P R O M O T I O N A L   P R O D U C T S   A S S O C I A T I O N   I N T E R N A T I O N A L

PPAI LEGISLATIVE *Agenda*

2021

promotionalproductswork.org

PPAI LEGISLATION

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 businesses, 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 changes to labor classifications in some states, the implementation of new joint employer rules, the implementation of international trade agreements and numerous international 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 about essential policy goals.

2020 was an incredibly trying year and it presented challenges we never imagined. As shutdowns were implemented and live events ground to a halt, our members saw their business and livelihoods suffer. Many of our members saw their sales drop by as much as 80% during the first half of 2020. However, true to their entrepreneurial spirit, our members saw a need and filled it. As early as February 2020, the promotional products industry began sourcing and delivering personal protective equipment (PPE) when none was available through traditional channels. Our industry provided face coverings, hand sanitizer, nitrile gloves, floor clings and curbside pickup signs and more—protecting the health and safety of Americans.

As the economy continues its recovery, promotional products will remain the most cost-effective method for businesses to market products and services as well as a reliable source for the PPE that is essential for our recovery from the pandemic.

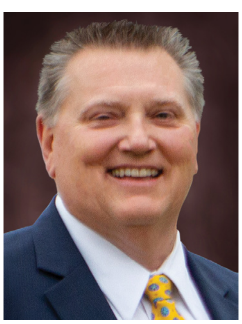
Key areas of concentration for the promotional products industry in 2021 include:

- Continuing education efforts with policymakers about the value of promotional products
- 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 favorable tax climate for 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
- Preserving the independent contractor status

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!



Robert I. McLean Jr., CPA, CAE, CEM
Interim President
Promotional Products Association International

THE PROMOTIONAL PRODUCTS INDUSTRY

Time and again, promotional products have proven themselves to be the most cost-effective method of reaching targeted audiences in a tangible, long-lasting and memorable manner. The promotional products industry represents a vibrant and creative market segment that employs over 477,000 Americans. In recent years, the gross revenue of the 33,000 businesses in this industry has exceeded $24 billion. More than 98 percent of these companies are considered small businesses. Small businesses like these will fuel the collective economic recovery, 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—particularly those messages that encourage social distancing. Promotional products recognize and reward employee achievements and inspire action. They are used to celebrate milestones, sign legislation and reinforce critical messages. A branded face covering protects the wearer and protects others, all while reinforcing the brand message.

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.

Through our legislative priorities outlined in this agenda, PPAI works to protect and preserve the interests of small businesses and encourage policies that drive innovation and entrepreneurship.

Small Business—An Economic Driver

There are over 33,000 promotional products companies in the United States, generating more than $24 billion in annual revenues and employing over 477,000 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.

Promotional Products And Independent Contractors

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

There is a long-standing debate about whether individuals who provide services to a business are employees or independent contractors. That debate saw a resurgence in 2019, when California's governor signed Assembly Bill 5 into law. The legislation, which was revisited in 2020, effectively bans companies from classifying most workers in California as independent contractors. The law also outlines some exceptions to the employment standard and establishes a three-pronged test for determining independent contractor status in California.

The first element of the employment test requires the worker to be free from the control of the hiring organization. This condition must exist in the text of the contract as well as in the practice of the contractor's work. The second element of the test requires the work being performed to be outside the normal course of business for the hiring organization. The third element of the test is a requirement for the contractor to be involved in an occupation or trade that is independently established and the same type of work that is being performed for the hiring entity.

This test makes the presumption that a worker is an employee unless all the elements are demonstrated by the hiring organization.

Soon after California's Assembly Bill 5 was passed into law, the U.S. House of Representatives passed a similar measure. The Protecting the Right to Organize (PRO) Act amends the National Labor Relations Act to establish a new federal definition of the term "employee" which expressly eliminates independent contractors in the U.S. The new legislation makes a broad presumption that all workers in the U.S. are employees unless each element of a three-pronged "ABC" test can be demonstrated.

The legislation also sets new criteria for determining occupational status as an independent contractor instead of an employee. The proposed new criteria entails a three-pronged test for which each of the requirements must be proven if an independent contractor wants to retain his or her status under federal labor law. If enacted, the PRO Act would significantly change how thousands of promotional products companies in the U.S. interact with each other.

The relevant state legislation and the PRO Act changed the nature of the discussions concerning labor classifications and independent contractors. Before last year, these conversations involved classifications pursuant to tax legislation. Because of the new legislation that was introduced, the conversations about employment categories shifted to discussions about proposed modifications to existing labor laws. More than ten different standards define the term "employee" among the states and the federal government.

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.

The passage of the PRO Act would have a detrimental impact on the promotional products industry should this 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. Individual promotional consultants often 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 protect independent contractors' status in 2021 as they consider legislation that affects small businesses and American workers.

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 more than 100 designated beneficiary countries and territories. The GSP program also supports U.S. jobs. U.S. businesses imported nearly $21 billion worth of products under the GSP program in 2019, 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 $1 billion in import duties in 2019. The GSP program, which saved American companies $879 million in 2020, expired in December 2020 before Congress passed legislation to renew it.

Congress must pass legislation to renew the GSP program, including a provision that the renewal be applied retroactively.

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.

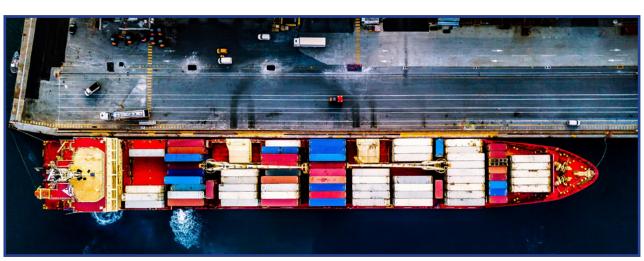
The U.S. Global Value Chain Coalition is on a mission to educate policymakers and the public about the American jobs and the domestic economic growth their companies generate through their value chains. The various components of a global value chain include a variety of domestic participants, for example, 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 301 Tariff Actions

At the direction of former President Trump, 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 various imports. The Section 301 tariffs were implemented through four 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. The fourth tariff list named $300 billion of products imported from China, and encompassed nearly all the remaining imports that were not named on any of the previous lists. 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, especially now that tariffs continue be paid by American businesses and consumers during the public health crisis.

Self-Employed Health Care 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.

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 2021, 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 33,000 promotional products companies operate in the United States, generating more than $24 billion in annual revenue and employing over 477,000 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 Advocacy and Member Engagement Anne Stone, CAE at AnneS@ppai.org or PPAI Public Affairs Manager Maurice Norris at MauriceN@ppai.org.