



March 2, 2011

The Honorable Timothy F. Geithner
Secretary, Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20509

Re: Additional Comments on Guidance for the Excise Tax on Medical Devices (Notice 2010-89)

Dear Secretary Geithner:

On January 7, 2011, the American Association for Homecare (AAHomecare) submitted comments regarding the implementation of the new excise tax on medical devices imposed by section 4191 of the Internal Revenue Code (Code). Section 4191 was added by section 1405 of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 1064-1065 (the Act), in conjunction with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119. In these initial comments, AAHomecare indicated that home medical equipment (HME) and supplies should be exempt from the new excise tax on medical devices. It is our opinion that the statutory language and Congressional intent validate our position.

AAHomecare is pleased to submit additional comments regarding the home medical equipment sector as it relates to the medical device tax. Specifically, these comments will focus on a definition of home medical equipment and supplies that should be used to exempt these items in the guidance for the excise tax on medical devices. AAHomecare appreciates the opportunity to provide additional information on this matter and looks forward to working with you and your staff as the guidance for the excise tax on medical devices is developed.

The Act imposes an excise tax on the sale of any “taxable medical device” by the manufacturer, producer, or importer of the device in an amount equal to 2.3 percent of the sale price, beginning in 2013. The provision provides exemptions for eyeglasses, contact lenses, hearing aids, and 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. Thus, in order to be exempt from the tax, the Secretary must determine that the device is generally purchased (a) by the general public; (b) at retail; and (c) for individual use. As stated in our original comments, AAHomecare believes that sales of HME and supplies meet the statutory requirement and should be exempt from the definition of “taxable medical device.” AAHomecare also believes that it was Congressional intent to exempt HME and supplies from the excise tax.

AAHomecare requests the use of the following definition of home medical equipment and supplies in the IRS guidance to exempt these items from the excise tax on medical devices.

Definition of “Home Medical Equipment and Supplies”

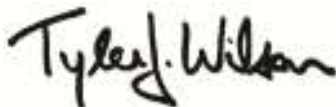
For purposes of an IRS exemption for home medical equipment and supplies from medical device excise tax

Home medical equipment and supplies is a category of medical devices intended by the manufacturer to be regularly used by patients/consumers whose care is being managed in their homes/communities. Specifically, home medical equipment and supplies:

- a. are “medical devices” as defined by the Food and Drug Administration;
- b. are items that are generally designed and purchased by an individual for his/her use in the home and community (rather than used by health care professionals or individuals in a health care institution);
- c. are sold by the manufacturer regularly through retail distribution channels focused on sales for home/community use;
- d. are primarily and customarily used to serve a medical purpose;
- e. are not useful to an individual in the absence of illness, injury, functional impairment, or congenital anomaly;
- f. are needed to maintain the patient in his/her home and community (not in a health care institution);
- g. includes, but not limited to, respiratory therapy technologies (including home oxygen systems, sleep therapy technologies, inhalation drug therapy), mobility assistive technologies (including canes, crutches, walkers, manual wheelchairs, scooters, power wheelchairs, wheelchair cushions, backs and accessories), diabetes therapy and supplies, home infusion therapy, negative pressure wound therapy, ostomy supplies, wound care dressings and supplies, home and bath safety aides (including shower chairs, bath safety rails, commodes, lifts, slings), and other medical equipment, therapy, and supplies that are regularly used in the home and community (not in a health care institution);
- h. includes supplies that are used in conjunction with a piece of medical equipment and that must be replaced on a regular basis.

Once again, AAHomecare appreciates the opportunity to provide additional information on this matter and looks forward to working with you and your staff as the guidance for the excise tax on medical devices is developed. If you have questions about the Association’s additional comments or position, please contact Jay Witter at (703) 535-1884 or jayw@aahomecare.org.

Sincerely,



Tyler J. Wilson
President