year shall remit three equal quarterly installments with each installment equal  
22 to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability  
23 incurred in the immediately preceding taxable year. The quarterly installment payments  
24 shall be made on or before April 15, June 15, and October 15 of each taxable year. The  
25 company shall remit the balance by the following March 15 in the same manner provided  
26 in this section for annual returns.

27 The Secretary of Revenue may permit an insurance company to pay less than the  
28 required estimated payment when the insurer reasonably believes that the total estimated  
29 payments made for the current year will exceed the total anticipated tax liability for the  
30 year.

31 An underpayment of an installment payment required by this subsection shall bear  
32 interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear  
33 interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to  
34 the company and applied against the taxes imposed upon the company under this Article.

35 (g) Exemptions. – This section does not apply to farmers' mutual assessment fire  
36 insurance companies or to fraternal orders or societies that do not operate for a profit and  
37 do not issue policies on any person except members."

38 Section 2. G.S. 58-6-25(a) reads as rewritten:

39 "(a) Charge Levied. – There is levied on each insurance company an annual charge  
40 for the purposes stated in subsection (d) of this section. As used in this section, the term  
41 "insurance company" means a company that pays the gross premiums tax levied in G.S.  
42 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this  
43 Chapter. ~~A health maintenance organization subject to Article 67 of this Chapter is not subject~~

1 ~~to those taxes and is therefore not subject to the charge levied in this section.~~ The charge levied  
2 in this section is in addition to all other fees and taxes. The charge shall be at a  
3 percentage rate of the company's premium tax liability for the taxable year. In  
4 determining an insurance company's premium tax liability for a taxable year, the  
5 following shall be disregarded:

- 6 (1) Additional taxes imposed by G.S. 105-228.8.
- 7 (2) The additional local fire and lightning tax imposed by G.S. 105-  
8 228.5(d)(4).
- 9 (3) Any tax credits for guaranty or solvency fund assessments under G.S.  
10 105-228.5A or G.S. 97-133(a).
- 11 (4) Any tax credits allowed under Chapter 105 of the General Statutes other  
12 than tax payments made by or on behalf of the taxpayer."

13 Section 3. This act is effective for taxable years beginning on or after January  
14 1, 1999.