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How does the new medical device excise tax affect me?

A new 2.3% excise tax has been imposed on the sale of certain medical devices under section 4191 of the Internal Revenue Code, enacted by the Health Care and Education Reconciliation Act of 2010 in conjunction with the Patient Protection and Affordable Care Act (Obamacare). There have been several questions about the applicability of the tax to GAWDA members.

This whitepaper is not tax advice. I encourage all members to get competent tax advice from a tax professional. However, after polling major gas companies and distributors, there appears to be a consensus on some of the provisions of the act.

Here are some questions and consensus as of the date of this paper:

- 1. Question** - Do I need to pay the 2.3% excise tax on VIPR's – Integrated valve units commonly supplied on "Medical E" style cylinders?
Consensus – The manufacturer of the integrated valve unit pays the excise tax when the unit is sold to a GAWDA distributor member. The GAWDA distributor member should not pay the excise tax when the cylinder/valve is sold to their customers.
- 2. Question** - Do I need to pay the 2.3% excise tax on rentals/leases of VIPR's – Integrated valve units?
Consensus – Once again, the original manufacturer of the integrated valve unit pays the excise tax when the unit is sold to a GAWDA distributor member. The GAWDA distributor member should not pay the excise tax when the cylinder/valve is rented or leased to their customers.
- 3. Question** - Do I need to pay the 2.3% excise tax on Medical Device gases like Lung Diffusion Test Mixtures, Clinical Blood Gas Mixtures, etc.?
Consensus – A GAWDA member who manufactures a medical device gas pays the 2.3% excise tax when the cylinder is sold to their customer. This excise tax applies to all medical device gases manufactured by a registered device manufacturer.

Your tax professional may want to review the source documents:

- The IRS announcement - <http://www.irs.gov/pub/newsroom/reg-113770-10.pdf>
- Link to the Federal Register - Taxable Medical Devices:
<https://www.federalregister.gov/articles/2012/12/07/2012-29628/taxable-medical-devices>
- IRS: Interim Guidance and Request for Comments; Medical Device Excise Tax; Manufacturers Excise Taxes; Constructive Sale Price; Deposit Penalties
<http://www.irs.gov/pub/irs-drop/n-12-77.pdf>

If you have additional questions about the tax, please let me know. I will revise this document as new information becomes available.

Thank you
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