Excise Tax on Medical Device Manufacturers

**Summary:** Institutes an excise tax (not industry fee) on the first sale of medical devices beginning in 2013 (which is a delay by two years from the initial Senate proposal) at a rate of 2.9 percent. Exempts from the tax Class I medical devices, eyeglasses, contact lenses, hearing aids, and any device of a type that is generally purchased by the public at retail for individual use.

**Status Updates:** On April 1, 2011, Rep. Michael Turner (R-OH) introduced H.R. 1310, which would exempt certain emergency medical devices from the excise tax on medical devices.

**Next steps:**
- January 25, 2011 -- Sen. Hatch introduced S. 12, the "Medical Device Access and Innovation Protection Act," which would repeal this provision.
- February 3, 2011 -- Sen. Scott Brown introduced S. 262, a bill to repeal the excise tax on medical device manufacturers.
- February 16, 2011 -- Rep. Bilbray introduced H.R. 734, a bill to repeal the medical device tax.
- March 22, 2011 -- AdvaMed provided comments to the Internal Revenue Service (IRS) regarding implementation of this provision.
- March 28, 2011 -- Medical Device Manufacturers Association (MDMA) provided comments to the IRS regarding implementation of this provision.
- March 29, 2011 -- American Hospital Association, Federation of American Hospitals, Catholic Health Association, and Health Industry Group Purchasing Association provided comments to the IRS regarding implementation of this provision.
- January 1, 2013 – Device tax goes into effect

**Additional information:**
Long summary:
Sec. 9009. Imposition of annual fee on medical device manufacturers and importers (sec. 9009 repealed and replaced by sec. 1405 of HCERA).
Imposes an excise tax on the first sale of medical devices by a manufacturer, producer, or importer equal to 2.3% of the sales price. Taxable medical devices include any device as defined in Section 201(h) of the Federal Food, Drug, and Cosmetic Act intended for humans, with the exception of eyeglasses, contact lenses, hearing aids and any other device determined by the Secretary of HHS to be a type which is generally purchased by the general public at retail for individual use. Effective for sales made after December 31, 2012.

Legislative text:
SEC. 1405. EXCISE TAX ON MEDICAL DEVICE MANUFACTURERS
(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 is amended—
(1) by inserting after subchapter D the following new subchapter:
``Subchapter E—Medical Devices
''Sec. 4191. Medical devices.
''SEC. 4191. MEDICAL DEVICES.
''(a) IN GENERAL.—There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax equal to 2.3 percent of the price for which so sold.
''(b) TAXABLE MEDICAL DEVICE.—For purposes of this section—
''(1) IN GENERAL.—The term ‘taxable medical device’ means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans.
''(2) EXEMPTIONS.—Such term shall not include—
''(A) eyeglasses,
''(B) contact lenses,
''(C) hearing aids, and
''(D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.’’, and
(2) by inserting after the item relating to subchapter D in the table of subchapters for such chapter the following new item:
``SUBCHAPTER E. MEDICAL DEVICES’’.
(b) CERTAIN EXEMPTIONS NOT TO APPLY.—
(1) Section 4221(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence:
``In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.’’.
(2) Section 6416(b)(2) of such Code is amended by adding at the end the following: ‘‘In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply.’’.
(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2012.