

105TH CONGRESS
2D SESSION

S. 1755

To amend the Internal Revenue Code of 1986 to disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain advertising requirements are met.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1998

Mr. REED (for himself, Mrs. BOXER, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain advertising requirements are met.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Children’s Health
5 Preservation and Tobacco Advertising Compliance Act”.

1 **SEC. 2. DISALLOWANCE OF TAX DEDUCTIONS FOR CERTAIN**
 2 **ADVERTISING, PROMOTION, AND MARKETING**
 3 **EXPENSES RELATING TO TOBACCO PRODUCT**
 4 **USE.**

5 (a) IN GENERAL.—Part IX of subchapter B of chap-
 6 ter 1 of subtitle A of the Internal Revenue Code of 1986
 7 (relating to items not deductible) is amended by adding
 8 at the end the following:

9 **“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR CERTAIN**
 10 **TOBACCO ADVERTISING, PROMOTION, AND**
 11 **MARKETING EXPENSES.**

12 “(a) IN GENERAL.—No deduction shall be allowed
 13 under this chapter for any taxable year for any expendi-
 14 ture relating to advertising, promoting, or marketing to-
 15 bacco products if such advertising, promoting, or market-
 16 ing, or such expenditure is prohibited under the following
 17 subsections.

18 “(b) PROHIBITION OF CERTAIN ADVERTISING.—

19 “(1) PROHIBITION ON OUTDOOR ADVERTIS-
 20 ING.—

21 “(A) IN GENERAL.—No manufacturer, dis-
 22 tributor, or retailer may use any form of out-
 23 door tobacco product advertising, including bill-
 24 boards, posters, or placards.

25 “(B) STADIA AND ARENAS.—Except as
 26 otherwise provided in this section, a manufac-

1 turer, distributor, or retailer shall not advertise
2 tobacco products in any arena or stadium where
3 athletic, musical, artistic, or other social or cul-
4 tural events or activities occur.

5 “(2) PROHIBITION ON USE OF HUMAN IMAGES
6 AND CARTOONS.—No manufacturer, distributor, or
7 retailer may use a human image or a cartoon char-
8 acter or cartoon-type character in its advertising, la-
9 beling, or promotional material with respect to a to-
10 bacco product.

11 “(3) PROHIBITION ON ADVERTISING ON THE
12 INTERNET.—No manufacturer, distributor, or re-
13 tailer may use the Internet to advertise tobacco
14 products unless such an advertisement is inaccessible
15 in or from the United States.

16 “(4) PROHIBITION ON POINT OF SALE ADVER-
17 TISING.—

18 “(A) IN GENERAL.—Except as otherwise
19 provided in this paragraph, no manufacturer,
20 distributor, or retailer may use point of sale ad-
21 vertising of tobacco products.

22 “(B) ADULT ONLY STORES AND TOBACCO
23 OUTLETS.—Subparagraph (A) shall not apply
24 to point of sale advertising at adult only stores
25 and tobacco outlets.

1 “(C) PERMISSIBLE ADVERTISING.—

2 “(i) IN GENERAL.—Each manufac-
3 turer of tobacco products may display not
4 more than 2 separate point of sale adver-
5 tisements in or at each location at which
6 tobacco products are offered for sale.

7 “(ii) RETAILERS.—No manufacturer,
8 distributor, or retailer may enter into any
9 arrangement with a retailer to limit the
10 ability of the retailer to display any form
11 of permissible point of sale advertisement
12 or promotional material originating with
13 another manufacturer, distributor, or re-
14 tailer.

15 “(D) LIMITATIONS.—

16 “(i) IN GENERAL.—A point of sale ad-
17 vertisement permitted under this para-
18 graph shall be comprised of a display area
19 that is not larger than 576 square inches
20 (either individually or in the aggregate)
21 and shall consist only of black letters on a
22 white background or other recognized typo-
23 graphical marks. Such advertisement shall
24 not be attached to nor located within 2 feet

1 of any fixture on which candy is displayed
2 for sale.

3 “(ii) AUDIO AND VIDEO FORMATS.—
4 Audio and video advertisements otherwise
5 permitted under this section may be dis-
6 tributed to individuals who are 18 years of
7 age or older at point of sale but may not
8 be played or viewed at such point of sale.

9 “(iii) DISPLAY FIXTURES.—Display
10 fixtures in the form of signs consisting of
11 brand name and price and not larger than
12 2 inches in height are permitted.

13 “(c) ADDITIONAL RESTRICTIONS.—

14 “(1) RESTRICTION ON PRODUCT NAMES.—A
15 manufacturer shall not use a trade or brand name
16 of a nontobacco product as the trade or brand name
17 for a cigarette or smokeless tobacco product, except
18 for a tobacco product whose trade or brand name
19 was on both a tobacco product and a nontobacco
20 product that were sold in the United States on Jan-
21 uary 1, 1998.

22 “(2) ADVERTISING LIMIT ACTIONS.—

23 “(A) IN GENERAL.—A manufacturer, dis-
24 tributor, or retailer may in accordance with this
25 section, disseminate or cause to be disseminated

1 advertising or labeling which bears a tobacco
2 product brand name (alone or on conjunction
3 with any other word) or any other indicia of to-
4 bacco product identification only in newspapers,
5 in magazines, in periodicals or other publica-
6 tions (whether periodic or limited distribution),
7 on billboards, posters and placards in accord-
8 ance with subsection (b)(1), in nonpoint of sale
9 promotional material (including direct mail), in
10 point-of-sale promotional material, and in audio
11 or video formats delivered at a point-of-sale.

12 “(B) LIMITATION.—A manufacturer, dis-
13 tributor, or retailer that intends to disseminate,
14 or to cause to be disseminated, advertising or
15 labeling for a tobacco product in a medium that
16 is not described in subparagraph (A) shall no-
17 tify the Secretary of Health and Human Serv-
18 ices not less than 30 days prior to the date on
19 which such medium is to be used. Such notice
20 shall describe the medium and discuss the ex-
21 tent to which the advertising or labeling may be
22 seen by individuals who are under 18 years of
23 age.

24 “(C) ACTION BY SECRETARY.—Not later
25 than 30 days after the date on which the Sec-

1 retary receives a notice under subparagraph
2 (B), the Secretary shall make a determination
3 with respect to the action to be taken concern-
4 ing such notice.

5 “(3) RESTRICTION ON PLACEMENT IN ENTER-
6 TAINMENT MEDIA.—No payment shall be made by
7 any manufacturer, distributor, or retailer for the
8 placement of any tobacco product or tobacco product
9 package or advertisement—

10 “(A) as a prop in any television program
11 or motion picture produced for viewing by the
12 general public; or

13 “(B) in a video or on a video game ma-
14 chine.

15 “(4) RESTRICTIONS ON GLAMORIZATION OF TO-
16 BACCO PRODUCTS.—No direct or indirect payment
17 shall be made, or consideration given, by any manu-
18 facturer, distributor, or retailer to any entity for the
19 purpose of promoting the image or use of a tobacco
20 product through print, film or broadcast media that
21 appeals to individuals under 18 years of age or
22 through a live performance by an entertainment art-
23 ist that appeals to such individuals.

24 “(d) FORMAT AND CONTENT REQUIREMENTS FOR
25 LABELING AND ADVERTISING.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graphs (2) and (3), each manufacturer, distributor,
3 or retailer advertising or causing to be advertised,
4 disseminating or causing to be disseminated, any la-
5 beling or advertising for a tobacco product shall use
6 only black text on a white background.

7 “(2) CERTAIN ADVERTISING EXCEPTED.—

8 “(A) IN GENERAL.—Paragraph (1) shall
9 not apply to advertising—

10 “(i) in any facility where vending ma-
11 chines and self-service displays are located
12 if the advertising involved—

13 “(I) is not visible from outside of
14 the facility; and

15 “(II) is affixed to a wall or fix-
16 ture in the facility;

17 “(ii) that appears in any publication
18 (whether periodic or limited distribution)
19 that is an adult publication.

20 “(B) ADULT PUBLICATION.—For purposes
21 of subparagraph (A)(ii), the term ‘adult publi-
22 cation’ means a newspaper, magazine, periodi-
23 cal, or other publication—

24 “(i) whose readers under 18 years of
25 age constitute 15 percent or less of the

1 total readership as measured by competent
2 and reliable survey evidence; and

3 “(ii) that is read by fewer than
4 2,000,000 individuals who are under 18
5 years of age as measured by competent
6 and reliable survey evidence.

7 “(3) AUDIO OR VIDEO FORMATS.—Each manu-
8 facturer, distributor or retailer advertising or caus-
9 ing to be advertised any advertising for a tobacco
10 product in an audio or video format shall comply
11 with the following:

12 “(A) With respect to an audio format, the
13 advertising shall be limited to words only with
14 no music or sound effects.

15 “(B) With respect to a video format, the
16 advertising shall be limited to static black text
17 only on a white background. Any audio with the
18 video advertising shall be limited to words only
19 with no music or sound effects.

20 “(e) BAN ON NONTOBACCO ITEMS AND SERVICES,
21 CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP
22 OF EVENTS.—

23 “(1) BAN ON ALL NON-TOBACCO MERCHAN-
24 DISE.—No manufacturer, importer, distributor, or
25 retailer shall market, license, distribute, sell or cause

1 to be marketed, licensed, distributed or sold any
2 item (other than tobacco products) or service, which
3 bears the brand name (alone or in conjunction with
4 any other word), logo, symbol, motto, selling mes-
5 sage, recognizable color or pattern of colors, or any
6 other indicia of product identification similar or
7 identifiable to those used for any brand of tobacco
8 products.

9 “(2) GIFTS, CONTESTS, AND LOTTERIES.—No
10 manufacturer, distributor, or retailer shall offer or
11 cause to be offered to any person purchasing tobacco
12 products any gift or item (other than a tobacco
13 product) in consideration of the purchase of such
14 products, or to any person in consideration of fur-
15 nishing evidence, such as credits, proofs-of-purchase,
16 or coupons, of such a purchase.

17 “(3) SPONSORSHIP.—

18 “(A) IN GENERAL.—No manufacturer, dis-
19 tributor, or retailer shall sponsor or cause to be
20 sponsored any athletic, musical, artistic or
21 other social or cultural event, or any entry or
22 team in any event, in which the brand name
23 (alone or in conjunction with any other word),
24 logo, motto, selling message, recognizable color
25 or pattern of colors, or any other indicia of

1 product identification similar or identical to
2 those used for tobacco products is used.

3 “(B) USE OF CORPORATE NAME.—A man-
4 ufacturer, distributor, or retailer may sponsor
5 or cause to be sponsored any athletic, musical,
6 artistic, or other social or cultural event in the
7 name of the corporation which manufactures
8 the tobacco product if—

9 “(i) both the corporate name and the
10 corporation were registered and in use in
11 the United States prior to January 1,
12 1995; and

13 “(ii) the corporate name does not in-
14 clude any brand name (alone or in con-
15 junction with any other word), logo, sym-
16 bol, motto, selling message, recognizable
17 color or pattern of colors, or any other in-
18 dicia or product identification identical or
19 similar to, or identifiable with, those used
20 for any brand of tobacco products.

21 “(f) DEFINITIONS.—For purposes of this section—

22 “(1) IN GENERAL.—Any term used in this sec-
23 tion which is also used in section 5702 shall have
24 the same meaning given such term by section 5702.

1 “(2) BRAND.—The term ‘brand’ means a vari-
2 ety of a tobacco product distinguished by the tobacco
3 used, tar content, nicotine content, flavoring used,
4 size, filtration, or packaging.

5 “(3) DISTRIBUTOR.—The term ‘distributor’
6 means any person who furthers the distribution of
7 tobacco products, whether domestic or imported, at
8 any point from the original place of manufacture to
9 the person who sells or distributes the product to in-
10 dividuals for personal consumption. Such term shall
11 not include common carriers.

12 “(4) PACKAGE.—The term ‘package’ means a
13 pack, box, carton, or container of any kind in which
14 tobacco products are offered for sale, sold, or other-
15 wise distributed to consumers.

16 “(5) POINT OF SALE.—The term ‘point of sale’
17 means any location at which an individual can pur-
18 chase or otherwise obtain tobacco products for per-
19 sonal consumption.

20 “(6) POINT OF SALE ADVERTISING.—The term
21 ‘point of sale advertising’ means all printed or
22 graphical materials bearing the brand name (alone
23 or in conjunction with any other word), logo, motto,
24 selling message, recognizable color or pattern of col-
25 ors, or any other indicia of product identification

1 similar or identical to those used for tobacco prod-
2 ucts, which, when used for its intended purpose, can
3 reasonably be anticipated to be seen by customers at
4 a location at which tobacco products are offered for
5 sale.

6 “(7) RETAILER.—The term ‘retailer’ means any
7 person who sells tobacco products to individuals for
8 personal consumption, or who operates a facility
9 where vending machines or self-service displays are
10 located.

11 “(8) VIDEO.—The term ‘video’ means an audio-
12 visual work produced for viewing by the general pub-
13 lic, such as a television program, a motion picture,
14 a music video, and the audiovisual display of a video
15 game.

16 “(9) VIDEO GAME.—The term ‘video game’
17 means any electronic amusement device that utilizes
18 a computer, microprocessor, or similar electronic cir-
19 cuitry and its own cathode ray tube, or is designed
20 to be used with a television set or a monitor, that
21 interacts with the user of the device.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for such part IX is amended by adding after the
24 item relating to section 280H the following:

“Sec. 280I. Disallowance of deduction for certain tobacco ad-
vertising, promotion, and marketing expenses.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1998.

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