

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2342

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.

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## IN THE SENATE OF THE UNITED STATES

MAY 15, 2014

Mr. BLUMENTHAL (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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) Budgets for food marketing to children have  
21 spiked into the billions of dollars. According to a  
22 2012 report from the Federal Trade Commission,  
23 the total amount spent on food marketing to chil-  
24 dren is about \$2 billion a 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, and  
5 almost anywhere a logo or product image can be  
6 shown.

7           (6) According to a comprehensive review by the  
8 National Academies' Institute of Medicine, studies  
9 demonstrate that television food advertising affects  
10 children's food choices, food purchase requests,  
11 diets, and health.

12           (7) A 2005 report from the Institute of Medi-  
13 cine confirmed that "aggressive marketing of high-  
14 calorie foods to children and adolescents has been  
15 identified as one of the major contributors to child-  
16 hood obesity".

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

20           (9) A study published in the Journal of Law  
21 and Economics and funded by the National Insti-  
22 tutes of Health found that the elimination of the tax  
23 deduction that allows companies to deduct costs as-  
24 sociated with advertising food of poor nutritional

1 quality to children could reduce the rates of child-  
 2 hood obesity by 5 to 7 percent.

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) IOM 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 Insti-  
14 tute of Medicine under which the Institute of Medi-  
15 cine shall develop procedures for the evaluation and  
16 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) IOM REPORT.—Not later than 12 months  
21 after the date of the enactment of this section, the  
22 Institute of Medicine shall submit to the Secretary  
23 a report that establishes the proposed procedures de-  
24 scribed 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 under the age of 14.

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

11          “(4) MARKETING.—The term ‘marketing’  
12          means any product or brand advertising or pro-  
13          motional techniques directed at children, including—

14                 “(A) advertising (including product place-  
15                 ment) on television and radio, in print media,  
16                 in social media, and on the Internet (including  
17                 third-party and company-sponsored websites),

18                 “(B) the use of characters or mascots,  
19                 themes, activities, incentives, or any other ad-  
20                 vertising or promotional techniques contained  
21                 on the packaging or labeling of a product,

22                 “(C) advertising preceding a movie shown  
23                 in a movie theater or placed on a video (DVD  
24                 or VHS) or within a video game or mobile ap-  
25                 plication,

1           “(D) promotional content transmitted to  
2           televisions, personal computers, and other dig-  
3           ital or mobile devices,

4           “(E) advertising displays and promotions  
5           at the retail site or events,

6           “(F) specialty or premium items distrib-  
7           uted in connection with the sale of a product or  
8           a product loyalty program,

9           “(G) character licensing, toy co-branding  
10          and cross-promotions,

11          “(H) celebrity and athlete endorsements,  
12          and

13          “(I) any advertising or promotional tech-  
14          niques used within a school.

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

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

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

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

8 **SEC. 4. ADDITIONAL FUNDING FOR THE FRESH FRUIT AND**  
9 **VEGETABLE PROGRAM.**

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

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