Congress should repeal the medical device excise tax, an arbitrary tax that increases health care costs and stifles innovation. The two-year prohibition on the implementation of the tax expires on December 31, 2019.

BACKGROUND

Congress imposed the medical device excise tax in 2010 as a funding mechanism to offset the cost of the Affordable Care Act (ACA).\(^1\) The 2.3 percent excise tax applies to certain medical devices\(^2\) sold domestically in the United States.\(^3\) These devices include pacemakers, dental equipment, surgical gloves, and X-ray machines. The tax is charged to device manufacturers, producers, or importers.\(^5\)

A 2015 report by the nonpartisan Congressional Research Service (CRS) found that the tax is “difficult to justify,” and “imposes administrative and compliance costs that may be disproportionate to revenue.”\(^6\) The Joint Committee on Taxation (JCT) originally estimated the tax would raise about $3.2 billion in revenue.\(^7\) However, a 2017 study by the American Action Forum (AAF) found that the actual tax revenue fell nearly $2.1 billion below estimated revenues between 2013 and 2015, when the tax was in place.\(^8\)

According to data by the Department of Commerce compiled by AdvaMed, the medical technology industry lost over 28,000 jobs from 2012 to 2015 at the time the tax was in place.\(^9\)

A study by Iowa State University also found that the tax had a harmful impact on the industry between 2013 to 2015. According to the report, medical device research and development (R&D) expenditures decreased by $34 million in 2013.\(^10\) Sales of medical devices fell by $188 million.\(^11\)

The medical device tax also disproportionately harms smaller medical device manufacturers, who account for 80 percent of the industry.\(^12\)

The moratorium on the medical device excise tax expires on December 31, 2019. As Figure 1 shows, Congress has twice delayed implementation of the medical device tax in recent years:
Repealing the medical device excise tax has broad bipartisan support. S. 692, the Protect Medical Innovation Act of 2019, would permanently repeal the medical device excise tax. Ten of the bill’s 32 cosponsors are Democrats, including presidential candidate Sen. Amy Klobuchar (D-MN).

H.R. 2207, the House companion, was introduced by Rep. Ron Kind (D-WI) and has 235 cosponsors. Last Congress, the House passed the bill by a vote of 283–182, with 57 Democrats voting in support.14

**CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Congress has the constitutional authority to lay and collect taxes, including the ability to repeal taxes.15 Federal taxes should be limited to constitutionally authorized functions in order to allow hard-working Americans to control more of their income. Taxes should have broad applicability rather than targeting specific industries or individuals.

**POLICY SOLUTIONS**

The two-year suspension of the medical device excise tax expires on December 31, 2019. Congress must pass the Protect Medical Innovation Act of 2019 and repeal this damaging tax.

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1 Patient Protection and Affordable Care Act, Pub. L. No. 111-148. 124 Stat. 119. The medical device tax was enacted by the Health Care and Education Reconciliation Tax (Pub. L. No. 111-152), which modified the ACA.

2 A taxable medical device generally refers to a device defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act intended for humans. Congress exempted several devices determined by the Treasury Secretary that is “generally purchased by the general public at retail for individual use” such as eyeglasses, contact lenses, and hearing aids.


4 An excise tax is sometimes referred to as a “sin tax,” as it taxes the sale of products such as alcohol or tobacco to discourage certain behaviors.


11 *Id.*


