

107TH CONGRESS
2D SESSION

S. 2486

To amend the Internal Revenue Code of 1986 to limit the deduction for advertising of FDA approved prescription drugs by the manufacturer of such drugs to the level of such manufacturer's research and development expenditures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2002

Ms. STABENOW (for herself, Mr. DASCHLE, Mr. MILLER, Mr. DURBIN, Mrs. CARNAHAN, and Mr. WELLSTONE) 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 limit the deduction for advertising of FDA approved prescription drugs by the manufacturer of such drugs to the level of such manufacturer's research and development expenditures, and for other purposes.

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 “Fair Advertising and
5 Increased Research (FAIR) Act”.

1 **SEC. 2. LIMITATION ON TAX DEDUCTIONS FOR ADVER-**
 2 **TISING BY FDA PRESCRIPTION DRUG MANU-**
 3 **FACTURERS.**

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

8 **“SEC. 280I. LIMITATION ON TAX DEDUCTIONS FOR ADVER-**
 9 **TISING BY FDA PRESCRIPTION DRUG MANU-**
 10 **FACTURERS.**

11 “(a) IN GENERAL.—No deduction shall be allowed
 12 under this chapter for any taxable year for any expendi-
 13 ture relating to the advertising, promoting, or marketing
 14 (in any medium) of any FDA prescription drug manufac-
 15 tured by the taxpayer to the extent the aggregate amount
 16 of such expenditures exceeds the taxpayer’s aggregate re-
 17 search and development expenditures for such taxable
 18 year.

19 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
 20 poses of this section—

21 “(1) FDA PRESCRIPTION DRUGS.—The term
 22 ‘FDA prescription drug’ means any drug or biologi-
 23 cal approved by the Federal Drug Administration
 24 which requires a prescription of a physician for its
 25 use by an individual.

1 “(2) RESEARCH AND DEVELOPMENT EXPENDI-
2 TURES.—The term ‘research and development ex-
3 penditures’ means any expenditures which may be
4 treated as expenses under section 174.

5 “(3) AGGREGATION RULES.—All members of
6 the same controlled group of corporations (within
7 the meaning of section 52(a)) and all persons under
8 common control (within the meaning of section
9 52(b)) shall be treated as 1 person.”.

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

“Sec. 280I. Limitation on tax deductions for advertising by
FDA prescription drug manufacturers.”

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2001.

16 (d) TRANSFER TO THE FEDERAL HOSPITAL INSUR-
17 ANCE TRUST FUND OF RESULTING BUDGETARY SAV-
18 INGS.—There is appropriated to the Federal Hospital In-
19 surance Trust Fund established under section 1817 of the
20 Social Security Act amounts equal to the increase in Fed-
21 eral revenues resulting from the amendment made by sub-
22 section (a). Such appropriated amounts shall be trans-
23 ferred from the general fund of the Treasury on the basis

1 of estimates of such revenues made by the Secretary of
2 the Treasury.

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