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Medical device excise tax moratorium once again extended, through 2019

A two-year moratorium suspending the medical device excise tax has been extended, this time retroactively through 2019.

H.R. 195 (the “Continuing Resolution”) extends the moratorium on the medical device excise tax contained in Code section 4191(c) for two years (through December 31, 2019), for sales after December 31, 2017. Read [TaxNewsFlash-Legislative Update](#)

Background

Section 4191 imposes a medical device excise tax on the sale, use, or lease of a “taxable medical device” by its manufacturer or importer at a rate of 2.3% of the price for which each device is sold. Certain adjustments to the sale price are allowed, and in some situations, a constructive sale price may be used to determine the tax base. In addition, export sales are generally not subject to the tax, subject to certain registration requirements.

The definition of a “taxable medical device” is any device listed with the Food and Drug Administration (FDA) under section 510(j) of the Federal Food, Drug, and Cosmetic Act (P.L. 75-717, as amended) and 21 C.F.R. Part 807, pursuant to FDA requirements. There are exemptions provided for eyeglasses, contact lenses, and hearing aids, and devices of a type generally purchased by the general public at retail for individual use (the “retail exemption”).

A provision in legislation enacted in December 2015 imposed a two-year moratorium on application of the medical device excise tax. The excise tax, thus, did not apply to sales of taxable medical devices between January 1, 2016, and December 31, 2017. Manufacturers and importers of devices sold during this period were not required to make semi-monthly deposits of the excise tax or to file Forms 720 relating to those sales.

That two-year moratorium on the medical device excise tax expired at the end of 2017. In other words, the moratorium no longer applied, and the tax became effective for sales beginning January 1, 2018, with the tax payable quarterly and with semi-monthly deposits required to be made. The first deposit would have been due January 29, 2018, for sales of taxable medical devices for the period January 1, 2018 - January 15, 2018. The IRS in January 2018 released Notice 2018-10 to provide penalty relief relating to certain failures to deposit the medical device excise tax imposed under section 4191. Read [TaxNewsFlash-United States](#)

Because the moratorium on the medical device excise tax has been retroactively extended for two years, this obviates the need for manufacturers and importers to begin making semi-monthly deposits of tax and filing excise tax returns.

For more information, contact a tax professional with KPMG's Excise Tax Practice group:

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