

June 24, 2009

The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Rangel and Ranking Member Camp:

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. We understand that the Committee on Ways and Means is discussing 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 this tax on advertising 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 in our country. 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 – in effect, a tax on advertising. Because the tax would make speech more expensive, affected companies would reduce their advertising, which, in turn, would reduce the amount of information available to consumers.

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, including utilities, salaries or rent. It is worth noting that 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.

As a general matter, it is thought that Congress may grant or withhold tax benefits according to its legislative discretion. However, according to several U.S. Supreme Court cases, the government may not use taxes or other policies to discriminate against speech, including commercial speech. For example, 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 any proposal to tax advertising. The potential for short term revenues would be far outweighed by the adverse precedent it would establish and the repercussions for the treatment of all forms of advertising, particularly during these challenging economic times.

Respectfully,

ABC
American Advertising Federation
American Association of Advertising Agencies
Association of National Advertisers
CBS Corporation
Grocery Manufacturers Association
Magazine Publishers of America
National Association of Broadcasters
National Cable & Telecommunications Association
National Newspaper Association
NBC Universal
Newspaper Association of America
Radio Advertising Bureau
Television Bureau of Advertising

cc: Members of the House Leadership