

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<https://oversight.house.gov>

March 4, 2021

Mr. Mike Kaufman
Chief Executive Officer
Cardinal Health Incorporated
7000 Cardinal Place
Dublin, OH 43017

Dear Mr. Kaufman:

We are writing in light of Cardinal Health's recent announcement that it plans to use a CARES Act tax provision—meant to help companies struggling during the coronavirus pandemic—to deduct the costs of settling lawsuits related to Cardinal Health's role in the U.S. opioid crisis from its federal tax liability. Cardinal Health's planned deduction under the CARES Act is reprehensible given the company's role in fueling the deadly opioid pandemic and is contrary to congressional intent to help small and ailing businesses hurt by the coronavirus pandemic.

Communities hit by the opioid epidemic across America have sued drug distributors like Cardinal Health for their contribution to a national public health emergency that has claimed the lives of nearly half a million Americans since 1999.¹ More than 3,000 localities, Native American tribes, and other entities have brought suits against Cardinal Health and other pharmaceutical distributors, manufacturers, and pharmacies for the devastation they have caused across the country.² These communities allege that entities like Cardinal Health flooded them with prescription opioids while failing to enact necessary anti-diversion measures.³

Distributors Cardinal Health, McKesson, and AmerisourceBergen and manufacturer Johnson & Johnson have reportedly agreed to pay a combined \$26 billion to settle claims from dozens of states and local jurisdictions regarding their roles in the opioid crisis. Under the terms

¹ Centers for Disease Control and Prevention, *Understanding the Epidemic* (online at www.cdc.gov/drugoverdose/epidemic/index.html) (accessed on Feb. 18, 2021); Department of Health and Human Services and Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report* (Feb 12, 2021) (online at www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7006a4-H.pdf).

² *Coronavirus Stalls Long-Awaited Day in Court for Historic Opioid Lawsuit*, Washington Post (Dec. 26, 2020) (online at www.washingtonpost.com/health/2020/12/26/coronavirus-opioid-trials/).

³ *Drug Companies Seek Billion-Dollar Tax Deductions from Opioid Settlement*, Washington Post (Feb. 12, 2021) (online at www.washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/?arc404=true).

of this proposed settlement, this money would reimburse communities for the costs of the opioid crisis. Cardinal Health is expected to pay \$6.6 billion if the settlement receives federal court approval.⁴

Apart from the opioid epidemic, Congress took unprecedented action last year to shore up the economy in response to the coronavirus pandemic. Congress included a provision in the CARES Act that allows net operating losses that were generated in 2018, 2019, and 2020 to be carried back for up to five years to improve liquidity for suffering businesses.⁵ In public statements, lawmakers on both sides of the aisle described the provision as a form of “relief for struggling businesses” and “emergency relief to workers, families, small businesses, and distressed industries.”⁶

Cardinal Health recently announced that it planned to take advantage of this provision to collect a federal income tax refund of \$974 million by claiming opioid-related legal costs as a “net operating loss carryback” applied retrospectively to fiscal years 2015, 2016, 2017, and 2018.⁷ Through this tax strategy, Cardinal Health increased the size of its estimated tax refund by nearly \$500 million because the CARES Act provision allowed Cardinal Health to carry back losses to previous years when the tax rate was higher.⁸

Cardinal Health is seeking to exploit the CARES Act provision despite being fiscally healthy during the pandemic. The company reported a 5% increase in revenue in fiscal year 2020 to \$152 billion.⁹ The company also recently reported \$72 billion in revenue through the first two quarters of fiscal year 2021, which is 5% more than the same period in 2020.¹⁰

Experts have raised concerns about Cardinal Health’s abuse of the CARES Act tax provision. For example, Francine J. Lipman, a tax professor at the University of Nevada at Las Vegas, told the *Washington Post* that Cardinal Health appears to be “getting a bit of a windfall

⁴ *Id.* See also *Opioid Settlement Tax Breaks Sought by Four Drug Companies*, Wall Street Journal (Feb. 12, 2021) (online at www.wsj.com/articles/opioid-settlement-tax-breaks-sought-by-four-drug-companies-11613177612).

⁵ Pub. L. No. 116-136 (2020).

⁶ See, e.g., House Committee on Ways and Means, *Ways and Means Democrats’ Priorities in the Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Mar. 26, 2020) (online at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/WM%20CARES%20provisions_0.pdf); House Committee on Ways and Means, *CARES Act: Tax* (Mar. 25, 2020) (online <https://gop-waysandmeans.house.gov/the-senate-cares-bill-tax/>).

⁷ Cardinal Health Inc., *2021 Form 10-Q* (Feb. 5, 2021) (online at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0000721371/1e832342-4ba9-463c-b708-4f574a5fbf1d.pdf>).

⁸ *Id.*; Cardinal Health Inc., *2020 Form 10-K* (Aug. 13, 2020) (online at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0000721371/5a7655cd-b024-43a1-925b-c012229afa01.pdf>).

⁹ *Id.*

¹⁰ Cardinal Health, *Press Release: Cardinal Health Reports Second-Quarter Results for Fiscal Year 2021* (Feb. 5, 2021) (online at <https://cardinalhealth.mediaroom.com/2021-02-05-Cardinal-Health-Reports-Second-Quarter-Results-for-Fiscal-Year-2021>).

from laws that Congress intended to help companies that are suffering due to a pandemic.”¹¹ Matthew Gardner from the Institute of Taxation and Economic Policy described this decision as a, “one-two punch,” stating, “Already, communities across the country have paid a heavy price via the devastating public health toll. Now, it appears taxpayers will be on the hook for billions in corporate tax breaks.”¹²

We agree. It is wrong for you to deduct opioid settlement payments under a CARES Act provision intended to assist businesses struggling during the pandemic. The American people should not be on the hook for hundreds of millions of dollars for your company’s role in fueling the opioid crisis. Your attempt to reduce your settlement costs by taking advantage of a tax provision intended for businesses suffering coronavirus-related losses is insulting to every community suffering from the opioid crisis and the pandemic.

Your decision to leverage the opioid settlements into tax relief also raises serious questions about whether Cardinal Health feels remorse for exacerbating our nation’s opioid crisis and whether the company is truly committed to changing its behavior going forward. The Committee seeks to understand the company’s role in the opioid crisis, including whether Cardinal Health sufficiently disciplined executives and employees involved in the conduct that the company now seeks to settle. In addition, it is critical that Cardinal Health commit to disclosing publicly the relevant internal documents that underlie the proposed settlement, a requirement in other similar settlements.¹³ This disclosure should include the millions of pages of documents that the Committee understands Cardinal Health produced during the course of its litigation.¹⁴

The Committee is appalled that Cardinal Health would use one public health crisis to avoid accountability for another. We urge you to reverse course and not attempt to saddle America’s taxpayers with the \$974 million you owe for your role in contributing to the opioid crisis. In addition, we ask that you produce the following information by March 18, 2021:

1. Any assessment of whether Cardinal Health’s use of the CARES Act to carryback of losses arising due to the company’s opioid litigation is consistent with the intent of the law;

¹¹ *Drug Companies Seek Billion-Dollar Tax Deductions from Opioid Settlement*, Washington Post (Feb. 12, 2021) (online at www.washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/?arc404=true).

¹² *CARES Act Helps Create \$4.6 Billion Tax Cut for Health Care Companies Paying Opioid Settlements*, Institute of Taxation and Economic Policy: Just Taxes Blog (Feb. 12, 2021) (online at <https://itep.org/cares-act-helps-create-4-6-billion-tax-cut-for-health-care-companies-paying-opioid-settlements/>).

¹³ See e.g., *McKinsey Settles for Nearly \$600 Million Over Role in Opioid Crisis*, New York Times (Feb. 3, 2021) (online at www.nytimes.com/2021/02/03/business/mckinsey-opioids-settlement.html) (noting that the company agreed to post relevant documents in a public repository); Department of Justice, *Press Release: Plea Agreement with Purdue Pharma L.P.* (Oct. 20, 2020) (online at www.justice.gov/opa/press-release/file/1329576/download); Mallinckrodt, *Annual Report (Form 10-K) for Fiscal Year 2019* (Feb. 25, 2020) (online at <https://mallinckrodt.gcs-web.com/static-files/1252745e-320c-4090-b92f-b3cc14b6bc3f>).

¹⁴ See Cardinal Health’s Objections to Discovery Ruling No. 14, Part I, *In Re: National Prescription Opiate Litigation*, Case No. 17-02804, (N.D. Ohio) (Feb. 6, 2019) (stating that the company produced millions of pages of documents).

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2. A complete list of current and former employees who have been disciplined or terminated for any conduct related to opioid sales, the failure to implement sufficient anti-diversion programs, or other conduct described in any opioid litigation against Cardinal Health; and
3. A detailed list of steps Cardinal Health has taken or plans to take to publicly disclose the documents it produced during its opioid litigation by placing them in a public document repository.

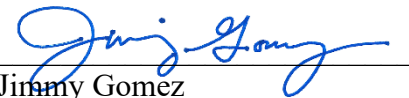
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jimmy Gomez
Vice Chair
Committee on Oversight and
Reform



Mark DeSaulnier
Member of Congress

Enclosure

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform