Why we are fighting the Medical Device Excise Tax

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We appreciate Dr Smith’s comments regarding his belief that the American Association of Orthodontists (AAO) should suspend lobbying to repeal the Medical Device Excise Tax (MDET). Although we may disagree with Dr Smith’s positions, his initiative in raising the question allows us to better educate members about why the AAO has joined the fight to repeal the tax. The reality is simple: the medical device tax increases costs, undermines innovation, weakens employment, and diminishes value for orthodontic patients. Let’s dig deeper and respond to some of Dr Smith’s specific concerns.

Beyond the AAO, what do other health care providers think about repealing the MDET? As orthodontists, caring for patients comes first, and we generally agree with the American Dental Association’s position that “an increase in the cost of oral health care as a result of the excise tax on medical devices—including restorative materials, instruments, impression materials and equipment—makes healthcare less affordable and acts as a deterrent to patients seeking dental care,” and runs directly counter to our mission as health care providers. In calling for repeal of the MDET, the AAO is joined by nearly 1000 organizations, associations, companies, and firms representing patients, physicians, manufacturers, and researchers that support ending the tax. If we look more narrowly at just the dental advocacy community, repeal of the MDET is supported by the American Dental Association, the American Academy of Pediatric Dentistry, the Dental Trade Alliance, the American Association of Oral and Maxillofacial Surgeons, 20 state dental associations (Alabama, Colorado, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Pennsylvania, South Carolina, Utah, Virginia, Wisconsin, and Wyoming), the Hispanic Dental Association, and the Orthodontic Manufacturers Association.

Outside dentistry, the consensus position of industry is also that the medical device tax does more harm than good for our nation because it decreases job growth and hampers medical innovation. Our nation’s history of medical innovations—from drug research to device creation—is a driver of our economy, but roadblocks such as the MDET slow the engine of ingenuity. A survey by the Advanced Medical Technology Association showed that more than half of device makers had to scale back research budgets to pay the tax, decreasing the potential for the discovery of breakthrough lifesaving medical devices and destroying more than 30,000 associated jobs in the first 5 years of its implementation. Before the tax was lifted for 2 years, Boston Scientific said that it would “prune another 900 to 1,000 jobs from its global workforce as it tries to manage the effects of the new medical device tax,” reducing 10% of the company’s workforce. Not only is this a short-term crisis, but it also has long-term ramifications on our nation’s competitiveness in a global economy where US tax policy is cited by some companies as their reason for moving jobs out of the country. Bruce Josten, executive vice president for government affairs at the US Chamber of Commerce, stated that the MDET “will put U.S. medical device companies at a competitive disadvantage to global competitors. Jobs, economic output, and medical innovations will be lost.” Since the health care industry leads the field in corporate inversions to go offshore, we must not undermine innovation, or it will be a dead end for the American economy.

Does the MDET hurt small business? The vast majority of AAO members are small business owners, and their top governmental concern has always been that federal taxes and regulatory schemes undermine their business in the form of increased compliance costs, reduced employment, and a slower pace to raise wages and benefits for staff as margins are squeezed ever tighter. When we discuss these issues with the AAO’s Committee on Government Affairs, it is clear that most AAO members do not believe that the medical device tax, which acts as a deterrent to patients seeking dental care, is the answer. Instead, the American Dental Association, American Association of Orthodontists, American Society of Oral and Maxillofacial Surgeons, and the American Academy of Pediatric Dentistry have all joined in the call for repeal of the MDET.
device tax is an appropriate way to fund the Affordable Care Act (ACA), and causes many negative outcomes for our members, their staff, and their patients.

Will the ACA become unaffordable if it loses the revenue from the MDET? The MDET was put in place to help pay for the ACA. The AAO is proud to have lobbied to keep general orthodontics outside the scope of the ACA and to preserve scarce federal resources for primary and preventive oral care. Throughout the health reform debate, however, cost was a critical concern for the AAO and its members. Dr Smith hypothesized that the MDET and other taxes in the ACA were about making those who were expected to benefit from the law do their part to help pay for it. Unfortunately, the funding provided by the MDET is the federal equivalent of looking under the couch cushions for loose change to pay a massive mortgage—one you got with a teaser rate to buy a new house that you will never be able to afford. The Joint Committee on Taxation’s estimated cost of the MDET at $29 billion for 2013 through 2022 is a small portion of an ACA tab that will reach $1.207 trillion by 2025. Proponents of the MDET never weighed its potentially destructive implications on the medical industry before the ACA was passed, but once those ramifications became apparent, there was the momentum needed for repeal.

Is the MDET repeal just a political issue where the AAO is taking a partisan position? No, this is one of the rare instances where Congress has bipartisan support to fix a fundamental flaw in our national system to finance health care. In fact, a majority of both parties in the House of Representatives and Senate voted last December to suspend the MDET for 2 years, making it a shining example of bipartisan cooperation in a hyperpartisan political environment. The predecessor legislation to permanently repeal the MDET passed the House in 2015 and was sponsored by 65% of all members, including more than 40 Democrats. The companion legislation in the Senate had 40 bipartisan sponsors, a high number for that chamber. Democrats from key states with medical device industries such as Minnesota and Massachusetts were among the strongest supporters of this legislation. Senator Al Franken (Democrat, Minn) stated that he “fought for this important change because it will allow hundreds of important Minnesota companies—both large and small—to create jobs, expand innovation, and continue to improve the health of people across the globe.” Fellow Senator Amy Klobuchar (Democrat, Minn) praised the bipartisan work on the repeal of the tax, stating that “after a lot of hard work, Democrats and Republicans came together today to suspend this harmful tax for two years.” Suspension of the MDET shows Congress working the way it is supposed to, acting for the collective best interests of our citizens.

Does repealing the MDET create a climate for other industries to lobby to repeal separate taxes that would then threaten the financial foundation for the ACA? Right now in Washington, DC, you can find interest groups lobbying from across the political spectrum to alter, suspend, or undo every financial support mechanism for the ACA. For example, organized labor worked hard to pass the ACA but now lobbies to defer implementation of the “Cadillac tax” provision that will hurt union members with strong benefit packages. Congress itself has taken the Obama administration to court several times over funding elements of the ACA. Some financing pillars for the ACA fell quickly because of bipartisan concern about patient benefits in comparison with their costs to consumers. For example, the ACA established the Community Living Assistance Services and Supports plan to create a voluntary long-term care benefit plan, but it was repealed almost immediately at a cost of $70.2 billion, almost 3 times the cost of the MDET. The AAO is proud to have been part of a coalition in 2010 and 2011 to repeal the burdensome 1099 tax form reporting requirements, put in place under the ACA. Without that coalition, AAO member time and resources would be consumed with filling out forms for every purchase over $600 each year, from a new office computer to the staff Christmas party and on to a never-ending blizzard of paperwork. The ACA did not crumble and fail when the Community Living Assistance Services and Supports plan or the 1099 requirements were repealed, and the law will not fail now because the MDET is suspended for 2 years. To suggest that passing the MDET suspension will cause a rush of other industries to fix their own tax concerns about the ACA requires one to ignore that those groups have been pushing their own fixes since the day President Obama signed the ACA into law.

Are AAO members better off today because of the ACA and its expenses such as the MDET? We don’t hear many AAO members making the argument that the ACA is good for their patients, good for their staff, or good for them as small business owners. Any comprehensive health care bill should have included common-sense small business provisions to help AAO members grow and thrive: policies such as (1) association health plans, (2) purchasing insurance across state lines, and (3) expanding patient control over their financial outlays via rewarding the use of flexible spending accounts and medical savings accounts. The ACA did not contain such provisions, and we find it hard...
to muster credible evidence that AAO members are better off today than they were before the law passed. Add to it that the consumer marketplace confusion caused by the ACA, passed amid a severe recession from which the country has only slowly rebounded and ever-expanding increases in health insurance premiums in all markets, and a strong case can be made that the new law has created conditions that reduce demand for orthodontic services compared with what they otherwise might be.

Don’t other changes to the tax code make the cost of the MDET inconsequential for our patients and for us? Dr Smith believes that the benefits derived from tax code changes related to Section 179’s accelerated expensing of equipment more than makes up for any loss from the MDET’s implementation, but that is a faulty comparison. Orthodontists use a variety of medical supplies for braces, retainers, and various other procedures on a daily basis and were paying the medical device tax every day, regardless of whether they have the capital to buy new equipment to upgrade their practice’s patient service capabilities. Every time these daily supplies were purchased, the medical device tax was being applied. Congress has spent a long time fighting to get things right on Section 179 expensing because it recognized that the existing law was hurting the economy in many ways. Saying that fixing Section 179 means that the AAO should just “grin and bear it” on the MDET is the equivalent of saying that my son can be charged an exorbitant price for braces from his orthodontist because he got a great deal on a filling from his dentist in the same office building.

Dr Smith, however, did not mention other additions to the tax code, also part of the ACA, that impact not only the bottom line of AAO members’ practices, but also their own personal household bottom line. These include higher Medicare taxes on high-earners, a new cap on flexible spending account spending and applicability to over-the-counter medicines, individual and employer coverage mandates (although small businesses are exempt from the employer mandate, we hear that AAO members overwhelmingly choose to cover their employees), rising health insurance premiums (due to new consumer protections and new requirements for qualified health coverage), and health insurance taxes that contribute to higher prices. Dr Smith implored us to consider the MDET in the larger context of certain beneficial tax changes but ignored the larger context of other harmful tax changes brought on by the ACA. As small business owners, it does not matter whether these issues impact an orthodontist as a doctor or as an individual; they still impact your ability to run a successful practice providing important services to your patients and important benefits to your employees. With or without the MDET, orthodontists are certainly doing their fair share.

The ACA continues to face daunting implementation challenges, including the need to expand coverage to the more than 33 million Americans who remain uninsured, control premium hikes, bend the cost curve, empower Americans to make their own health care decisions, produce robust risk pools, and address the increasing costs of health care coverage to small businesses such as orthodontic practices that choose to cover their employees. Enacting the medical device tax fixes none of these problems, but its suspension for the next 2 years is a net positive for AAO members, your staff, and your patients. Pushing for repeal of the MDET is a great example of why the AAO’s success in Washington is a key way to preserve the value of your medical specialty and allows you to best serve the needs of your patients going forward.