



American Advertising Federation
American Association of Advertising Agencies
Association of National Advertisers
CBS Corporation
The Walt Disney Company
Grocery Manufacturers Association
Magazine Publishers of America

National Association of Broadcasters
National Cable & Telecommunications Association
National Newspaper Association
NBC Universal
Newspaper Association of America
Pharmaceutical Research & Manufacturers of America
Time Warner, Inc.

June 16, 2009

The Honorable Max Baucus
United States Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman:

Our organizations represent virtually every business in the country that uses advertising or depends upon advertising as revenue to support public access to media and entertainment. Today, we understand that the Committee on Finance is discussing the possible elimination of the ordinary and necessary business expense deduction for the cost of advertising prescription medications.

Because advertising is critical to the economic health of our country, particularly during this period in which we are experiencing a severe recession, we strongly urge you to reject such a penny-wise and pound-foolish means to raise modest revenues. Moreover, we believe the proposal would represent an unconstitutional restriction on commercial speech that is protected under the First Amendment.

Advertising for all products helps generate \$6 trillion in U.S. economic activity and supports more than 21 million jobs. The current state of our economy requires that we do everything we can to create more sales and more jobs – not adopt policies to eliminate them. Our views do not reflect in any way our position on healthcare reform. They do reflect our view of how a tax on advertising would affect the health of the U.S. economy.

The denial of the deduction would make this advertising more expensive – a tax on advertising. Because the tax will make speech more expensive, the affected companies will have to reduce their advertising resulting in a reduction of advertising to consumers.

It would appear there are two goals to this tax – to attempt to raise additional tax revenues, assuming that companies could find more money to maintain their advertising levels in the face of higher costs, and a reduction in sales of the advertised prescription medications, particularly to Medicare Part D eligible patients. In other words, Congress would be taxing speech to save money on a federal program.

The Tax Code permits a business to deduct the cost of advertising, including advertising of prescription medications. The deduction of the cost of advertising is no different from the deduction of any other ordinary and necessary business expense. Imagine the world of business, however, if Congress were to begin picking and choosing favored products – products that would get the deduction and products that would be denied the deduction. What else might make such a hit list? Would generic drugs be entitled to the deduction, but not brand drugs? What about vehicles that cannot achieve the efficiency of 20 miles on a gallon of gas, or banks that failed to pass the federal stress test?

While it generally is thought that Congress may grant or withhold tax benefits according to its legislative discretion, according to several U.S. Supreme Court cases, the government may not use taxes or other policies to discriminate against speech, including commercial speech. In the past 20 years alone, the United States Senate has three times rejected amendments that would have imposed a tax on advertising of tobacco products by denying the ordinary and necessary business deduction for the cost.

In *Grosjean v. American Press Co., Inc.*, 297 U. S. 233 (1936), the U.S. Supreme Court struck down a 2 percent Louisiana tax on newspapers with a circulation of more than 20,000 per week. The 13 affected newspapers were critics of Governor Huey Long and sued to challenge the tax as an unconstitutional restriction on speech. The U.S. Supreme Court agreed.

We urge you to reject the proposal under discussion to tax advertising. The possible potential for short-term revenues will be far outweighed by the precedent it would establish and the repercussions for the treatment of all forms of advertising, particularly during these challenging economic times.

Respectfully,