

Survey of MedTech Execs Reveals Medical Device Tax Impacts Jobs, Revenue, R&D

Medical device makers faced a significant tax change in 2013, when the 2.3% Medical Device Excise Tax (MDET) — part of the Affordable Care Act (ACA) — took effect. The tax is imposed directly on medical device manufacturers, producers and importers. The MDET was one of the revenue-raising provisions to finance health care reform, and it is projected to collect approximately \$38 billion of excise revenues over the next 10 years.¹

Pressure to repeal

Since its inception, the MDET has been the subject of unabated scrutiny by political leaders, medical device companies and representatives of health care business interests. The House of Representatives voted to repeal it in 2012 and again in 2014. The Senate also made its displeasure known, passing a nonbinding, largely symbolic resolution supporting a repeal in 2013. This year, the prospect of repeal is gaining steam again. A repeal bill passed the House in June with the support of 234 Republicans and 46 Democrats. The Senate has not addressed the 2015 House bill to date, and it is at best uncertain as to whether the bill would gather enough support to override an expected presidential veto.

The case for keeping MDET

Supporters of the MDET assert revenue generated by the tax helps offset the cost of the ACA.² They argue that, while medical device makers are ultimately liable for paying the MDET, the medical device industry may still reap the benefits the ACA provides through expanded health care coverage. Expanded health care coverage would theoretically increase demand for

medical devices and, as a result, more overall revenue for the medical device industry.³

Advocates for the tax reject the notion that MDET has a crippling effect on the medical device industry. Their position is in line with the Congressional Research Service (CRS) MDET economic analysis report, which concluded that the tax will not cause manufacturers to shift production overseas and/or significantly decrease employment.⁴ The CRS also determined that the tax will have little effect on innovation in the medical device industry. To the contrary, the CRS found that innovation and research will be “minimally affected” by the tax, since the cost is “expected” to be passed on to consumers, making the decrease in demand negligible.⁵

Critics of MDET

Opponents of the tax believe it is inherently bad for business.⁶ They claim over the past three years, the MDET has had a meaningful, negative impact on the U.S. medical device industry, resulting in thousands of lost jobs and forgone employment opportunities.⁷ They also argue it stifles innovation, ultimately reducing patient access to a high level of health care and new technologies.⁸

Those in favor of MDET repeal reason that the tax has not delivered the trade-off of an increased revenue and customer base because most medical device companies cannot pass on the cost of the tax to their purchasers.⁹ Since the MDET is a gross receipts-type tax and not based on bottom-line profits, it has been contended that the tax severely impacts medical device companies’ margins, especially small companies that are not yet profitable.¹⁰

¹ Gravelle, Jane, and Lowry, Sean. Congressional Research Service Report, *The Medical Device Excise Tax: Economic Analysis*, Jan. 9, 2015., See p. 1.

² Id.

³ Id., see p. 5.

⁴ Id., see p. 17 - 20.

⁵ Id.

⁶ Advanced Medical Technology Association, *Impact of the Medical Device Excise Tax, A Status Report from AdvaMed*, Jan. 2015.

⁷ Id.

⁸ Id.

⁹ Advanced Medical Technology Association, *Response to April 17, 2015 CRS Report; “The Medical Device Excise Tax: Economic Analysis”*.

¹⁰ Id.

The Grant Thornton/MassMEDIC MDET Survey

In consideration of the current state of the MDET, Grant Thornton asked MassMEDIC companies to report the impact of the MDET.¹¹ Twenty-four of MassMEDIC's 197 primary member companies that received the survey responded.¹²

Key Results

"The MDET has forced our company to invoke alternative measures to off-set the substantial cost increases from this unfair and inequitable tax, including shifting more jobs and manufacturing operations from Massachusetts to overseas locations, while also forcing delays or outright cancellations of other important domestic investments. Further adding to the incremental tax burden are other significant costs to the company for systems, processes and resources necessary to manage and administer the overall MDET compliance requirements."

- *Lou A. Borrelli, SVP & CFO,
Nova Biomedical Corporation*

Massachusetts job losses and creation¹³

- Twenty three member companies (approximately 96% of survey respondents) replied that their company had reduced employment/ headcount by 0% to 25% as a result of the MDET. One member company (about 4% of survey respondents) reported that their headcount had been reduced by 25% - 50%.¹⁴
- Seventeen member companies (approximately 71% of survey respondents) answered that their company had slowed/or halted overall U.S. job creation because of the MDET. Seven member companies (about 29% of survey respondents) reported that their company had not slowed/or halted overall U.S. job creation because of the MDET.

Revenue/customer base increases as a result of ACA¹⁵

- Twenty two member companies (approximately 96% of survey respondents) concluded that their companies' revenue/customer base has only increased by 0% to 5% as a result of the implementation of the ACA. One participating member company reported that their revenue/customer base has increased by greater than 10%.

Decreased R&D and expansion in Massachusetts¹⁶

- Nineteen member companies (approximately 79% of survey respondents) replied that their company's R&D/innovation activities had been reduced by 0% to 25% because of the MDET. Four member companies (about 17% of survey respondents) reported that their R&D/innovation activities had been reduced by 25% - 50%. One participating member company responded that their R&D/innovation activities had been reduced by 50% to 75%.
- Twelve member companies (50% of survey respondents) replied that their company had deferred or canceled capital investments as a result of the MDET. Twelve member companies (50% of survey respondents) reported that their company had not deferred or canceled capital investments as a result of the MDET.
- Twelve member companies (approximately 52% of survey respondents) concluded that their company had moved operations and/or expanded outside of Massachusetts as a result of the MDET. Eleven member companies (about 48% of survey respondents) concluded that their company had not moved operations and/or expanded outside of Massachusetts as a result of the MDET.

Compliance burden of the tax¹⁷

- Fifteen member companies (approximately 88%) that participated in the Grant

¹¹ 2015 Grant Thornton LLP/MassMedic Survey.

¹² MassMEDIC primary members include medical device manufacturers and other entities involved in the production of medical devices.

¹³ 2015 Grant Thornton LLP/MassMedic Survey.

¹⁴ Massachusetts medical device employment has decreased in recent years by 5%, falling to No. 2 behind Minnesota on a nationwide basis. See U.S. Census Bureau. *Annual Survey of Manufactures*, 2013.

¹⁵ 2015 Grant Thornton LLP/MassMedic Survey.

¹⁶ Id.

¹⁷ Id.

Thornton/MassMEDIC survey responded that they experienced MDET reporting/processing issues with the IRS. Two participating member companies (about 12%) reported that the IRS was very helpful with reporting/processing issues.¹⁸

- Thirteen member companies (approximately 54% of survey respondents) replied that zero-to-two employees at the company currently work on MDET reporting; five participating companies (about 21%) responded that between two and six employees work on MDET matters; six companies (25% of survey respondents) reported that over six employees at their company work on MDET compliance.

Methodology

The survey was conducted electronically between the dates August 24 and September 24. It was completed by senior executives at member companies including directors, vice presidents, presidents, CFOs and CEOs. The surgical and medical instruments sector was the highest sector represented, with 54% of the responses. Electro-medical and in-vitro diagnostics sectors were close in range, with a 30–33% response rate, and the irradiation apparatus and surgical appliances/supplies sectors rounded out the remaining responses, both at about 13%. Nine respondents had annual revenue of over \$500 million, five had revenue in the \$20 million to \$75 million range, four had revenue under \$20 million, three had revenue in the \$150 million to \$500 million range, and 2 had revenue in the \$75 million to \$150 million range. Lastly, 83% of survey members responded that their company was subject to the MDET.¹⁹

The survey was comprised of the following questions:

- Has the responding company reduced employment/headcount as a result of the MDET?
- Has the company slowed and/or halted U.S. job creation as a result of the MDET?
- Have the company's R&D/innovation activities been reduced as a direct result of the MDET?
- Has the company moved operations and/or expanded outside of Massachusetts as a result of the MDET?
- Has the company deferred or canceled capital investments as a result of the MDET?
- Has the company's tax compliance burden been increased because of the MDET?
- Has the company's revenue/customer base increased as a result of the ACA?

Conclusion

Many of the responding companies reported that the MDET has a negative impact on their company in the areas of work-force reductions, reduced R&D spending, increased tax compliance burdens and the movement of operations to other states and/or overseas. Based on this impact, a more expansive study should be considered to specifically quantify the actual economic effect of the MDET on the Massachusetts medical device industry. Any study should also consider the future impact of the MDET, and whether repeal of the tax would significantly influence Massachusetts medical device companies' actions going forward.

¹⁸ In July 2014, the Treasury Inspector General for Tax Administration published a report confirming these challenges and concluded that an "improved strategy is needed by the IRS to ensure accurate reporting and payment of the MDET". See Treasury Inspector General for Tax

Administration. *The Affordable Care Act: An Improved Strategy Is Needed to Ensure Accurate Reporting and Payment of the Medical Device Excise Tax*, July 17, 2014.

¹⁹ 2015 Grant Thornton LLP/MassMedic Survey.

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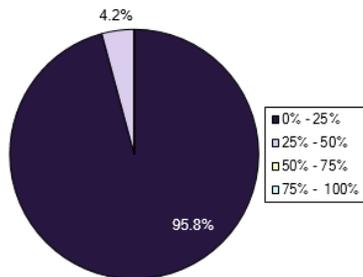
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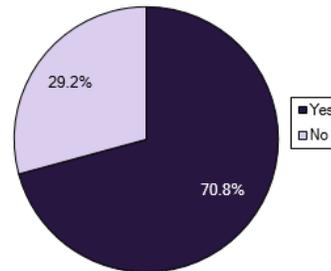
Appendix

Massachusetts job losses and creation

BY APPROXIMATELY WHAT PERCENTAGE HAS YOUR COMPANY'S EMPLOYMENT/HEADCOUNT BEEN REDUCED AS A RESULT OF THE MDET?

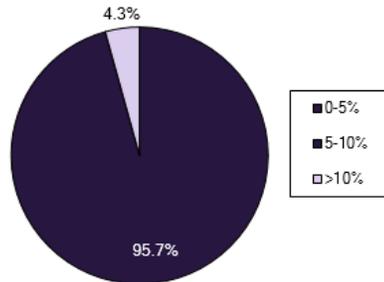


HAS YOUR COMPANY SLOWED AND/OR HALTED U.S. JOB CREATION AS A RESULT OF THE MDET?



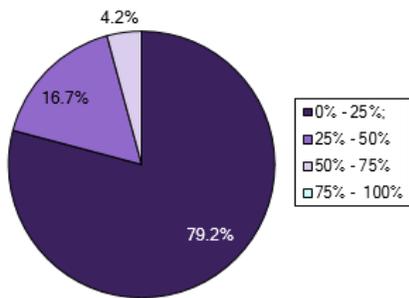
Revenue/customer base increases as a result of ACA

BY APPROXIMATELY WHAT PERCENTAGE HAS YOUR COMPANY'S REVENUE/CUSTOMER BASE INCREASED AS A RESULT OF THE IMPLEMENTATION OF THE AFFORDABLE CARE ACT?

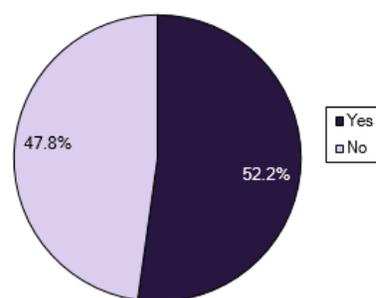


Decreased R&D and expansion in Massachusetts

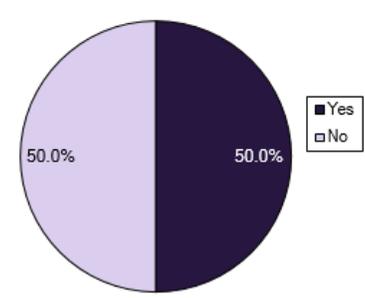
BY APPROXIMATELY WHAT PERCENTAGE HAS YOUR COMPANY'S RESEARCH AND DEVELOPMENT/INNOVATION ACTIVITIES BEEN REDUCED AS A RESULT OF THE MDET?



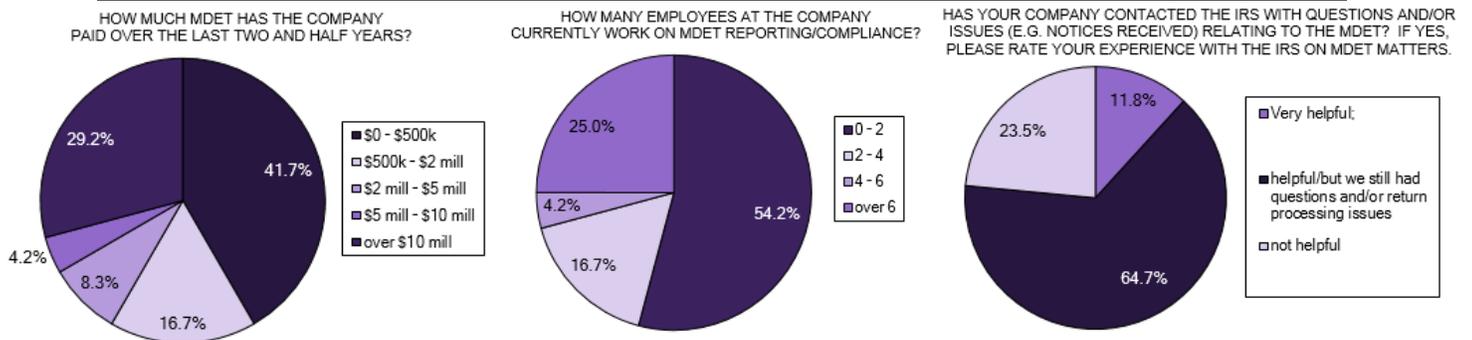
HAS YOUR COMPANY MOVED OPERATIONS AND/OR EXPANDED OUTSIDE OF MASSACHUSETTS AS A RESULT OF THE MDET?



HAS YOUR COMPANY DEFERRED OR CANCELLED CAPITAL INVESTMENTS, DEFERRED OR CANCELLED PLANS TO OPEN NEW FACILITIES AS A RESULT OF THE MDET?



Compliance burden of the tax



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