

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

March 4, 2021

Mr. Alex Gorsky
Chief Executive Officer
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Dear Mr. Gorsky:

We are writing to seek information about whether Johnson & Johnson plans to use a CARES Act tax provision—meant to help companies struggling during the coronavirus pandemic—to increase its tax deduction of litigation costs related to the company’s role in the U.S. opioid crisis. If taken, this deduction would be 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 manufacturers like Johnson & Johnson 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 Johnson & Johnson and other pharmaceutical manufacturers, distributors, and pharmacies for the devastation they have caused across the country.² These communities allege that entities like Johnson & Johnson flooded them with prescription opioids and engaged in aggressive and misleading marketing practices that exacerbated the crisis.³

Johnson & Johnson and distributors Cardinal Health, McKesson, and AmerisourceBergen 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 of this proposed

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); *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).

settlement, this money would reimburse communities for the costs of the opioid crisis. Johnson & Johnson is expected to pay \$5 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

Johnson & Johnson estimates that it will claim a tax benefit of \$1.1 billion due to its costs related to the opioid settlement.⁷ The Committee is concerned that Johnson & Johnson will now attempt to exploit the CARES Act tax provision to burden taxpayers with an even larger portion of the settlement. Johnson & Johnson’s co-defendant, Cardinal Health, has already announced that it plans to employ this tax strategy to increase the size of its estimated refund by nearly \$500 million.⁸

Experts have raised concerns about opioid manufacturers and distributors abusing 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 from laws that Congress intended to help companies that are suffering due to a pandemic.”⁹ 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.”¹⁰

⁴ *Id.*

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 Johnson & Johnson, *2021 Form 10-K* (Feb. 22, 2021) (online at <https://johnsonandjohnson.gcs-web.com/static-files/e2a329b4-aeb6-438d-a449-f0e282cf8ee0>).

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

⁹ *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).

¹⁰ *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/>).

We agree. It would be wrong for you to deduct opioid settlement payments under a CARES Act provision intended to assist businesses that are struggling during the coronavirus 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. Any attempt to reduce your settlement costs by taking advantage of a tax provision intended for businesses suffering coronavirus-related losses is an insult to every community suffering from the opioid crisis and the pandemic.

Johnson & Johnson is not struggling—in 2020, it reported an increase in net sales to \$82.6 billion.¹¹

Your decision to convert \$1.1 billion of your opioid settlement into tax relief raises serious questions about whether Johnson & Johnson 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 the company sufficiently disciplined executives and employees involved in the conduct that the company now seeks to settle. In addition, it is critical that Johnson & Johnson commit to disclosing publicly the relevant internal documents that underlie the proposed settlement, a requirement in other similar settlements.¹² This disclosure should include the millions of pages of documents that the Committee understands Johnson & Johnson produced during the course of its litigation.¹³

For these reasons, we ask that you produce the following information by March 18, 2021:

1. Documents sufficient to indicate whether Johnson & Johnson will commit to taking no net operating loss carrybacks under the CARES Act;
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 Johnson & Johnson; and
3. A detailed list of steps Johnson & Johnson 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.

¹¹ Johnson & Johnson, *2021 Form 10-K* (Feb. 22, 2021) (online at <https://johnsonandjohnson.gcs-web.com/static-files/e2a329b4-aeb6-438d-a449-f0e282cf8ee0>).

¹² 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>).

¹³ See The State's Motion for De-Designation of Alleged Confidential Documents, *Oklahoma v. Johnson & Johnson, et. al.*, Case No. 17-00816, (N.D. Ohio) (Feb. 26, 2019) (stating that Johnson & Johnson produced millions of pages of documents).

Mr. Alex Gorsky

Page 4

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