

114TH CONGRESS
2D SESSION

S. 2936

To amend the Internal Revenue Code of 1986 to protect children’s health by denying any deduction for advertising and marketing directed at children to promote the consumption of food of poor nutritional quality.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2016

Mr. BLUMENTHAL 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 protect children’s health by denying any deduction for advertising and marketing directed at children to promote the consumption of food of poor nutritional quality.

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 “Stop Subsidizing
5 Childhood Obesity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Childhood obesity has more than doubled in
2 children and tripled in adolescents in the past 30
3 years. Currently, more than $\frac{1}{3}$ of children and ado-
4 lescents in the United States are overweight or
5 obese.

6 (2) A report by the Robert Wood Johnson
7 Foundation and Trust for America's Health found
8 that if the population of the United States continues
9 on its current trajectory, adult obesity rates could
10 exceed 60 percent in a number of States by 2030.

11 (3) Health-related behaviors, such as eating
12 habits and physical activity patterns, develop early
13 in life and affect behavior and health in adulthood.
14 The diets of American children and adolescents de-
15 part substantially from recommended patterns that
16 put their health at risk. Overall, American children
17 and youth are not achieving basic nutritional goals.
18 They are consuming excess calories and added sug-
19 ars and have higher than recommended intakes of
20 sodium, total fat, and saturated fats.

21 (4) According to a 2012 report from the Fed-
22 eral Trade Commission, the total amount spent on
23 food marketing to children is about \$2,000,000,000
24 per year.

1 (5) Companies market food to children through
2 television, radio, Internet, magazines, product place-
3 ment in movies and video games, schools, product
4 packages, toys, clothing and other merchandise.

5 (6) According to a comprehensive review by the
6 National Academy of Medicine, studies demonstrate
7 that television food advertising affects children's
8 food choices, food purchase requests, diets, and
9 health. The Academy concluded that the marketing
10 of high-calorie foods to children and adolescents is
11 one of the major contributors to childhood obesity.

12 (7) More than 80 percent of the food advertise-
13 ments seen by children on television are for foods of
14 poor nutritional value.

15 (8) A study published in the Journal of Law
16 and Economics and funded by the National Insti-
17 tutes of Health found that the elimination of the tax
18 deduction that allows companies to deduct costs as-
19 sociated with advertising food of poor nutritional
20 quality to children could reduce the rates of child-
21 hood obesity by 5 to 7 percent.

22 (9) A study published in the Journal of Health
23 Affairs found that the elimination of the tax deduc-
24 tion for costs described in paragraph (8) would save
25 up to \$260,000,000 in health care costs and prevent

1 nearly 130,000 cases of childhood obesity over 10
2 years.

3 **SEC. 3. DENIAL OF DEDUCTION FOR ADVERTISING AND**
4 **MARKETING DIRECTED AT CHILDREN TO**
5 **PROMOTE THE CONSUMPTION OF FOOD OF**
6 **POOR NUTRITIONAL QUALITY.**

7 (a) IN GENERAL.—Part IX of subchapter B of chap-
8 ter 1 of the Internal Revenue Code of 1986 is amended
9 by adding at the end the following new section:

10 **“SEC. 280I. DENIAL OF DEDUCTION FOR ADVERTISING AND**
11 **MARKETING DIRECTED AT CHILDREN TO**
12 **PROMOTE THE CONSUMPTION OF FOOD OF**
13 **POOR NUTRITIONAL QUALITY.**

14 “(a) IN GENERAL.—No deduction shall be allowed
15 under this chapter with respect to—

16 “(1) any advertisement or marketing—

17 “(A) primarily directed at children for pur-
18 poses of promoting the consumption by children
19 of any food of poor nutritional quality, or

20 “(B) of a brand primarily associated with
21 food of poor nutritional quality that is primarily
22 directed at children, and

23 “(2) any of the following which are incurred or
24 provided primarily for purposes described in para-
25 graph (1):

1 “(A) Travel expenses (including meals and
2 lodging).

3 “(B) Goods or services of a type generally
4 considered to constitute entertainment, amuse-
5 ment, or recreation or the use of a facility in
6 connection with providing such goods and serv-
7 ices.

8 “(C) Gifts.

9 “(D) Other promotion expenses.

10 “(b) NAM STUDY.—

11 “(1) IN GENERAL.—Not later than 60 days
12 after the date of the enactment of this section, the
13 Secretary shall enter into a contract with the Na-
14 tional Academy of Medicine under which the Na-
15 tional Academy of Medicine shall develop procedures
16 for the evaluation and identification of—

17 “(A) food of poor nutritional quality, and

18 “(B) brands that are primarily associated
19 with food of poor nutritional quality.

20 “(2) NAM REPORT.—Not later than 12 months
21 after the date of the enactment of this section, the
22 National Academy of Medicine shall submit to the
23 Secretary a report that establishes the proposed pro-
24 cedures described in paragraph (1).

25 “(c) DEFINITIONS.—In this section:

1 “(1) BRAND.—The term ‘brand’ means a cor-
 2 porate or product name, a business image, or a
 3 mark, regardless of whether it may legally qualify as
 4 a trademark, used by a seller or manufacturer to
 5 identify goods or services and to distinguish them
 6 from the goods of a competitor.

7 “(2) CHILD.—The term ‘child’ means an indi-
 8 vidual who is age 14 or under.

9 “(3) FOOD.—The term ‘food’ shall include bev-
 10 erages, candy, and chewing gum.

11 “(d) REGULATIONS.—Not later than 18 months after
 12 the date of the enactment of this section, the Secretary,
 13 in consultation with the Secretary of Health and Human
 14 Services and the Federal Trade Commission and based on
 15 the report prepared by the National Academy of Medicine
 16 pursuant to subsection (b)(2), shall promulgate such regu-
 17 lations as may be necessary to carry out the purposes of
 18 this section, including regulations defining the terms ‘mar-
 19 keting’, ‘directed at children’, ‘food of poor nutritional
 20 quality’, and ‘brand primarily associated with food of poor
 21 nutritional quality’ for purposes of this section.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 for such part IX is amended by adding at the end the
 24 following new item:

“Sec. 280I. Denial of deduction for advertising and marketing directed at chil-
 dren to promote the consumption of food of poor nutritional
 quality.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred in tax-
3 able years beginning 24 months after the date of the en-
4 actment of this Act.

5 **SEC. 4. ADDITIONAL FUNDING FOR THE FRESH FRUIT AND**
6 **VEGETABLE PROGRAM.**

7 In addition to any other amounts made available to
8 carry out the Fresh Fruit and Vegetable Program under
9 section 19 of the Richard B. Russell National School
10 Lunch Act (42 U.S.C. 1769a), the Secretary of the Treas-
11 ury (or the Secretary's delegate) shall, on an annual basis,
12 transfer to such program, from amounts in the general
13 fund of the Treasury of the United States, an amount de-
14 termined by the Secretary of the Treasury (or the Sec-
15 retary's delegate) to be equal to the increase in revenue
16 for the preceding 12-month period by reason of the
17 amendments made by section 3 of this Act.

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