



July 9, 2009

The Honorable Barack Obama
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

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 Administration and Members of Congress are discussing elimination of the ordinary and necessary business expense deduction for the cost of advertising prescription medications. We urge you to reject what would amount to a tax on pharmaceutical advertising.

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. We believe the proposal would represent an unconstitutional restriction on commercial speech that is protected under the First Amendment. It would constitute government action to use a tax to suppress commercial speech, and it would contravene 35 years of U.S. Supreme Court decisions that have barred the government from restricting truthful advertising.

The effect of this tax will be to make the advertising more expensive resulting in less advertising and less information going to consumers. Advertising raises health awareness among Americans. It could reach the six million Americans the Centers for Disease Control estimate suffer from diabetes but have not been diagnosed. It also could reach the 65 million Americans that CDC estimates have high blood pressure -- 18 million are unaware they have this silent killer.

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.

Advertising is critical to the economic health of our country, particularly during this period in which we are experiencing a severe recession. 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.

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
Greater Media Inc.
Grocery Manufacturers Association
Interactive Advertising Bureau

Magazine Publishers of America
Montana Broadcasters Association
National Association of Broadcasters
National Cable & Telecommunications Association
NBCUniversal
Newspaper Association of America
Radio Advertising Bureau
Television Bureau of Advertising