



# SBLC WEEKLY

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## MILLIONAIRES' SURTAX

This week the Senate will debate the merits of the President's stimulus proposal, the American Jobs Act, the details of which were included in the 9-12-11 Weekly. There is one big change. The Senate majority leadership has ditched the President's revenue raisers and proposed a 5.6 surtax on incomes over \$1 million. The irony is that when the President released his proposal, he talked about the "Buffett Rule" - that millionaires should pay their fair share. His proposal however, had components that would have increased taxes on incomes over \$250,000. I suspect what the majority is proposing is what the general public thought the Buffett Rule was.

What does this mean for small business? All things are relative. In comparison to the President's proposed revenue raisers, it would be an improvement. On a percentage basis, small businesses with taxable income at that level are a small segment of the entire small business community, while some of the President's revenue raisers would have applied across the board. There were 1.7 million C Corporations in 2008 and undoubtedly some of their owners

are in the bracket, but for this analysis, the C's do not count since the business income is taxed according to the corporate rate brackets.

S Corporations, partnerships and sole proprietorships make up the numerical bulk of the small business community and there is a direct line between their income and individual tax rates. The most current data on the number of businesses is from 2008.

2008 Gross Receipts	Number Of S Corporations	Partnerships	Non-Farm Sole Proprietors
Below \$100K	1,664,504	2,458,829	20,225,5231
\$100K to \$250K	707,617	206,257	1,506,201
\$250K to \$500K	536,784	141,415	519,138
\$500K to \$1M	467,402	118,379	227,167
\$1M to \$10M	585,763	187,050	132,164
\$10M +	87,874	34,076	3,282
Total	4,049,944	3,146,006	22,614,483

Note this is gross receipts data but it gives you a sense of the universe.

From the "in case you were wondering" files: seven percent of federal tax revenues came from the income taxes paid directly by C

Corporations in 2009. Individual income tax revenue, including that from all the pass-through businesses, was 44 percent of total federal tax revenue in 2009, but it is hard to say exactly how much came from taxing the net income passed through. Rounding out the pie were payroll taxes (employer and employee) at 42 percent, excise taxes at three percent, and "other taxes" which includes estate and gift taxes, customs duties, Federal Reserve earnings/losses, and miscellaneous receipts, at four percent.

Of course, the facts of greatest interest to us below the line:

There were 233,435 taxpayers with taxable income over \$1 million out of the 140 million returns in 2009;

another 484,497 taxpayers had taxable income between \$500,000 and \$1 million.)

The Senate is not likely to pass the President's bill. Sixty votes will be needed to do so.

## ***PRESIDENT'S PROPOSAL UPDATE***

The President's proposed American Jobs Act does have some provisions I did not mention in the earlier Weekly that usually draw some attention in congressional debates. It includes a "Buy American" provision similar to the one included in the American Recovery and Reinvestment Act of 2009. It says, "None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States." It does include a mechanism for making exceptions.

Also, there is a reaffirmation that the U.S. prevailing wage law for government funded projects, also known as "Davis Bacon" applies. For those of you not familiar with the requirement, it states "Laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality."

## ***THE POSTER HAS BEEN DELAYED***

The National Labor Relations Board (NLRB) has postponed the implementation date for its new notice-posting rule for a couple of months. *The new effective date of the rule is January 31, 2012.*

According to the NLRB, "The decision to extend the rollout period followed queries from businesses and trade organizations indicating uncertainty about which businesses fall under the Board's jurisdiction, and was made in the interest of ensuring broad voluntary compliance. No other changes in the rule, or in the form or content of the notice, will be made."

Translation: They discovered a lot of small businesses think they do not have to post the notice if they are not unionized. That is not the case.

The posting requirement applies to all private-sector employers (including labor unions) subject to the National Labor Relations Act (NLRA), which excludes agricultural, railroad and airline employers. Even if there is no union in your workplace you still have to post the notice. The NLRB has a long standing policy that it "chooses" not to assert its jurisdiction over very small employers whose annual volume of business is not large enough to have a more than a slight effect on interstate commerce. The NLRB's general jurisdictional standards are summarized in the rule and some of them are industry specific. The two most notable "size exemptions" are:

- The retail standard which applies to employers in retail businesses, including home construction. As the NLRB expresses it, the NLRB will not "take" jurisdiction over any such employer that has a gross annual volume of business of less than \$500,000.

- The nonretail standard which applies to most other employers. It is based either on the amount of goods sold or services provided by the employer out of state (called "outflow") or goods or services purchased by the employer from out of state (called "inflow"). The NLRB will not "take" jurisdiction over any employer with an annual inflow or outflow of at less than \$50,000. Outflow can be either direct -- to out-of-state purchasers -- or indirect -- to purchasers that meet other jurisdictional standards. Inflow can also be direct -- purchased directly from out of state -- or indirect -- purchased from sellers within the state that purchased them from out-of-state sellers.

Among the industries with their own specific "size exemption" from NLRB jurisdiction are: Amusement industry; Apartment houses, condominiums, cooperatives; Architects; Art museums, cultural centers, libraries; Bandleaders; Cemeteries; Colleges, universities, other private schools; Communications (radio, TV, cable, telephone, telegraph); Credit unions; Day care centers; Gaming industry; Health care institutions such as nursing homes, visiting nurses associations, hospitals, blood banks, other health care facilities (including doctors' and dentists' offices); Hotels and motels; Instrumentalities of interstate commerce; Labor organizations (as employers); Law firms, legal service organizations; Newspapers (with interstate contacts); Nonprofit charitable institutions (depending on the entity's substantive purpose); Office buildings, shopping centers; Private clubs; Public utilities; Restaurants; Social services organizations; Symphony orchestras; Taxicabs; and Transit systems.