



Contact Attorney Regarding
This Matter:

William H. Kitchens
404.873.8644 - direct
william.kitchens@agg.com

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

1775 Pennsylvania Avenue NW
Suite 1000
Washington DC 20006
202.677.4030

www.agg.com

Despite Growing Momentum Repeal of Medical Device Tax Faces Significant Hurdles

On March 21, 2013, the United States Senate approved an amendment by a vote of 79 to 20 to repeal the 2.3 percent medical device excise tax. The tax, which went into effect this past January, was included as part of the Patient Protection and Affordable Care Act.¹ Despite the vote, it is far from clear that repeal of the tax will occur.

The repeal is largely symbolic because the resolution was an amendment to the Senate Democrats' budget, a partisan measure that is not likely to pass the Republican-controlled House of Representatives. Further, although this type of amendment binds Congress to certain budgetary priorities, it does not have the force of law. The resolution is not likely to be brought to the Senate as a stand-alone bill, but it may be considered in general discussions to revamp the tax code and cut the deficit.

Another substantial obstacle the repeal faces is included in the resolution itself: the repeal cannot "increase the deficit over either the period of the total of fiscal years 2013 through 2018 or the period of the total of fiscal years 2013 through 2023."² Despite this condition, the resolution does not include an offset to the cost, and the Joint Committee on Taxation estimates that repealing the tax would cost \$29 billion over a 10-year period. Thus, even if the repeal were to eventually pass, Congress would need to find a way to compensate for the repeal.

Although Congress has introduced legislation that would offset the tax, these efforts have not yet been met with broader Congressional support. Sources remain doubtful about Congress agreeing on an alternative source of revenue.

Nonetheless, the resolution is evidence that a growing number of Senators have begun to support the repeal. The resolution was adopted by a significant majority in the Senate, which demonstrates that future legislation to repeal the medical device tax could attract similarly strong bipartisan support. The bipartisan amendment was introduced by Sen. Orrin Hatch (R-UT) and Sen. Amy Klobuchar (D-MN).

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
² S. Amdt. 297 to S. Con. Res., 113th Cong. (2013).

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.