

117TH CONGRESS
2D SESSION

S. 5213

To amend the Internal Revenue Code of 1986 to deny the deduction for advertising and promotional expenses for tobacco products and electronic nicotine delivery systems.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2022

Mrs. SHAHEEN (for herself, Mr. BLUMENTHAL, Mr. BROWN, Mr. REED, Mr. DURBIN, Mr. VAN HOLLEN, and Mr. MERKLEY) 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 deny the deduction for advertising and promotional expenses for tobacco products and electronic nicotine delivery systems.

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 “No Tax Subsidies for
5 E-Cigarette and Tobacco Ads Act”.

1 **SEC. 2. DISALLOWANCE OF DEDUCTION FOR ADVERTISING**
 2 **AND PROMOTIONAL EXPENSES FOR TO-**
 3 **BACCO PRODUCTS AND ELECTRONIC NICO-**
 4 **TINE DELIVERY SYSTEMS.**

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

8 **“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR DIRECT-**
 9 **TO-CONSUMER ADVERTISING OF TOBACCO**
 10 **PRODUCTS AND ELECTRONIC NICOTINE DE-**
 11 **LIVERY SYSTEMS.**

12 “(a) IN GENERAL.—No deduction shall be allowed
 13 under this chapter for expenses relating to direct-to-con-
 14 sumer advertising of tobacco products (including elec-
 15 tronic nicotine delivery systems) for any taxable year.

16 “(b) DIRECT-TO-CONSUMER ADVERTISING.—For
 17 purposes of this section, the term ‘direct-to-consumer ad-
 18 vertising’ means any dissemination, by or on behalf of a
 19 sponsor of a tobacco product (including an electronic nico-
 20 tine delivery system product), of an advertisement
 21 which—

22 “(1) is in regard to such tobacco product (in-
 23 cluding an electronic nicotine delivery systems prod-
 24 uct), and

25 “(2) is primarily targeted to the general public,
 26 including through—

1 “(A) publication in journals, magazines,
2 other periodicals, and newspapers,

3 “(B) broadcasting through media such as
4 radio, television, and telephone communication
5 systems, direct mail, and billboards, and

6 “(C) dissemination on the internet or
7 through digital platforms (including social
8 media, mobile media, web applications, digital
9 applications, mobile applications, and electronic
10 applications).

11 “(c) TOBACCO PRODUCT.—For purposes of this sec-
12 tion, the term ‘tobacco product’ means any product de-
13 scribed in section 201(rr) of the Federal Food, Drug, and
14 Cosmetic Act (21 U.S.C. 321(rr)).

15 “(d) ELECTRONIC NICOTINE DELIVERY SYSTEM.—
16 For purposes of this section, the term ‘electronic nicotine
17 delivery system’—

18 “(1) means any electronic device that delivers
19 nicotine, flavor, or another substance via an aero-
20 solized solution to the user inhaling from the device
21 (including e-cigarettes, e-hookah, e-cigars, vape pens,
22 advanced refillable personal vaporizers, and elec-
23 tronic pipes) and any component, liquid, part, or ac-
24 cessory of such a device, whether or not sold sepa-
25 rately, and

1 “(2) does not include a product that—

2 “(A) is approved by the Food and Drug
3 Administration for sale as a tobacco cessation
4 product or for another therapeutic purpose, and

5 “(B) is marketed and sold solely for a pur-
6 pose described in subparagraph (A).”.

7 (b) CONFORMING AMENDMENT.—The table of sec-
8 tions for such part IX of the Internal Revenue Code of
9 1986 is amended by adding after the item relating to sec-
10 tion 280H the following new item:

“Sec. 280I. Disallowance of deduction for direct-to-consumer advertising of to-
bacco products and electronic nicotine delivery systems.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to amounts paid or incurred after
13 the date of the enactment of this Act, in taxable years
14 ending after such date.

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