

114TH CONGRESS
2D SESSION

H. R. 5232

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 HOUSE OF REPRESENTATIVES

MAY 13, 2016

Ms. DELAURO (for herself and Ms. LEE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 one-third of children
4 and adolescents are overweight or obese.

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

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

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

24 (5) Companies market food to children through
25 television, radio, Internet, magazines, product place-

1 ment in movies and video games, schools, product
2 packages, toys, clothing and other merchandise, and
3 almost anywhere a logo or product image can be
4 shown.

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.

10 (7) A 2005 report from the National Academy
11 of Medicine confirmed that marketing of high-calorie
12 foods to children and adolescents has been identified
13 as one of the major contributors to childhood obe-
14 sity.

15 (8) Nearly three-quarters of the foods adver-
16 tised on television shows intended for children are
17 for sweets and convenience or fast foods.

18 **SEC. 3. DENIAL OF DEDUCTION FOR MARKETING DI-**
19 **RECTED AT CHILDREN TO PROMOTE FOOD**
20 **OF POOR NUTRITIONAL QUALITY.**

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

1 **“SEC. 280I. DENIAL OF DEDUCTION FOR MARKETING DI-**
2 **RECTED AT CHILDREN FOR FOOD OF POOR**
3 **NUTRITIONAL QUALITY OR BRANDS PRI-**
4 **MARILY ASSOCIATED WITH FOOD OF POOR**
5 **NUTRITIONAL QUALITY.**

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

8 “(1) any marketing directed at children for food
9 of poor nutritional quality or brands primarily asso-
10 ciated with food of poor nutritional quality, and

11 “(2) any of the following which are incurred or
12 provided primarily for purposes described in para-
13 graph (1):

14 “(A) Travel expenses (including meals and
15 lodging).

16 “(B) Goods or services of a type generally
17 considered to constitute entertainment, amuse-
18 ment, or recreation or the use of a facility in
19 connection with providing such goods and serv-
20 ices.

21 “(C) Gifts.

22 “(D) Other promotion expenses.

23 “(b) DEFINITIONS.—In this section:

24 “(1) BRAND.—The term ‘brand’ means a cor-
25 porate or product name, a business image, or a
26 mark, regardless of whether it may legally qualify as

1 a trademark, used by a seller or manufacturer to
2 identify goods or services and to distinguish them
3 from the goods of a competitor.

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

6 “(3) DIRECTED AT.—The term ‘directed at’ in-
7 cludes the use of measured media if the audience for
8 such media will consist of 25 percent or more of
9 children.

10 “(c) MARKETING.—For purposes of this section, the
11 term ‘marketing’ means all advertising and promotional
12 techniques, including—

13 “(1) advertising (including product placement)
14 on television and radio, in print media, in social
15 media, mobile media and apps, and on the Internet
16 (including third-party and company-sponsored
17 Websites),

18 “(2) product packaging and labeling,

19 “(3) advertising preceding a movie shown in a
20 movie theater or placed on a video (DVD or VHS)
21 or within a video game or mobile application,

22 “(4) promotional content transmitted to per-
23 sonal computers and other digital or mobile devices,

24 “(5) advertising displays and promotions at the
25 retail site, including preferential placement,

1 “(6) specialty or premium items distributed in
2 connection with the sale of a product or a product
3 loyalty program,

4 “(7) character licensing fees, toy cobranding
5 and cross-promotions,

6 “(8) sponsorship of events,

7 “(9) celebrity endorsements, and

8 “(10) in-school advertising including corporate-
9 branded materials, corporate incentive programs,
10 label redemption programs, fundraisers, signs, score-
11 boards, posters, vending machine fronts, in-school
12 TV and radio, corporate sponsorships, and market
13 research activities.

14 “(d) REGULATIONS.—Not later than 24 months after
15 the date of the enactment of this section, the Secretary,
16 in consultation with the Secretary of Health and Human
17 Services and the Federal Trade Commission, shall promul-
18 gate such regulations as may be necessary to carry out
19 the purposes of this section, including regulations defining
20 the terms ‘directed at children’, ‘food of poor nutritional
21 quality’, and ‘brand primarily associated with food of poor
22 nutritional quality’, based on the National Academy of
23 Medicine report described in such section 3(b), for pur-
24 poses of this section.”.

25 (b) STUDY BY NATIONAL ACADEMY OF MEDICINE.—

1 (1) IN GENERAL.—Not later than 60 days after
 2 the date of the enactment of this section, the Sec-
 3 retary of Treasury shall enter into a contract with
 4 the National Academy of Medicine to develop proce-
 5 dures for the evaluation and identification of—

6 (A) food of poor nutritional quality, and

7 (B) brands that are primarily associated
 8 with food of poor nutritional quality.

9 (2) REPORT.—Not later than 12 months after
 10 the date of the enactment of this section, the Na-
 11 tional Academy of Medicine shall submit to the Sec-
 12 retary a report that establishes the proposed proce-
 13 dures described in paragraph (1).

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 for part IX of subchapter B of chapter 1 of such Code
 16 is amended by adding at the end the following new item:

“Sec. 280I. Denial of deduction for marketing directed at children to promote
 food of poor nutritional quality.”.

17 (d) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to amounts paid or incurred in tax-
 19 able years beginning 24 months after the date of the en-
 20 actment of this Act.

21 **SEC. 4. ADDITIONAL FUNDING FOR THE FRESH FRUIT AND**
 22 **VEGETABLE PROGRAM.**

23 In addition to any other amounts made available to
 24 carry out the Fresh Fruit and Vegetable Program under

1 section 19 of the Richard B. Russell National School
2 Lunch Act (42 U.S.C. 1769a), the Secretary of the Treas-
3 ury (or the Secretary's delegate) shall, on an annual basis,
4 transfer to such program, from amounts in the general
5 fund of the Treasury of the United States, an amount de-
6 termined by the Secretary of the Treasury (or the Sec-
7 retary's delegate) to be equal to the increase in revenue
8 for the preceding 12-month period by reason of the
9 amendments made by section 3 of this Act.

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