

PROTECT MEDICAL INNOVATION ACT OF 2015

JUNE 11, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 160]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 160) to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	2
C. Legislative History	2
II. EXPLANATION OF THE BILL	3
A. Repeal of Medical Device Excise Tax (sec. 2 of the bill, sec. 4191 of the Code)	3
III. VOTES OF THE COMMITTEE	5
IV. BUDGET EFFECTS OF THE BILL	5
A. Committee Estimate of Budgetary Effects	5
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	6
C. Cost Estimate Prepared by the Congressional Budget Office	6
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	7
A. Committee Oversight Findings and Recommendations	7
B. Statement of General Performance Goals and Objectives	7
C. Information Relating to Unfunded Mandates	7

D. Applicability of House Rule XXI 5(b)	7
E. Tax Complexity Analysis	8
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	8
G. Duplication of Federal Programs	8
H. Disclosure of Directed Rule Makings	8
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	8
A. Text of Existing Law Amended or Repealed by the Bill, as Reported	8
B. Changes in Existing Law Proposed by the Bill, as Reported	17
VII. MINORITY VIEWS	27

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protect Medical Innovation Act of 2015”.

SEC. 2. REPEAL OF MEDICAL DEVICE EXCISE TAX.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 is amended by striking subchapter E.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 4221 of such Code is amended by striking the last sentence.

(2) Paragraph (2) of section 6416(b) of such Code is amended by striking the last sentence.

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by striking the item relating to subchapter E.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales in calendar quarters beginning after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 160, as reported by the Committee on Ways and Means, repeals the 2.3-percent excise tax on medical device sales for calendar quarters beginning after the date of enactment.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes it is important to provide immediate relief from taxes that stifle innovation in order to encourage economic growth and job creation. The Committee believes that repealing the medical device excise tax will decrease health care costs, encourage medical innovation, and eliminate an unfair tax burden.

C. LEGISLATIVE HISTORY

Background

H.R. 160 was introduced on January 6, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 160, the “Protect Medical Innovation Act of 2015” on June 2, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The harmful effects and need for repeal of the medical device excise tax was discussed at three hearings during the 112th, 113th, and 114th Congresses:

- Full Committee Hearing on the Tax Ramifications of the Supreme Court’s Ruling on the Democrats’ Health Care Law (July 10, 2012);
- Oversight Subcommittee Hearing on the Tax-Related Provisions in the President’s Health Care Law (March 5, 2013); and
- Full Committee Hearing on Moving America Forward: With a Focus on Economic Growth (January 15, 2015).

II. EXPLANATION OF THE BILL

A. REPEAL OF MEDICAL DEVICE EXCISE TAX (SEC. 2 OF THE BILL, SEC. 4191 OF THE CODE)

PRESENT LAW

Effective for sales after December 31, 2012, a tax equal to 2.3 percent of the sale price is imposed on the sale of any taxable medical device by the manufacturer, producer, or importer of such device.¹ A taxable medical device is any device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act,² intended for humans. Regulations further define a medical device as one that is listed by the Food and Drug Administration (“FDA”) under section 510(j) of the Federal Food, Drug, and Cosmetic Act and 21 CFR Part 807, pursuant to FDA requirements.³

The excise tax does not apply to eyeglasses, contact lenses, hearing aids, or any other medical device determined by the Secretary to be of a type that is generally purchased by the general public at retail for individual use (“retail exemption”). Regulations provide guidance on the types of devices that are exempt under the retail exemption. A device is exempt under these provisions if: (1) it is regularly available for purchase and use by individual consumers who are not medical professionals; and (2) the design of the device demonstrates that it is not primarily intended for use in a medical institution or office or by a medical professional.⁴ Additionally, the regulations provide certain safe harbors for devices eligible for the retail exemption.⁵

The medical device excise tax is generally subject to the rules applicable to other manufacturers excise taxes. These rules include

¹Sec. 4191.

²21 U.S.C. sec. 321. Section 201(h) defines device as “an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.”

³Treas. Reg. sec. 48.4191–2(a). The regulations also include as devices items that should have been listed as a device with the FDA as of the date the FDA notifies the manufacturer or importer that corrective action with respect to listing is required.

⁴Treas. Reg. sec. 48.4191–2(b)(2).

⁵Treas. Reg. sec. 48.4191–2(b)(2)(iii). The safe harbors include devices that are described as over-the-counter devices in relevant FDA classification headings, as well as certain FDA device classifications listed in the regulations.

certain general manufacturers excise tax exemptions including the exemption for sales for use by the purchaser for further manufacture (or for resale to a second purchaser in further manufacture) or for export (or for resale to a second purchaser for export).⁶ If a medical device is sold free of tax for resale to a second purchaser for further manufacture or for export, the exemption does not apply unless, within the six-month period beginning on the date of sale by the manufacturer, the manufacturer receives proof that the medical device has been exported or resold for use in further manufacturing.⁷ In general, the exemption does not apply unless the manufacturer, the first purchaser, and the second purchaser are registered with the Secretary of the Treasury. Foreign purchasers of articles sold or resold for export are exempt from the registration requirement.

The lease of a medical device is generally considered to be a sale of such device.⁸ Special rules apply for the imposition of tax to each lease payment. The use of a medical device subject to tax by manufacturers, producers, or importers of such device is treated as a sale for the purpose of imposition of excise taxes.⁹

There are also rules for determining the price of a medical device on which the excise tax is imposed.¹⁰ These rules provide for (1) the inclusion of containers, packaging, and certain transportation charges in the price, (2) determining a constructive sales price if a medical device is sold for less than the fair market price, and (3) determining the tax due in the case of partial payments or installment sales.

REASONS FOR CHANGE

The U.S. medical device industry is a leader in medical technology innovation. The industry is an important contributor to the nation's economy, employing hundreds of thousands of people and manufacturing devices both for the U.S. and foreign markets. The United States is a net exporter of medical devices. The Committee believes that the excise tax on medical devices adversely affects the industry. The Committee believes that repealing the tax will decrease the cost of healthcare, encourage medical innovation, and lead to more jobs in the industry.

EXPLANATION OF PROVISION

The provision repeals the medical device excise tax.

EFFECTIVE DATE

The provision applies to sales in calendar quarters beginning after the date of enactment of this Act.

⁶Sec. 4221(a). Other general manufacturers excise tax exemptions (*i.e.*, the exemption for sales to purchasers for use as supplies for vessels or aircraft, to a State or local government, to a nonprofit educational organization, or to a qualified blood collector organization) do not apply to the medical device excise tax.

⁷Sec. 4221(b).

⁸Sec. 4217(a).

⁹Sec. 4218.

¹⁰Sec. 4216.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 160, the “Protect Medical Innovation Act of 2015,” on June 2, 2015.

The Chairman’s amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 160, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 25 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Johnson	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Brady	X	.....	.....	Mr. McDermott .....	.....	X	.....
Mr. Nunes	X	.....	.....	Mr. Lewis .....	.....	X	.....
Mr. Tiberi	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Reichert	X	.....	.....	Mr. Becerra .....	.....	X	.....
Mr. Boustany	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Roskam	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Price	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Buchanan	X	.....	.....	Mr. Blumenauer .....	.....	X	.....
Mr. Smith (NE)	X	.....	.....	Mr. Kind	X	.....	.....
Ms. Jenkins	X	.....	.....	Mr. Pascrell .....	.....	X	.....
Mr. Paulsen	X	.....	.....	Mr. Crowley .....	.....	X	.....
Mr. Marchant	X	.....	.....	Mr. Davis .....	.....	X	.....
Ms. Black	X	.....	.....	Ms. Sanchez .....	.....	X	.....
Mr. Reed	X	.....	.....		
Mr. Young	X	.....	.....		
Mr. Kelly	X	.....	.....		
Mr. Renacci	X	.....	.....		
Mr. Meehan	X	.....	.....		
Ms. Noem	X	.....	.....		
Mr. Holding	X	.....	.....		
Mr. Smith (MO)	X	.....	.....		
Mr. Dold	X	.....	.....		

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 160, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2016–2025:

FISCAL YEARS											
[Billions of dollars]											
2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–20	2016–25
–1.8	–2.0	–2.1	–2.2	–2.3	–2.5	–2.6	–2.8	–2.9	–3.1	–10.4	–24.4

NOTE: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is

less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 4, 2015.

Hon. PAUL RYAN,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 160, the Protect Medical Innovation Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

KEITH HALL, *Director.*

Enclosure.

H.R. 160—Protect Medical Innovation Act of 2015

H.R. 160 would amend the Internal Revenue Code to repeal the medical device excise tax. Under current law, a tax of 2.3 percent is imposed on the sale of medical devices by the manufacturer or importer. Medical devices that are regularly available at retail for individual use and not primarily intended for use by a medical professional are exempt from the tax. The tax went into effect on January 1, 2013, and its repeal by H.R. 160 would be effective starting in the first calendar quarter after the date of enactment.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 160 would reduce revenues, thus increasing federal deficits, by about \$24.4 billion over the 2015–2025 period. The estimate assumes enactment in the last quarter of fiscal year 2015.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 160 would result in revenue losses in each year beginning in 2016. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 160, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON WAYS AND MEANS ON JUNE 2, 2015

By fiscal year, in millions of dollars—														
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015– 2020	2015– 2025	
NET INCREASE IN THE DEFICIT														
Statutory Pay-As- You-Go Impact ...	0	1,834	1,958	2,085	2,216	2,349	2,488	2,630	2,778	2,934	3,097	10,441	24,368	

Source: Staff of the Joint Committee on Taxation.
Note: Components do not sum to totals because of rounding.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee’s review of the provisions of H.R. 160 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

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SUBCHAPTER E. MEDICAL DEVICES

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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.

* * * * *

Subchapter G—Exemptions, Registration, Etc**SEC. 4221. CERTAIN TAX-FREE SALES.**

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter C of chapter 31 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government,

(5) to a nonprofit educational organization for its exclusive use, or

(6) to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood,

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2016. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply. In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.

(b) PROOF OF RESALE FOR FURTHER MANUFACTURE; PROOF OF EXPORT.—Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

(c) MANUFACTURER RELIEVED FROM LIABILITY IN CERTAIN CASES.—In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) DEFINITIONS.—For purposes of this section—

(1) MANUFACTURER.—The term “manufacturer” includes a producer or importer of an article, and, in the case of taxes imposed by subchapter C of chapter 31, includes the retailer with respect to the first retail sale.

(2) EXPORT.—The term “export” includes shipment to a possession of the United States; and the term “exported” includes shipped to a possession of the United States.

(3) SUPPLIES FOR VESSELS OR AIRCRAFT.—The term “supplies for vessels or aircraft” means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the

term “vessels” includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term “vessels of war of the United States or of any foreign nation” includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) STATE OR LOCAL GOVERNMENT.—The term “State or local government” means any State, any political subdivision thereof, or the District of Columbia.

(5) NONPROFIT EDUCATIONAL ORGANIZATION.—The term “non-profit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) USE IN FURTHER MANUFACTURE.—An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(7) QUALIFIED BUS.—

(A) IN GENERAL.—The term “qualified bus” means—

- (i) an intercity or local bus, and
- (ii) a school bus.

(B) INTERCITY OR LOCAL BUS.—The term “intercity or local bus” means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

- (i) such transportation is scheduled and along regular routes, or
- (ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) SCHOOL BUS.—The term “school bus” means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term “school” means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) SPECIAL RULES.—

(1) RECIPROCITY REQUIRED IN CASE OF CIVIL AIRCRAFT.—In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft reg-

istered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) TIRES.—

(A) TAX-FREE SALES.—Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) PROOF.—Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) SUBSECTION (A)(1) DOES NOT APPLY.—Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) TIRES USED ON INTERCITY, LOCAL, AND SCHOOL BUSES.—Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

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Subtitle F—Procedure and Administration

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

* * * * *

Subchapter B—Rules of Special Application

* * * * *

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) **CONDITION TO ALLOWANCE.**—

(1) **GENERAL RULE.**—No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes), shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he—

(A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

(C) in the case of an overpayment under subsection (b)(2) of this section—

(i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

(2) **EXCEPTIONS.**—This subsection shall not apply to—

(A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and

(B) an overpayment of tax under paragraph (1), (3)(A), (4), (5), or (6) of subsection (b) of this section.

(3) **SPECIAL RULE.**—For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term “ultimate purchaser” (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination.

(4) **REGISTERED ULTIMATE VENDOR OR CREDIT CARD ISSUER TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.**—

(A) **IN GENERAL.**—For purposes of this subsection, except as provided in subparagraph (B), if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101.

(B) **CREDIT CARD ISSUER.**—For purposes of this subsection, if the purchase of gasoline described in subpara-

graph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

- (i) is registered under section 4101,
- (ii) has established, under regulations prescribed by the Secretary, that such person—

- (I) has not collected the amount of the tax from the person who purchased such article, or

- (II) has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and

- (iii) has so established that such person—

- (I) has repaid or agreed to repay the amount of the tax to the ultimate vendor,

- (II) has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or

- (III) has otherwise made arrangements which directly or indirectly provides the ultimate vendor with reimbursement of such tax.

If clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such credit or payment.

(C) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) or (B) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor or credit card issuer has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor or credit card issuer are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(B) FURTHER MANUFACTURE.—Subparagraph (A) shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for

which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(C) ADJUSTMENT OF TIRE PRICE.—No credit or refund of any tax imposed by subsection (a) or (b) of section 4071 shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee.

(2) SPECIFIED USES AND REALES.—The tax paid under chapter 32 (or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported;

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) sold to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood;

(F) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

(G) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C), (D), and (E) shall not apply in the case of any tax paid under section 4064. In the case of the tax imposed by section 4131, subparagraphs (B), (C), (D), and (E) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. This paragraph shall not apply in the case of any tax imposed under section 4041(a)(1) or 4081 on diesel fuel or kerosene and any tax paid under section 4121. Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met. In the case of taxes imposed by subchapter C or D of chapter 32, subparagraph (E) shall not apply. In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply.

(3) TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than any fuel taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

- (i) another article taxable under chapter 32, or
- (ii) an automobile bus chassis or an automobile bus body, manufactured or produced by him; or

(B) in the case of any fuel taxable under section 4081, such fuel is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

(4) TIRES.—If—

(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article is—

(i) an automobile bus chassis or an automobile bus body,

(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, or

(iii) sold to a qualified blood collector organization for its exclusive use in connection with a vehicle the organization certifies will be primarily used in the collection, storage, or transportation of blood.

(5) RETURN OF CERTAIN INSTALLMENT ACCOUNTS.—If—

(A) tax was paid under section 4216(d)(1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4216(d)(1) allocable to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

(6) TRUCK CHASSIS, BODIES, AND SEMITRAILERS USED FOR FURTHER MANUFACTURE.—If—

(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him,

such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale

or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) **REFUND TO EXPORTER OR SHIPPER.**—Under regulations prescribed by the Secretary the amount of any tax imposed by chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(d) **CREDIT ON RETURNS.**—Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return. The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e).

(e) **ACCOUNTING PROCEDURES FOR LIKE ARTICLES.**—Under regulations prescribed by the Secretary, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) on a first-in-first-out basis,

(2) on a last-in-first-out basis, or

(3) in accordance with any other consistent method approved by the Secretary.

(f) **MEANING OF TERMS.**—For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

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B. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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【SUBCHAPTER E. MEDICAL DEVICES】

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[Subchapter E—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.]

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Subchapter G—Exemptions, Registration, Etc

SEC. 4221. CERTAIN TAX-FREE SALES.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter C of chapter 31 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government,

(5) to a nonprofit educational organization for its exclusive use, or

(6) to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization’s exclusive use in the collection, storage, or transportation of blood,

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2016. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply. **[In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.]**

(b) **PROOF OF RESALE FOR FURTHER MANUFACTURE; PROOF OF EXPORT.**—Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

(c) **MANUFACTURER RELIEVED FROM LIABILITY IN CERTAIN CASES.**—In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) **DEFINITIONS.**—For purposes of this section—

(1) **MANUFACTURER.**—The term “manufacturer” includes a producer or importer of an article, and, in the case of taxes imposed by subchapter C of chapter 31, includes the retailer with respect to the first retail sale.

(2) **EXPORT.**—The term “export” includes shipment to a possession of the United States; and the term “exported” includes shipped to a possession of the United States.

(3) **SUPPLIES FOR VESSELS OR AIRCRAFT.**—The term “supplies for vessels or aircraft” means fuel supplies, ships’ stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term “vessels” includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term “vessels of war of the United States or of any foreign nation” includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) **STATE OR LOCAL GOVERNMENT.**—The term “State or local government” means any State, any political subdivision thereof, or the District of Columbia.

(5) **NONPROFIT EDUCATIONAL ORGANIZATION.**—The term “non-profit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of

pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) **USE IN FURTHER MANUFACTURE.**—An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(7) **QUALIFIED BUS.**—

(A) **IN GENERAL.**—The term “qualified bus” means—

(i) an intercity or local bus, and

(ii) a school bus.

(B) **INTERCITY OR LOCAL BUS.**—The term “intercity or local bus” means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

(i) such transportation is scheduled and along regular routes, or

(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) **SCHOOL BUS.**—The term “school bus” means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term “school” means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) **SPECIAL RULES.**—

(1) **RECIPROCITY REQUIRED IN CASE OF CIVIL AIRCRAFT.**—In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) **TIRES.**—

(A) **TAX-FREE SALES.**—Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) PROOF.—Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) SUBSECTION (A)(1) DOES NOT APPLY.—Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) TIRES USED ON INTERCITY, LOCAL, AND SCHOOL BUSES.—Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

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Subtitle F—Procedure and Administration

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) CONDITION TO ALLOWANCE.—

(1) GENERAL RULE.—No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes), shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he—

(A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

- (C) in the case of an overpayment under subsection (b)(2) of this section—
 - (i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or
 - (ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or
- (D) has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.
- (2) EXCEPTIONS.—This subsection shall not apply to—
 - (A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and
 - (B) an overpayment of tax under paragraph (1), (3)(A), (4), (5), or (6) of subsection (b) of this section.
- (3) SPECIAL RULE.—For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term “ultimate purchaser” (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination.
- (4) REGISTERED ULTIMATE VENDOR OR CREDIT CARD ISSUER TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—
 - (A) IN GENERAL.—For purposes of this subsection, except as provided in subparagraph (B), if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101.
 - (B) CREDIT CARD ISSUER.—For purposes of this subsection, if the purchase of gasoline described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—
 - (i) is registered under section 4101,
 - (ii) has established, under regulations prescribed by the Secretary, that such person—
 - (I) has not collected the amount of the tax from the person who purchased such article, or
 - (II) has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and
 - (iii) has so established that such person—

(I) has repaid or agreed to repay the amount of the tax to the ultimate vendor,

(II) has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or

(III) has otherwise made arrangements which directly or indirectly provides the ultimate vendor with reimbursement of such tax.

If clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such credit or payment.

(C) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) or (B) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor or credit card issuer has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor or credit card issuer are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(B) FURTHER MANUFACTURE.—Subparagraph (A) shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(C) ADJUSTMENT OF TIRE PRICE.—No credit or refund of any tax imposed by subsection (a) or (b) of section 4071 shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee.

(2) SPECIFIED USES AND RESALES.—The tax paid under chapter 32 (or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported;

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) sold to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood;

(F) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

(G) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C), (D), and (E) shall not apply in the case of any tax paid under section 4064. In the case of the tax imposed by section 4131, subparagraphs (B), (C), (D), and (E) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. This paragraph shall not apply in the case of any tax imposed under section 4041(a)(1) or 4081 on diesel fuel or kerosene and any tax paid under section 4121. Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met. In the case of taxes imposed by subchapter C or D of chapter 32, subparagraph (E) shall not apply. [In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply.]

(3) TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than any fuel taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

(i) another article taxable under chapter 32, or

(ii) an automobile bus chassis or an automobile bus body, manufactured or produced by him; or

(B) in the case of any fuel taxable under section 4081, such fuel is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

(4) TIRES.—If—

(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall

be deemed to be an overpayment by such person if such other article is—

(i) an automobile bus chassis or an automobile bus body,

(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, or

(iii) sold to a qualified blood collector organization for its exclusive use in connection with a vehicle the organization certifies will be primarily used in the collection, storage, or transportation of blood.

(5) RETURN OF CERTAIN INSTALLMENT ACCOUNTS.—If—

(A) tax was paid under section 4216(d)(1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4216(d)(1) allocable to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

(6) TRUCK CHASSIS, BODIES, AND SEMITRAILERS USED FOR FURTHER MANUFACTURE.—If—

(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him, such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) REFUND TO EXPORTER OR SHIPPER.—Under regulations prescribed by the Secretary the amount of any tax imposed by chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(d) CREDIT ON RETURNS.—Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return. The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e).

(e) ACCOUNTING PROCEDURES FOR LIKE ARTICLES.—Under regulations prescribed by the Secretary, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

- (1) on a first-in-first-out basis,
- (2) on a last-in-first-out basis, or
- (3) in accordance with any other consistent method approved by the Secretary.

(f) MEANING OF TERMS.—For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

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VII. MINORITY VIEWS

With this legislation, the Majority furthers their fiscal irresponsibility and misguided priorities. The bill results in a revenue loss of \$24.4 billion and it is not offset, bringing the total of deficit-financed tax cuts to \$610 billion so far this year. One need not look far to see the imprudent vision the Republican Majority has for our country: Republicans continue to struggle to ensure our nation's infrastructure investments do not collapse, yet do not blink at deficit financing over half a trillion in tax cuts. Furthermore, in these difficult fiscal times, the Majority is insisting on spending and program cuts that will have a devastating impact on a vast array of Americans. For example, House Republicans proposed in their recent budget to slash spending for seniors who need long-term care, families needing food assistance, and students struggling to pay for college.

The bill is the latest in a continued series of attacks by the Majority on the Affordable Care Act (ACA). The medical device sector stood with the President in the late spring of 2009 and, with other industries that would benefit from expanding health coverage, pledged \$2 trillion in savings for health care reform. The medical device excise tax that is the subject of H.R. 160 represents the medical device sector's contribution to health care reform. All sectors of the health and medical industry made significant contributions to pay for health care reform. For example, hospitals, pharmaceutical companies, and insurance companies all knew that these contributions were appropriate because the coverage expansions of health care reform will result in tens of millions of additional health care customers for the health care industry. H.R. 160 eliminates the contribution of a key health industry sector, thereby encouraging the other sectors to follow suit and press for repeal of their contributions.

A number of distortions surrounding the debate on the medical device excise tax were dispelled during the markup of H.R. 160.

First, the device tax has not caused a contraction of the medical device industry. Tom Barthold, Chief of Staff for the Joint Committee on Taxation (JCT), testified previously before the Committee that the medical device industry will continue to grow even after the effective date of the medical device excise tax. Among the reasons for this growth is the aging of America's population—a demographic shift that favors the device industry as older patients tend to constitute a larger portion of the sector's total sales. However, as Mr. Barthold testified, another key reason for the industry's continued growth is the coverage expansion of the ACA. It should be carefully noted that JCT is an impartial and nonpartisan expert on tax law and implications of tax law.

Second, the medical device tax is not hindering the medical device industry. About half of medical devices produced in the U.S.

are exempt from the tax, either because of exemptions in the domestic market or because they are being exported. An analysis by CRS since the tax went into effect suggests that most costs are included in the prices for devices rather than reduced medical device company profits. And a recent analysis by Ernst and Young indicates that the industry's revenue increased by \$8 billion in the year the tax took effect, while at the same time R&D spending by the industry also increased by 6 percent in the same year and employment in the medical device industry increased by 23,500. According to CRS, while most device manufacturers are relatively small, output is concentrated in the largest manufacturer with the top one percent of firms accounting for approximately 75 percent of sales in the industry.

Third, the device tax does not incentivize companies to ship jobs overseas. The tax applies to products *used* in the United States. Thus, the tax applies to goods made abroad and imported into America. Further, the tax does not apply to products made in the U.S. and shipped abroad. Domestic and foreign manufacturers are on a level playing field with regard to the medical device tax. Furthermore, even when the medical device tax is taken into account, U.S. medical device companies are still paying lower effective tax rates than their foreign competitors. Therefore, the tax is not making them less internationally competitive.

Finally, we object to the Majority's continued attacks on the ACA without putting forward any comprehensive legislation to address the health insurance needs of the nation. Since January of 2009, the Majority voted to repeal or undermine the ACA over 58 times, including earlier votes on repealing the medical device tax in 2012.

Sincerely,

SANDER M. LEVIN,
Ranking Member.

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