

Reject Proposal to Tax Advertising of Prescription Medicines

An amendment may be offered during the U.S. Senate debate on healthcare reform that would propose to disallow as an ordinary and necessary business expense the cost of all advertising and marketing for prescription medications. This would make this advertising 35 percent more expensive under the top corporate marginal tax. The amendment proposes a tax on free speech that is protected by the First Amendment, and it would dramatically reduce advertising dollars that support free news and entertainment consumers receive from newspapers, magazines, radio and television as these media struggle to survive this worst recession since the 1930s.

Proposal would overturn 100 years of tax policy. It is central to our net income system of taxation that ALL businesses be able to currently deduct business expenses such as rent, utilities, salaries and office supplies – and advertising costs. This is not a government subsidy – the Tax Code treats business costs the same in order to determine the net income subject to tax. S. 1763 would repeal the deduction for one group of businesses, but where would it stop? Would it be taxes on advertising for vehicles that do not meet emissions or fuel economy standards, advertising for gaming, or advertising for foods that do not meet nutrition standards?

It would violate the First Amendment to tax one type of advertising with the intent to discourage commercial speech about the advertised product. The proponents of the amendment have made it clear they want pharmaceutical companies to have less money for advertising. While Congress has broad discretion to grant or withhold many tax deductions or credits, the United States Supreme Court has said that even a tax can be unconstitutional if used the way this legislation has proposed – to tax speech about a product in order to make it more difficult and more costly to advertise that product. Because the tax makes this form of speech more expensive, it would violate the First Amendment because the suppression of this speech means consumers will receive less information.

Advertising is critical to the economic recovery of our nation. Advertising provides \$6 trillion in sales and 21 million jobs in America. In these challenging economic times we cannot afford to make any form of advertising more expensive by taxing it. Basic economics demonstrates that if you make advertising more expensive, businesses will reduce their advertising budgets. If there is less advertising there will be far fewer sales generated of goods and services. Nobel Laureates Dr. Kenneth Arrow and the late Dr. George Stigler wrote, the result of removing the deduction for advertising costs would be "an *increase* in the cost of advertising and a corresponding *decrease* in the amount of advertising."

Advertising supports free news and entertainment. When advertisers cut back on advertising in newspapers, magazines, radio and television, the media will have to reduce the news and entertainment that appears in print and radio and television media. The proposed tax on advertising and marketing would cost advertisers billions of dollars a year, resulting in dramatic reductions in advertising – a bad policy any time – but particularly harmful to media and advertising businesses in this economy and to the consumers who depend on them for free news and entertainment.

Advertising is protected because it is important to the daily lives of Americans. A 2004 *Prevention* magazine survey found 65 million patients talked with a physician as a result of seeing an ad for a prescription medication. Almost 30 million spoke to a physician for the first time about a specific medical condition. Advertising of prescription medications has helped millions of Americans receive medical care for diseases that might otherwise have gone untreated or undiagnosed.

Congress in 2007 overhauled FDA sanctions of pharmaceutical advertising with tough penalties. The FDA Amendments Act gives FDA new tools to assure advertising is truthful, along with authority to fine violators up to \$500,000 a day.