



Statement of the U.S. Chamber of Commerce

**ON: A Fresh Look at the Impact of the Medical Device Tax
on Jobs, Innovation, and Patients**

**TO: U.S. Senate Committee on Finance
Health Care Subcommittee**

DATE: May 1, 2015

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

**Statement
to the
UNITED STATES SENATE
COMMITTEE ON FINANCE
HEALTH CARE SUBCOMMITTEE
on behalf of the
U.S. CHAMBER OF COMMERCE**
Friday, May 1, 2015

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, appreciates this opportunity to provide a statement for the record as part of the Committee on Finance Health Care Subcommittee's April 23, 2015, hearing titled "A Fresh Look at the Impact of the Medical Device Tax on Jobs, Innovation, and Patients." The Chamber and its members continue to strongly support repeal of the medical device tax and we have summarized our concerns, and the concerns of the employer community, below for the record.

The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system. More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large. Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented.

The Medical Device Tax Undermines Health Care Reform

Since the legislative debates before the passage of the Affordable Care Act (ACA), the Chamber has testified¹ on the myriad of challenges the ACA poses to the business community through its mandated benefits, the imposition of taxes and penalties, and other burdensome requirements. Instead of controlling costs, the law decreases the flexibility employers and their workers have to access affordable and quality coverage. As the Chamber has reiterated in both testimony and letters to Congress, this new 2.3 percent tax on the sale of almost all medical devices will harm the ability of American companies to compete.² The tax will undermine America's global

¹ See "Health Reform in the 21st Century: Proposals to Reform the Health System," The House Committee on Ways and Means, June 24, 2009; "Roundtable Discussion – Health Care Reform Legislative Options," The Senate Health, Education, Labor and Pensions Committee, June 11, 2009.

² See, e.g., "The Challenges Facing America's Businesses under the Patient Protection and Affordable Care Act," The House Energy and Commerce Committee Subcommittee on Oversight and Investigation, June 26, 2013, available at: <https://www.uschamber.com/sites/default/files/documents/files/Katie%2520Mahoney%2520Testimony%25206%25202013%2520Challenges%2520Facing%2520America%2527s%2520Businesses%2520under%2520the%2520PPACA.pdf>; Josten, R. Bruce (Letter to Representatives Erik Paulsen and Ron Kind), "H.R. 523 – Protect Medical Innovation Act," Feb. 8, 2013, available at: https://www.uschamber.com/sites/default/files/documents/files/130208_HR523_ProtectMedicalInnovationAct_Paulsen_Kind.pdf.

leadership position in product innovation, clinical research, and patient care. This tax weakens the medical device industry's ability to create and maintain well-paying jobs in the United States and hinders the development of breakthrough treatments.

The Medical Device Tax is Already Costing Jobs and Stifling Innovation

The medical device industry, which adds over \$23 billion to the American economy annually, has already felt the impact of the medical device tax on jobs and innovation since its January 1, 2013, implementation.³ According to a recent survey by the Advanced Medical Technology Association (AdvaMed), two-thirds of the companies surveyed reported that they have had to "slow or halt U.S. job creation as a result of the tax."⁴ A recent survey by the Medical Device Manufacturers Association (MDMA) of 100 industry executives found that 72 percent "slowed or halted job creation" to pay for the tax, and 85 percent would hire more workers if the tax were repealed.⁵ The AdvaMed survey also found that the medical device tax has resulted in:

- Employment reductions of 14,000 industry workers in 2013 and years prior to implementation of the tax;
- An estimated 4,500 jobs lost in 2014;
- Almost 20,500 employees that will not be hired over the next five years;
- About 39,000 fewer industry jobs (considering both jobs lost and jobs not created); and
- Up to 156,000 jobs lost in indirect employment, leading to a total job loss of 195,000 jobs.⁶

Similarly, the effect of the medical device tax on current and future innovation has been equally as alarming. The AdvaMed survey found that 53 percent of respondents have reduced research and development as a result of the tax and 75 percent said they have:

- Deferred or cancelled capital investments and plans to open new facilities;
- Reduced investment in start-up companies;
- Found it more difficult to raise capital (among start-up companies); and,
- Reduced or deferred increases in employee compensation.⁷

³ Mary Kate Hays, *Medical Technology Adds \$23.6 Billion Annually to Economy*, U.S. CHAMBER OF COMMERCE BLOG, July 18, 2014, <https://www.uschamber.com/blog/medical-technology-adds-236-billion-annually-economy>.

⁴ AdvaMed, *Impact of the Medical Device Tax: A Status Report from AdvaMed* (Jan. 2015), available at <http://advamed.org/res.download/835>.

⁵ Sean Hackbarth, *New York Times Avoids Mentioning the Damage Caused by the Medical Device Tax*, U.S. CHAMBER OF COMMERCE BLOG, Feb. 2, 2015, <https://www.uschamber.com/blog/new-york-times-avoids-mentioning-damage-caused-medical-device-tax>.

⁶ AdvaMed, *supra* note 4.

⁷ *Id.*

While studies and survey results have shown the aggregate effects of the medical device tax, many companies have voiced the unique challenges they have dealt with because of this onerous tax. As Dr. Gregory Sorensen, President and CEO of Siemens Healthcare North America, recently explained, businesses often have no choice but to lay off employees and reduce research and development when dealing with such a heavy tax:⁸

I personally have had to let people go as we have had to eliminate jobs. For example, we have a factory in Walpole, Mass., where we make point-of-care devices, such as those to manage conditions like diabetes ... In Walpole, when this tax hit, we had to cancel projects, and we laid people off. And that's just one factory. At dozens of our other factories around the world we have similar stories, whether it is MRI scanner advances that are delayed, or new types of diagnostic devices for testing, or developments to reduce X-ray dose. When this heavy of a tax hits us, we have very little recourse other than to reduce our spending. Some of that involves cutting back on research and development, and some of that is reducing employees. It's a very painful process for us and is something that our country neither needs nor wants.

In his statement for the record, Christopher Cerone, Vice President of Global Government Affairs for Zimmer, an orthopedic medical device company based in Indiana, described how the medical device tax is affecting Zimmer's operations worldwide:

Medical device companies, such as Zimmer, continue to take significant steps to offset the bottom-line impact of the tax, including restructuring global operations and diverting capital away from key projects and investments. For instance, as a recent AdvaMed survey noted, many medical device companies are scaling back R&D initiatives. Passing on the cost of the tax is simply not an option, given the tight reimbursement environment for our consumers.

Cook Group, Inc., the largest family-owned medical device manufacturer in the world, detailed in its written testimony for the record similar challenges as they deal with how to continue product innovation in this tax environment:

Cook has made the difficult decision that without repeal, we will move important new, device-related product lines outside of the U.S. Our previous plans to open up five new device manufacturing facilities in American towns continue to be on hold as we use capital intended for these projects to pay the excise tax. The direct impact of this tax is squarely on U.S. jobs and because device manufacturing is performed mainly by a female workforce in many sectors, it will hit these workers the hardest.

⁸ Michael Bassett, *Siemens' Sorensen describes impact of the medical device tax*, RADIOLOGYBUSINESS.COM, Feb. 10, 2015, <http://www.radiologybusiness.com/topics/policy/siemens-sorensen-describes-impact-medical-device-tax?page=0%2C0>.

OrthoPediatrics, the world's only company specializing in making orthopedic equipment for children, has had to slow hiring and development as a result of the medical device tax. As CEO Mark Throdahl explained:⁹

We are a company that is not yet profitable. We've only been in the market for 5 years. This is a very burdensome tax because it is based on sales, not profits, and the only way we can pay a tax like this is to cut expenses ... In terms of magnitude, [the tax] is about the size of our entire product development budget. We have had to reduce our development budget. We're developing less products than we otherwise would. It has cut into our development expenses. The only way we can trump up the money to pay this tax is to reduce expenses.

According to M&S Technologies Inc., a company that develops and manufactures computerized vision testing products, the medical device tax has even hurt their ability to donate resources to children in need of specialized care:

Prior to the medical device tax, M&S Technologies actively participated in donating technology and other resources to assist in vision screening for children who may not have access to vision care. Our sponsorship of the Special Olympics, Children's Calendar fundraisers and other events have all been eliminated due to the medical device tax of which we paid over \$100,000 in 2014. The tragedy of all of this is that those kids who were at least getting some form vision testing are no longer receiving that service due to our cuts in our philanthropic activities due to the medical device tax, especially knowing that 80 percent of all eye problems in children are solvable before the age of 8-10.

The Medical Device Tax Needs to be Repealed

As we continue to see the destructive effects of the medical device tax hit employers, employees, and the U.S. economy at large, the Chamber urges swift bipartisan and bicameral action to repeal this tax before further damage is done. Legislation in both the House and the Senate has been introduced to repeal the medical device tax¹⁰ and we encourage you and your colleagues to support these bills. The Chamber thanks you for taking the time to hold this important hearing on the ongoing impacts of the medical device tax on jobs, innovation, and patients. We look forward to working with you as you continue to examine this important issue. Please do not hesitate to contact us if we may be of assistance in this matter.

⁹ Patrick Howley, *Company that makes medical equipment for kids hit hard by Obamacare*, THE DAILY CALLER, Feb. 25, 2014, available at <http://dailycaller.com/2014/02/25/company-that-makes-medical-equipment-for-kids-hit-hard-by-obamacare/>.

¹⁰ Protect Medical Innovation Act of 2015, H.R. 160, 114th Cong. (2015); Medical Device Access and Innovation Protection Act, S. 149, 114th Cong. (2015).