



# *SBLC WEEKLY*

Via E-mail  
November 16, 2009

Volume XI, Issue 39

## **PAYROLL TAXES**

Over the last couple of weeks, I have written about the annual FUTA tax and the social security portion of the FICA payroll taxes. Therefore it is only fitting that I write about the Medicare Hospital Insurance (HI) trust portion of the FICA tax this week. The FICA tax on payroll consists of the 6.2 percent social security tax (Old Age, Survivors and Disability Insurance (OASDI)) and the 1.45 HI tax. The employer and employee each pays the 7.65 percent and the self employed pay the combined 15.3 percent.

Senator Harry Reid (D-NV) apparently has been exploring the possibility of increasing the percentage of the HI portion of the FICA tax to fund health care reform. Unlike the income base used for the social security which is capped at \$106,800 of wages or self employment income, there is no cap on the amount of wages or self employment income subject to the HI tax.

He would use this funding mechanism instead of the tax on health insurance benefits in excess of \$8,000. I do not know how many percentage points he would need to

increase it in order to obtain enough offsetting revenue, and I do not know whether this would obviate the need for the Form 1099 information reporting revenues.

The other day I met with White House folks on health care along with some other associations including SBLC board members, the International Franchise Association and the National Association for the Self-Employed. Briefly at the meeting, but in more detail in a follow up exchange, I voiced concerns to a member of the staff of the Council of Economic Advisers about the pass-through income phenomena. As you know, the House version of health care reform includes a surtax on personal incomes over \$500,000 for individuals and \$1 million for joint filers. Since sole proprietors, partnerships and S Corporation shareholders calculate their tax liability on business income on the personal rate schedule, this is a concern for us. Likewise, at the end of next year when the current temporary top marginal rate is scheduled to increase automatically, it will be a big concern for us. I view the current debate as a dry run for that bigger debate.

The current “defense” that the House surtax will not have much of impact on small businesses is a statistical one based on the fact the most pass through businesses do not have income at the surtax levels. However, as I wrote in an email to the CEA:

“While the statistics demonstrate that only a small number of pass-through business owners have taxable income at the levels under discussion, those statistical based arguments are never persuasive. Never have been in the last thirty years. The small number affected are the true job creating type of businesses and there is a larger cadre below them who think they can get to that level. So that produces the ‘yeah, but...’”

“The principal goal as I perceive it is that the drafters want to keep the rate increase as low as possible so they try to drive the income base as low as possible. What happens if you picked higher income levels? How high would the rate have to be? As I expressed yesterday, the tendency is to set the levels at which they are still perceived by small business owners to be within reach. Why not go to \$10 million or \$50 million? My numbers are probably a bit older than the ones you and the Hill are using but approximately 0.2 percent of partnerships with gross receipts in excess of \$50 million report 67 percent of all partnership gross receipts. For S

corporations, 0.35 percent of S corporations with gross receipts in excess of \$50 million report 34 percent of S corporation gross receipts. At \$10 million in gross receipts, those numbers are one percent of partnership report 80 percent of the gross receipts and two percent of S Corporation report 55 percent of the gross receipts. The number of sole proprietors at either level is negligible.”

While an S Corporation shareholder’s income is not subject to the self-employment tax (principal S Corporation shareholders usually draw a salary so there is still some payroll tax implications), a sole proprietor’s and a partner’s income is, so the pass-through entity/personal high incomes debate has spill over relevance to the HI increase possibility in the Senate as well.

## ***ESTATE TAX***

The pace of the rumor mill regarding estate tax relief has increased. The word is a House vote is imminent. At this time, I am not sure upon what the House will vote, but we are pitching the permanent \$3.5 million exemption/45 percent top rate.

## ***HOW THIS ADMINISTRATION OPERATES***

This week there will be two Administration events involving the small business community – one on financing and one on the H1N1 flu. If you are curious about how this Administration is beginning to adjust its outreach process, here are a couple of opportunities to get a first hand look or listen. In the case of the financing forum, the SBA Administration Karen Mills will be taking questions live in advance of the event this Monday, November 16th, at 3:15pm EST in a live video discussion at [WhiteHouse.gov/live](http://www.whitehouse.gov/live) <<http://www.whitehouse.gov/live>> or through the White House’s live-chat application on Facebook <<http://apps.facebook.com/whitehouselive/>> . The event itself streamed live [WhiteHouse.gov/blog](http://www.whitehouse.gov/blog) <<http://www.whitehouse.gov/blog>> , Wednesday, November 18th, starting at 9am EST.

There will be a conference call on Monday, November 16th at 12:30pm EST with Administration leadership regarding small businesses and the H1N1 virus. On the call will be Small Business Administrator Karen Mills, Department of Homeland Security Assistant Secretary for Health Affairs and Chief Medical Officer Dr. Alexander Garza and the Centers for Disease Control H1N1 Incident Commander and Director of Influenza Coordination Unit Dr. Stephen Redd.

There will be a brief question and answer session at the end of the call. This call is not intended for press purposes. Conf call information: Monday, November 16, 2009 at 12:30PM EST Dial-in: (800) 288-8968, Password for operator: H1N1.