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In Last Ditch Effort, Lawmakers Propose Five-Year Device Tax Moratorium

by [Ferdous Al-Faruque](#)

As the 2017 window to fully repeal the medical device tax has all but closed, lawmakers and industry are now focusing on another extended moratorium of the tax. A new bill proposes to give medical device-makers more time without the tax to develop business plans and more breathing room for Congress to consider a full repeal. *Medtech Insight* speaks with co-sponsor Rep. Erik Paulsen and industry advocates.

Two Republicans on the US House Ways and Means Committee are making a last-ditch effort to ward off the medical device tax before it restarts in the new year. Reps. Erik Paulsen, R-Minn., and Jackie Walorski, R-Ind., have proposed a [new bill](#) that would kick the can down the road and prevent the tax from being implemented until 2023.

Despite a major lobbying campaign and legislative efforts, the chances of achieving a permanent repeal of the 2.3% medical device excise tax by the end of the year looks bleak. With only three weeks to go before the tax is set to return, lawmakers and industry are trying to at least buy some time to continue to try for a full repeal. (Also see "[AdvaMed CEO: Less Optimistic On Full Device Tax Repeal By Deadline](#)" - Medtech Insight, 17 Nov, 2017.)

Rep. Paulsen told Medtech Insight there was no real "rhyme or reason" on why the bill seeks a five-year delay. The goal, he said, is to provide more of a buffer to industry, while also being politically realistic.

"While we applaud this proposed five-year suspension, it is only a first step toward the ultimate goal to fully repeal the medical device tax and unleash the full promise of job growth and medical innovation for American patients," Rep. Paulsen told *Medtech Insight*.

The proposed bill is part of a [five-bill package](#) being proposed in the Ways and Means Committee to delay a several Affordable Care Act taxes including tax on over-the-counter medications, certain elements of the Health Insurance Tax and the so-called Cadillac Tax.

The device excise tax was enacted to help fund the ACA and first took effect in 2013. It was suspended by Congress for 2016 and 2017.

Industry Looking For Tax Assurances

Paulsen is already the lead author on a bill to permanently repeal the tax, the [Protect Medical Innovation Act of 2017 \(H.R.184\)](#), which has 260 co-sponsors across the aisle. Despite the strong support, the bill has not been able to move in the US House. The congressman joined 178 lawmakers in a letter to Speaker Paul Ryan, R-Wisc., asking to get the bill on the floor, but to no avail. (Also see "[Lawmakers Urge House Speaker To Take Action On Device Tax](#)" - Medtech Insight, 25 Oct, 2017.)

While he's not giving up on the full repeal, Paulsen says it's important to give investors and medical device companies assurance that the tax won't return in January and disrupt their business plans.

A House Republican aide in Rep. Walorski's office echoed Paulsen's comments.

"We're definitely not giving up on the full repeal, just making sure this tax does not go into effect while we're still working on that," the source said.

The aide noted the House did pass a full repeal of the tax in 2015 but the efforts died in the Senate. "Senate was the challenge and that's always the challenge in getting bills across the finish line," the aide added.

The decision to focus a bill to extend the moratorium on the device tax, rather than permanently repeal it, occurred in just the past few days, according to Paulsen. After speaking with staffers on the Ways and Means Committee, lawmakers decided the moratorium would have a better chance of passing than the full repeal, which more easily gets help up in a political fight.

Subsequently, Paulsen also reached out to industry stakeholders to get them to put pressure on members of Congress to get the bill passed.

Up until recently, industry groups said they were focused solely on getting a permanent report,

but they are now publicly supporting the moratorium. "I hate to say it but I don't think there is enough time on the calendar," JC Scott, AdvaMed chief advocacy officer and head of external affairs, said in an interview.

As it stands now, Scott noted, device-makers will have to make their first tax payments in February. A legislative fix is needed before December is over to provide assurances to firms, Scott said.

Mark Leahey, president and CEO of the Medical Device Manufacturers Association, said the measure was a "significant step towards boosting innovation and patient care."

And AdvaMed President and CEO Scott Whitaker also commended the Ways and Means leadership. He called the measure "an important first step to provide medical technology innovators with confidence that this tax will not go back into effect."

"With time running short, we urge Congress to adopt this suspension immediately," he added. Whitaker argued continuing the moratorium will mean companies will be able to keep reinvesting in jobs, capital

AdvaMed's Scott says the association was recently approached by lawmakers on the Ways and Means committee on the plan to seek a new moratorium. Seeing the writing on the wall, they decided to support the effort.

"There is a lot of support in the House and Senate for full repeal and that is still everyone's goal," Scott said. "I think unfortunately the other business of Congress has taken over the legislative calendar... Their thinking is a temporary relief on taxes is more doable than a full repeal as we get into next year and that's our assessment as well."

'Wherever It May Fit'

Paulsen pointed to several legislative vehicles for the new bill, including a Medicare extender, a budget cap extender and may even a tax-extender bill that may be coming out of the Senate. The bottom line, he says, is it should go "wherever it may fit."

A pending option is the funding bill needed to keep the government open after an active continuing resolution expires in the coming weeks.

AdvaMed Scott's believes the moratorium is likely to be added to this larger government funding bill for the end of the year, which will also include other major legislative pieces such as the State Children's Health Insurance Program.

Why Five Years

Instead of just going with another two-year moratorium, Paulsen says there was no real "rhyme or reason " on why they decided to ask for five years. The goal is to provide more of a buffer to industry so that device-makers aren't hampered in their business planning, while also being politically realistic.

"Part of it is to give investors a longer time frame and those who are planning for their businesses," he said.

Scott, from AdvaMed, said the reason to ask for a five-year moratorium instead of two years is because companies can't build their business plans around such a short time frame.

"From what I've heard from our companies, and it's a little different for each of them, it's really untenable to work around one or two years," he said. "As you think about the timeframes they have to work around, that's when you land in the neighborhood of five years."

Scott is hopeful next year will offer be a better chance to permanently repeal the device tax. because it has such broad bipartisan support in both chambers, unlike other issues that are more likely to get tied up by a mid-term election year.

Rep. Paulsen agreed, noting, "The bottom line is this is one of the few initiatives that has bipartisanship support in the House and Senate."

From the editors of The Gray Sheet