

PROMOTIONAL PRODUCTS ASSOCIATION INTERNATIONAL

PPAI LEGISLATIVE *Agenda*

2019





Promotional Products Association International (PPAI®) maintains a strong, industry-driven and collaborative voice in Washington, D.C., that promotes and protects the interests of the promotional products industry, its professionals and small-businesses in general.

From the beginning, PPAI's efforts have focused on the core issues related to independent contractors, tax reform and small business, as well as critical industry issues that emerge on a regular basis. Additionally, we engage in significant efforts to strengthen understanding and acknowledgement of promotional products as key branding tools that help brands gain exposure and reach their goals, and we position promotional consultants as strategic partners and trusted advisors.

The current economic and political climate has brought many challenges and opportunities for the promotional products industry. Last year we witnessed upheaval to the standard for states levying taxes on remote sales, the renegotiations of international trade agreements and several tariff actions. As the states and the federal government struggle with creating balanced budgets and finding new revenue sources, promotional products are occasionally drawn into the crossfire. In some cases, the purchases of promotional products are scrutinized because of a lack of awareness about the industry, the medium and the effectiveness of these branded advertising solutions. It is our mission to ensure that all lawmakers understand that promotional products are the most cost-effective way to deliver education, motivation, inspiration and to increase awareness.

Despite the challenges, the promotional products industry delivered strong sales numbers—once again demonstrating the importance and value of the industry and the power of small businesses in driving economic growth. It is our collective responsibility to work to ensure lawmakers understand the value, benefits and employment opportunities offered by this creatively fueled, forward-focused industry.

Key areas of concentration for the promotional products industry in 2019 include:

- Ensuring the industry remains vibrant and dynamic
- Protecting and preserving the interests of small businesses and encouraging policies that drive innovation and entrepreneurship
- Creating a tax climate that rewards small businesses
- Supporting trade agreements to ensure ease of international operations
- Adapting the global supply chain to ensure ease of international operations
- Understanding product responsibility and the need to balance risk and reason

The promotional products industry represents tens of thousands of companies, hundreds of thousands of jobs and billions of dollars. PPAI and its members urge Congress to learn more about the effectiveness and utility of promotional products for the public and private sectors.

The same marketing solutions that are essential to the campaign process can make a profound difference in the lives of constituents. Our industry is filled with professionals who passionately pursue and fulfill programs that bring a return on investment to charities and hospitals, to families and children in need and to their communities across the country. Every day, in every way, promotional products work!

Paul Bellantone, CAE
President and CEO
Promotional Products Association International

PPAI LEGISLATIVE POSITIONS SUMMARY

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The Promotional Products Industry

Time and again, promotional products have proven themselves to be the most cost-effective way to reach targeted audiences in a tangible, long-lasting and memorable manner.



The promotional products industry represents a vibrant and creative market segment that employs over 500,000 Americans. In recent years, the gross revenue of business in this industry has exceeded \$24 billion. More than 98 percent of these companies are considered small businesses. Small businesses like these will continue to fuel economic growth, and the products and services delivered by promotional

products professionals will enable millions of other small businesses to thrive and continue doing so.

Promotional products are the only advertising medium capable of engaging all five senses. Messages can be added to a tangible item to create a marketing experience. Of all existing advertising media, promotional products have the highest recall—over television, print and online advertising.

Lawmakers must understand that, quite often, promotional products are the most cost-effective way for smaller businesses and federal agencies to market their products and services. Promotional products educate, recruit, highlight safety awareness, urge organ donations and encourage healthy living and lifestyle choices. Promotional products recognize and reward employee achievements and inspire action. They are used to celebrate milestones, sign legislation and reinforce critical messages.

While it may be tempting to limit the purchase of promotional products in order to yield supposed short-term savings, in the long term this limitation may inadvertently diminish a program's potential success. Elected officials must keep the unique needs, challenges and interests of the promotional products sector in mind when considering legislation that could hamper the progress of this dynamic business sector.



Protecting and preserving the interests of small businesses and encouraging policies that drive innovation and entrepreneurship.

SMALL BUSINESS—AN ECONOMIC DRIVER

There are over 38,000 promotional products companies in the United States, generating more than \$24 billion in annual revenues and employing over 500,000 Americans.

The promotional products industry is overwhelmingly made up of small businesses. Because more than 98 percent of industry companies are considered small businesses, with revenues of less than \$250,000 annually, the challenges faced are unique to this category of business.

In addition to being an industry comprised of small businesses, promotional products are the advertising medium of choice for many other small businesses. Promotional products are the most cost-effective method for smaller businesses to market their products and services. These products are often used to reinforce personal relationships with customers, clients and prospects.



Proper tax reform and economic opportunity legislation will spur small businesses to create jobs and help to grow the economy. Congress must continue to support unique programs that promote small-

business growth and ensure appropriate small-business representation in the administrative branch.

Simplification Of Interstate Sales And Use Tax Collection

In 2018, the U.S. Supreme Court issued a ruling on a case involving a South Dakota law that levied a sales tax on out-of-state retailers. The ruling overturned a previous judgment that barred sales taxes for companies without a physical presence in the state looking to levy the tax. The decision effectively allowed South Dakota to implement its state sales tax on purchases made by residents through online retailers.

Although this ruling specifically applied to South Dakota's sales tax law, several other states looking to implement their own sales taxes on out-of-state retailers considered adopting similar versions of the law. For example, the tax law in South Dakota only applies to online retailers who either deliver a minimum of \$100,000 worth of products into the state or conduct at least 200 individual transactions annually. These conditions establish a safe harbor for small companies doing business across state lines.

Under the structure of state taxation, sales and use taxes are actually imposed on the purchaser of goods and services.

The obligation by the seller, if any, is to collect and remit the tax. A sales tax is the tax collected by a seller on a transaction that occurs in the state. The use tax

is essentially a fiction created to capture the sales tax on sales made out of state. The purchaser is obligated to pay the use tax on any goods or services bought out of state and used in the state.



While the issue is often perceived in terms of Main Street versus the internet, sales and use tax law has ramifications for a wide range of businesses. In the early 2000s, a number of states decided they had to eliminate one of the fundamental objections to expanding the definition of "nexus" to allow states to force remote sellers to collect and remit use taxes. The fundamental objection was that sales and use tax regimes varied greatly from state to state, and local jurisdiction sales taxes further complicated collection and remittance.

On November 12, 2002, representatives of 33 states and the District of Columbia voted to approve a multi-state agreement to simplify the nation's sales tax laws by establishing a single, uniform system to administer and collect sales taxes on the trillions of dollars spent annually in out-of-state retail transactions. The effort is known as the Streamlined Sales Tax Project (SSTP). Under the agreement known as the Streamlined Sales and Use Tax Agreement (SSUTA), a certain number of states with a certain percentage of the population needed to be in compliance in order for the system to go into effect. Under the bill proposed after the initial forming of the SSUTA, states that voluntarily were or would have become member states of the SSUTA would have been able to require remote sellers to collect and remit sales and use taxes after 90 days. States that did not wish to become members of SSUTA would have been allowed to collect the taxes only if they adopted certain minimum simplification requirements and provided sellers with additional

notices on the collection requirements. The requirements were similar to but not as comprehensive as the conditions SSUTA members had accepted.

The legislation allowed sellers who make less than \$1 million in total remote sales in the year preceding the sale to qualify for an exemption and not be required to collect the tax. The following states have passed legislation to conform to the Streamlined Sales and Use Tax Agreement: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

Congress must support continued efforts by states to simplify the collection of sales and use taxes.

SUPPORT TRADE AGREEMENTS TO ENSURE EASE OF INTERNATIONAL OPERATIONS

Generalized System Of Preferences



In 2018, Congress renewed and extended the then-expired Generalized System of Preferences (GSP) program. GSP is a program designed

to promote economic growth in the developing world by providing preferential duty-free entry for up to 5,000 products when imported from one of 122 designated beneficiary countries and territories. The GSP program also supports U.S. jobs. U.S. businesses imported over \$21 billion worth of products under the GSP program in 2017, including many used in U.S. manufacturing. The GSP renewal and expansion were wins for American consumers, the promotional products industry, developing countries and the U.S. and global economies. The GSP saved American businesses over \$847 million in import duties in 2018.

Promotional Products And Global Value Chains

The promotional products industry relies on global supply chains. Although most promotional products are manufactured overseas, once in the U.S., these products are decorated by U.S. workers. They are sold by U.S. workers. They are used to promote U.S. goods and services.

Global value chains operate more broadly than supply chains. Global value chains encompass the full range of activities that firms and workers are involved in to bring a product or service from conception to end use and beyond. The shift among many globally competitive companies to focus on core competencies and outsource other activities has led to the creation of global value chains that cross professional and national boundaries.

The U.S. Global Value Chain Coalition is on a mission to educate policymakers and the public about the American jobs and the domestic economic growth their companies generate through their value chains. The various components of a global value chain include a variety of domestic participants, for example, U.S. workers who are hired to manage production abroad, U.S. carriers who handle international transport and professionals in the U.S. who are hired to address compliance issues and customs clearance. Some of the other job fields found in the global value chains include design, manufacturing, supply chain, sales support, marketing and more.

Finished promotional products cannot be grouped into one of two categories, as they consist of products that are either imported or made in the United States. Global value chains have rendered that binary description outdated. All the diverse elements in a global value chain generate an added value through the variety of efforts that contribute to each product throughout its lifecycle, from conception to consumer.

Section 232 And Section 301 Tariff Actions

Throughout 2018, the United States government conducted numerous investigations into the domestic impacts of various other countries' trade policies. At the direction of the U.S. president, the U.S. Commerce Secretary investigated steel and aluminum imports to the U.S. pursuant to Section 232 of the Trade Expansion Act of 1962. Section 232 empowers the president to act unilaterally on trade matters in the instance of a national security concern. The steel and aluminum tariff actions initially included exemptions that were negotiated for certain U.S. trading partners. Those exemptions were eventually allowed to expire, and the U.S. extended its steel and aluminum tariff enforcement to trading partners such as Canada, Mexico and the European Union.

Also at the president's direction, the United States Trade Representative (U.S.T.R.) conducted an investigation under Section 301 of the Trade Act of 1974 that examined China's trade practices related to market access barriers, technology transfer mandates and intellectual property violations.

This investigation also resulted in the implementation of tariffs on imports. The Section 301 tariffs were implemented through three lists in the Federal Register. The first list comprised \$34 billion of products imported from China at an additional 25 percent rate.

The second Section 301 tariff list named \$17 billion worth of products imported from China. The third list named \$200 billion worth of imports from China and flagged several items that are popular in the promotional products industry. PPAI is on the record opposing any tariff actions. Due to the rise in consumer prices that results when tariffs are applied to products, tariffs are effectively a tax on consumers. There have been numerous pieces of legislation filed in both the U.S. Senate and the House of Representatives that would require various levels of oversight regarding tariff actions.

Congress must act to exercise its authority in the oversight of trade matters and reject tariff actions.

Fair Port Practices

The promotional products industry, along with all other industries that rely on international shipments, has observed repeated incidents of severe congestion at container terminals in U.S. ports on both the west coast and the east coast.

All too often shippers and truckers are charged demurrage and detention penalties for late pickup or return of

containers when it is not their fault. If the terminal is closed during normal working hours, or if a container is unavailable for pick-up during the free time period due to congestion or other disruption at the port, carriers and terminals should not assess demurrage. The same is true for detention charges when attempts to return an empty container are frustrated. These are real costs that hurt American businesses.



The Federal Maritime Commission (FMC) has the authority to ensure that demurrage and detention practices are fair and reasonable, and it needs to act to address this problem. Congress must urge the FMC to grant the petition proposed by the Coalition for Fair Port Practices and institute rulemaking to ensure U.S. imports and exports are not burdened with unfair demurrage and detention charges.

Promotional Products And Independent Contractors

In the promotional products industry, salespeople willingly and intentionally opt to be independent contractors because they wish to be their own bosses, want to manage their own time and desire the independence their sales positions afford them.

For industries in which there is a debate about whether individuals who provide services to a business are employees or independent contractors, there is a provision in the U.S. Tax Code known as Section 530 that provides safe harbors for the use of independent contractors in industries that have traditionally engaged independent contractors, including the promotional products industry. Section 530 also prevents the Internal Revenue Service (IRS) from writing rules on how to classify individuals as independent contractors or employees.

Why Is Section 530 Important?

- The Safe Harbor Rule, Section 530 of the Revenue Act of 1978, covers a long-standing practice in the promotional products industry. Essentially, promotional products consultants can be treated as independent contractors even though they might not meet all of the common law factors.
- Generally, while the promotional consultant as a businessperson possesses many of the characteristics of an independent contractor (as outlined in the seven factors determined by the U.S. Supreme Court to be significant), the consultant typically works on behalf of a single distributorship and therefore is economically dependent on that business.

Any repeal of Section 530 would remove the prohibition on the IRS' authority to issue new regulations on the subject and would allow the prospective reclassification of individuals to whom Section 530 Safe Harbor relief had previously been applied.

How Section 530 Repeal Affects The Promotional Products Industry:

- In the promotional products industry, independent contractors are self-employed, even when they sell on behalf of only one company. If the safe harbor rules are eliminated, then these entrepreneurs will likely be classified as employees.
- When asked "Why do you choose to be an independent contractor?" one PPAI member responded, "I had previously been a member of the corporate world and an employee for years, but starting my own business and becoming an independent contractor allowed me to...":
 - *Set my own hours*
 - *Be independent in every sense*
 - *Choose how I want to run my business*
 - *Work as much or as little as I want to*
 - *Not have to follow someone else's rules*
 - *Choose who I want to do business with*
 - *Pay my own way—including health care*

As stated, in the promotional products industry, salespeople readily and deliberately elect to be independent contractors because they wish to be their own supervisors, they want to manage their own time and they seek the freedom their sales positions provide them. In fact, any promotional consultant who is an independent contractor is a sole proprietor or principal of his or her own company for these very reasons.



According to PPAI's Distributor Business Survey, about 45 percent of the industry's estimated 125,000 salesforce participants are independent contractors, and firms reporting less than \$1 million in annual sales indicate that 60 to 70 percent of their salesforces are independent. More than half of the industry's distributor firms would be affected should pending legislation require them to turn their independent contractor salesforces into employees.

- Promotional consultants sell promotional products to businesses, marketing professionals and others. Promotional consultants do not make or “decorate” the products with art, logos or other imprints. A supplier manufactures, imports, converts, imprints or otherwise produces or processes promotional products
- The economic challenge in the promotional products industry is that the order from the end buyer (the business that is buying promotional products) is typically for a small quantity. The supplier assumes the economic responsibility for maintaining large inventories of “blank” items and turning them into small shipments of finished promotional products.
- Distributors are the economic facilitators between the end buyer and supplier. Once a blank item has been imprinted, it has very little economic value to anyone other than the end buyer.
- Individual promotional consultants do not have the economic wherewithal to provide the credit assurances to a supplier so that a supplier will proceed with the imprinting or decoration of the promotional products. Hence, the promotional consultant places the order through a distributor.



We ask that Congress modify Section 3508 (b)(2) of the tax code to broaden the definition of a “direct seller” by adding section (iv):

The term “direct seller” means any person if—

(A) such person—

- (i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or other than in a permanent retail establishment
- (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or
- (iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business)
- (iv) is engaged in the trade or business of selling (or soliciting the sale of) promotional products from other than a permanent retail establishment. For the purposes of this section, a ‘promotional product’ shall mean a tangible item with permanently marked promotional words, symbols or art of the buyer

(B) substantially all remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

We ask that Congress modify Section 3508 (b)(2) of the tax code to broaden the definition of a “direct seller” by adding section (iv) to place promotional products professionals safely under the same umbrella.

Self-Employed Healthcare Deduction



A majority of promotional products small-business enterprises are made up of self-employed Americans.

The self-employed pay into Social Security and Medicare funds at the combined rate of what an employee and employer would pay. The FICA tax for the self-employed is called the “self-employment tax” (officially, the Self-Employed Contributions Act tax). The self-employment tax is computed at the same rate (15.3 percent) as employee/employer FICA and is subject to the same annual limits.

When an entity operates as a C Corporation, health insurance premiums are fully deductible by the corporation and are fully tax-deductible from both the income tax and the FICA tax. If the same entity operated exactly the same in every detail, except the entity was not a C Corporation—that is, it operated as a sole proprietor, partnership or as some S corporations—the health insurance premiums for the sole-proprietor, partner and S Corporation shareholder are not deductible from either income tax or FICA tax liability.

As a result of subsequent changes in the law, 100 percent of health insurance premiums for the self-employed are now deductible from income tax liability. However, this does not fully level the playing field. Since the self-employed health insurance deduction was, and is, not considered an ordinary and necessary business expense for the self-employed as it is for the corporate entity, the premiums, while deductible from the income tax, are still subject to the self-employment tax.

Congress must recognize health insurance as a necessary business expense for the self-employed and allow the self-employed to deduct premiums from their FICA tax.

Promotional Products And Qualified Wellness Programs

In order to motivate employees to participate in a wellness program, employers are best served when they offer incentives to join the program, and when they provide recognition and awards for employees who reach significant plateaus and meet goals or targets. A detailed wellness program also requires an assessment of the general health and well-being of employees to provide baseline information before starting a program in order to measure its relative success. Because employees are sometimes reluctant to provide personal information and need to see an immediate tangible benefit for their efforts, incentives, awards and recognition provide them a compelling reason to participate in wellness programs.



There are dozens of studies that show connections between wellness programs and reduced health care costs. The Centers for Disease Control and Prevention published a report

in 2016 that showed a link between a lack of adequate physical activity and higher health care costs. The results of that study showed that compared to people who are active, inactive people spend \$1,313 more on health care every year. Results from the Illinois Workplace Wellness Study published in June 2018 showed wellness program participants spent \$525 monthly on health care, while nonparticipants spent \$657 monthly. Those same groups of participants and nonparticipants spent \$273 and \$387 respectively on hospital-related costs.

Incentives and recognition can be most beneficial if they are also conferred a tax benefit; namely, qualified wellness awards of up to \$400 per recipient that are given to eligible employees who participate in a qualified wellness program should be nontaxable to the employee and deductible by the employer.

Qualified wellness awards will motivate employees to participate in an employer's qualified wellness program by giving them an incentive for doing so. As shown by the the Johnson & Johnson study which assessed the efficacy of wellness programs, such awards and incentives have a long and proven track record of influencing good employee behavior and can be a powerful tool in ensuring the success of the qualified wellness programs championed by the program. To ensure that qualified wellness awards are not disguised compensation, the awards should be in the form of tangible personal property and not cash or cash equivalents.

Appropriately designed, qualified wellness awards will serve as a valuable tool to ensure the success of an employer's qualified wellness program.

Congress must work to reduce the costs of health care and help make American workers healthier. Legislation should be introduced to modify the tax code to support incentives, recognition and awards that encourage employee participation in wellness programs.

Occupational Safety Awareness And Promotional Products

A well-designed safety program sets employees up for success as it is structured to target "zero unsafe behaviors and conditions" rather than "zero injuries."



Behavior-based programs require a commitment on the part of management to actively identify safe behaviors, engage in recognizing and rewarding those behaviors and open the door to a dynamic exchange of information between workers and management. Despite the commitment involved, or perhaps because of it, the behavior-based programs have been found to deliver the greatest value in motivating employees to change their behavior.

Safety recognition programs are typically based on a point system of some sort. The program designer and sponsoring company identify the traits, habits or actions they wish to encourage (or discourage) and assign a point value for actions that support (or eliminate) those traits. Points are earned and then redeemed for items with real or perceived value to the participants. Promotional products can be used as rewards, as well as to communicate the theme of the safety program, to promote and reinforce a safe corporate culture, and also are often used to recognize and reward good safety practices on the spot.

Most experts advise against using cash as an incentive for a number of reasons:

- Once cash is given, it is considered part of compensation and is difficult to take away.
- Cash often drives a sense of entitlement and escalation from one year to the next

Non-monetary awards are recommended. If workers achieve certain goals associated with a point system, they are able to select merchandise. The merchandise delivers a more lasting reward to the employee, there is no financial consequence to the person if the program ends and there are limited tax liabilities for the employee.

Additionally, Congress must protect the IRS tax preference 274(j), enacted into law as part of the 1986 Tax Reform Act. Specifically, 274(j) allows employers to recognize and reward their employees for specific achievements in the area of safety without those employees having to pay taxes on the value of those awards and allows the employers to deduct the value of the awards given out, up to a specified percentage. It is no coincidence that during the 30 years since it was enacted, the U.S. workforce has had a dramatic drop in workplace-related accidents and injuries and 274(j) has been a catalyst that has helped drive this positive change.

Congress must work with the Occupational Safety and Health Administration to determine the nature of successful safety incentive programs and incentivize businesses to adopt programs that recognize and reward safe behaviors.

PRODUCT RESPONSIBILITY—BALANCE RISK AND REASON

Challenges Posed By The Consumer Product Safety Improvement Act Of 2008

During what was later dubbed “The Year of the Recall,” more than 472 consumer products and 20 million toys were recalled in 2007. In response to this, and amid growing concern among consumer groups, Congress passed the Consumer Product Safety Improvement Act (CPSIA) in 2008. This act made significant changes to consumer product safety laws and gave the Consumer Product Safety Commission (CPSC) new responsibilities for ensuring the safety of consumer products. The new requirements regarding children’s products are still a challenge for industry members, who are primarily small businesses without legal or compliance staff. In fact, many companies are made up of just one employee.

The promotional products industry received relief from the burdens of some consumer product safety requirements with the enactment of Public Law 112-28, which provided the Consumer Product Safety Commission (CPSC) with greater authority and discretion in enforcing consumer product safety laws.

With this law, the CPSC is required to seek public comment on opportunities to reduce the cost of third-party testing requirements consistent with ensuring compliance. The law also contained special rules for small-batch manufacturers and directed the CPSC to consider alternative testing requirements for those manufacturers.

Congress must work with the CPSC to continue to balance risk and regulation and foster an environment in which American companies can compete safely and efficiently in a global environment.

Conclusion

In 2019, it is imperative that promotional products professionals work together to educate lawmakers and advocate the power and effectiveness of promotional products. Elected officials must understand that the same advertising medium upon which they rely as an essential campaign tool can make a profound difference in the lives of their constituents.

More than 38,000 promotional products companies operate in the United States, generating more than 24 billion in annual revenue and employing over 500,000 Americans. More than 98 percent of the businesses in the promotional products industry are considered to be small businesses and they face many unique challenges.

If you have questions about PPAI's legislative agenda, contact PPAI Director of Public Affairs Anne Stone at AnneS@ppai.org or PPAI Manager of Public Affairs Maurice Norris at MauriceN@ppai.org.

