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Medical device tax giveaway would deny Americans health care

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By Frank Clemente

In their efforts to defund the Affordable Care Act, also known as Obamacare, the Republican leadership in the House of Representatives also demanded a \$29 billion tax break for one of the country's more profitable industries, medical device-makers. When they couldn't get their way on Obamacare and the tax break, the GOP literally shut down the U.S. government.

It is also a proposal they are likely to champion during the ongoing budget debate.

When Congress passed the law establishing the Affordable Care Act in 2010, it included mechanisms to help pay for new benefits, like ending denial of services because of pre-existing conditions and extending health care to previously uninsured Americans. Among these mechanisms was a 2.3 percent excise tax on medical devices ranging from surgical gloves to MRI machines. The tax would raise \$29 billion over 10 years.

But proponents in the House are more concerned with giving a tax break to an industry with about \$130 billion in sales and robust profit margins than with helping provide health care to millions of Americans.

And how would Congress pay for this \$29 billion corporate tax giveaway? A similar effort at repeal last year hinged on "clawing back" insurance subsidies from families whose income rose even marginally during a year of coverage. It was estimated that this threat of revoked subsidies would discourage 350,000 Americans from buying insurance.

Of course, congressional support for repealing the tax is no surprise, because the medical-device industry last year contributed \$10.4 million to influence federal elections and has spent more than \$150 million lobbying Washington since 2008. And it has become a bipartisan affair, with even liberal congressional Democrats from states rich with medical device companies joining in the repeal effort.

Complaints about the tax by the medical-device industry are highly misleading. One of their beefs--about how the tax is levied--can be traced back to their own pervasive tax-dodging. Bloomberg News and the Center on Budget and Policy Priorities have exposed how the arguments against this modest, fair and efficient tax are trumped-up charges.

What the industry doesn't say is that it likely will benefit handsomely from Obamacare, which will help create millions of new customers and new profits for the industry. The law will not lead to offshoring of jobs, as the industry asserts, because the tax applies to both domestic production and imports. And it will not hurt America's export industry because devices intended for overseas sales are exempt from the tax.

Device-makers claim they have been singled out, but this is completely false. Every industry in the health care field, from hospitals to insurance companies to drug companies, was required to help fund Obamacare because they will all benefit from it.

Leaders of the medical-device industry may have no one to blame but themselves for one feature of the tax they find objectionable: It is an excise tax on sales, rather than an income tax on profits. But maybe the law was written that way precisely because some of the biggest device-makers are also some of the most practiced at hiding their profits offshore.

The industry's sales leader, Johnson & Johnson, has \$49 billion stashed overseas, including in 55 subsidiaries located in tax havens, according to the U.S. Public Interest

Research Group. This money is out of reach of U.S. taxation until the day (which often never comes) the money returns to our shores.

General Electric, which is No. 2 in sales, is number 1 in offshoring profits, with \$108 billion tucked away overseas. Using both foreign and domestic loopholes, GE also managed to not pay any federal income taxes on nearly \$20 billion in profits between 2008-11, according to Citizens for Tax Justice. In fact, the company got \$10.6 billion in refunds, for an effective tax rate of negative 18.9 percent.

With some of America's biggest medical device-makers hiding their profits in tax havens, it's not surprising that the law requires that this small tax be on sales, not on profits.

A prominent Senate Republican recently floated the idea of repealing the medical-device tax as a "face-saving" measure for House Republican leaders who shut down the government in order to deny Americans health insurance. In essence, he is proposing to make all of us pay for a tax break to a very profitable industry in order to spare politicians some embarrassment. This is yet another sign that Washington's priorities are seriously out of whack.

Frank Clemente is executive director of Americans for Tax Fairness.

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