

IRS Provides Guidance on Suspension of Medical Device Excise Tax

Guidance eases tax filing burdens on medical device manufacturers.

On February 24, 2016, the Internal Revenue Service (IRS) published informal guidance on the suspension of the Medical Device Excise Tax through an update to its online “Medical Device Excise Tax: Frequently Asked Questions” web page.¹ The updated guidance clarifies that medical device manufacturers are not required to file quarterly Forms 720 Federal Excise Tax Returns to report sales of medical devices for tax periods during the suspension period² and instructs device manufacturers not to file zero-liability returns during the suspension period.³ The IRS also provides guidance on making adjustments to previously reported tax liabilities; filing claims for credit or refund during the suspension period; filing amended Forms 720; the impact of the suspension on ongoing examinations; and the impact of the suspension on statutes of limitation.

Background on Suspension of Medical Device Excise Tax

As part of the Affordable Care Act, Congress enacted a 2.3% excise tax on the sale of certain medical devices by the manufacturer or importer of the device.⁴ The excise tax originally applied to sales of taxable medical devices occurring after December 31, 2012. Following intense criticism, Congress passed a two-year suspension of the tax as part of the Consolidated Appropriations Act of 2016 (P.L. 114-13). Specifically, the new law amends Internal Revenue Code section 4191 to provide that the Medical Device Excise Tax shall not apply to sales of taxable medical devices by the manufacturer, producer or importer of the device during the period beginning on January 1, 2016, and ending on December 31, 2017.

Details of IRS’s Updated Guidance

On February 24, 2016, the IRS provided the following guidance to medical device manufacturers impacted by the suspension:

- Medical device manufacturers are not required to file Form 720 to report sales of medical devices during the suspension period.⁵
- Medical device manufacturers should not file zero-liability Form 720 returns during the suspension period.⁶
- Medical device manufacturers should file a Form 720 and pay the medical device excise tax for the fourth quarter of 2015,⁷ and should not check the “Final return” box when doing so.⁸

- Absent intervening legislation, at the conclusion of the suspension period, medical device manufacturers will be required to resume reporting and paying tax on sales of taxable medical devices. If the suspension is not extended or repealed, medical device manufacturers will begin reporting during the first quarter of 2018, and must file a Form 720 for that quarter by April 30, 2018.⁹
- During the suspension period, a medical device manufacturer may make adjustments to previously reported medical device excise tax liability and/or file claims for credit or refund.¹⁰
- If a medical device manufacturer mistakenly makes a semi-monthly deposit or files a Form 720 and remits taxes for tax periods during the suspension period, the taxpayer can claim a refund by, respectively, filing a zero-liability Form 720¹¹ or filing a Form 720-X.¹²
- Audits related to taxpayers' prior medical device excise tax liabilities will continue during the suspension period and are not affected by the suspension.¹³
- The suspension period will not affect the statute of limitations for medical device excise tax liability for the sale of medical devices before January 1, 2016.¹⁴

Uncertainty Remains

The IRS's recent guidance reduces the filing burdens on medical device manufacturers during the suspension period and clarifies the procedures for correcting filing errors and obtaining refunds and credits on deposits. However, some uncertainty remains, specifically including the impact of the suspension on leases, installment sales, and other deferred payment arrangements that straddle the suspension period. In addition, it is unclear whether the IRS will offer penalty relief at the conclusion of the suspension period similar to the transitional relief for late deposits that was previously afforded under Notice 2012-77 when the tax was initially imposed.¹⁵

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Endnotes

¹ <https://www.irs.gov/uac/Medical-Device-Excise-Tax:-Frequently-Asked-Questions>.

² FAQ 22.

³ FAQ 23.

⁴ Section 4191 was enacted by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), in conjunction with the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)).

⁵ FAQ 22.

⁶ FAQ 23.

⁷ FAQ 21.

⁸ FAQ 24.

⁹ FAQ 30.

¹⁰ FAQ 25.

¹¹ FAQ 26.

¹² FAQ 27.

¹³ FAQ 28.

¹⁴ FAQ 29.

¹⁵ Under Notice 2012-77, the IRS previously agreed to waive deposit penalties under Code section 6656 for the first three calendar quarters of 2013 if the taxpayer made a good faith attempt to comply and the failure to comply was not due to willful neglect.