

Talking Points on Proposal to Tax Advertising

A bill has been introduced in the United States Senate that would disallow as an ordinary and necessary business expense the cost of all advertising and marketing for prescription medications. This in effect would make the advertising 35 percent more expensive (based on the top corporate marginal rate of 35 percent). S. 1763 was introduced by Senators Al Franken (D-MN), Sherrod Brown (D-OH), and Sheldon Whitehouse (D-RI). The Senators would like to add the bill to the Leadership healthcare reform legislation in the Senate or offer it as a floor amendment. It is critical that we contact all U.S. Senators and express our concerns that this proposal is not only incompatible with fair and even-handed tax policy, it would tax commercial speech that is protected by the First Amendment. Here are some points to make in opposing this tax.

- ***The proposal would overturn 100 years of tax policy.*** It is central to our net income tax system that a business be able to currently deduct its advertising costs, along with all other business expenses such as rent, utilities, salaries and office supplies. The expenses of conducting a business must be able to be deducted in order to determine the net income subject to tax. The proposal in S. 1763 would repeal the deduction for one group of products, but where would it stop? Would we also tax advertising for vehicles that do not meet emissions or fuel economy standards, advertising for gaming, or advertising for foods that do not meet some nutrition standard?
- ***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 have to reduce their advertising budgets, and if there is less advertising there will be far fewer sales generated of goods and services.
- ***Advertising expenses must fit the budget like all other business costs.*** If advertising becomes too expensive, a business must cut back costs or reduce its work force or find other savings. All advertising, including advertising for prescription medications, helps pay for the cost of news and entertainment in print and television media. The proposed tax on advertising and marketing would cost advertisers billions of dollars a year, resulting in cutbacks in advertising – a bad policy any time – but particularly harmful to media and advertising businesses in this economy.
- ***It would violate the First Amendment to tax one type of advertising with the intent to discourage commercial speech about the advertised product.*** 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 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.
- ***We urge you to reject this tax on advertising as a part of healthcare reform.***