

June 7, 2011

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

Dear Secretary Geithner:

As representatives of consumer and disability-related organizations, we write to express our concerns with the application of the medical device tax under the Patient Protection and Affordable Care Act of 2010 ("ACA", Pub. L No 111-148) to a wide variety of medical devices and supplies typically used by individuals with injuries, illnesses, disabilities, and chronic conditions to remain healthy, functional and live as independently as possible.

The Affordable Care Act includes a provision requiring an annual excise tax on the sale of a "taxable medical device" equal to 2.3% of the price of the device. The tax is imposed on any sale by a "manufacturer, producer or importer" of the device. Under the law, a "taxable medical device" is any medical device as defined in section 201(h) of the Federal Food, Drug and Cosmetic Act (FFDCA) and includes Class I, II, and III medical devices.

Under the ACA, the Secretary of Treasury is required to exempt from the definition of "taxable medical device" "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." We believe that Congress intended device sales to consumers to be exempt from the medical device tax so the tax does not directly flow downstream to impact consumers. Application of this tax to medical equipment used by individual consumers could inevitably restrict access to necessary and appropriate medical devices and supplies.

As organizations representing direct consumers of a wide variety of medical devices, we believe that sales of home medical equipment (HME), including durable medical equipment, prosthetics, orthotics, and supplies, should be exempt from the definition of "taxable medical device," much like eyeglasses, contact lenses, and hearing aids are under section 4191(b)(2) of the Internal Revenue Code. This exemption should include a broad array of devices and supplies that are used to improve mobility (e.g., wheelchairs, canes, crutches, walkers, prosthetics, orthotics, etc.), or improve the ability to breathe via prescribed oxygen (e.g., oxygen devices and supplies), and other items such as home care beds, bath safety aids, commodes and other devices that enable consumers to live in their homes and communities, rather than in a health care institution.

Thank you for considering our views.

Sincerely,

1. AIDS Drug Assistance Program (ADAP) Advocacy Association (aaa+)
2. ALS Association
3. American Association of People with Disabilities
4. American Sleep Apnea Association
5. Association of Assistive Technology Act Programs
6. Association of Programs for Rural Independent Living
7. Brain Injury Association of America
8. Christopher and Dana Reeve Foundation
9. Community Access National Network
10. International Ventilator Users Network
11. National Association of the Deaf
12. National Council on Independent Living
13. National Spinal Cord Injury Association
14. Ohio Society for Respiratory Care
15. Paralyzed Veterans of America
16. Post-Polio Health International
17. Rehabilitation Engineering and Assistive Technology Society of North America
18. United Spinal Association