SMALL BUSINESS LEGISLATIVE COUNCIL

# SBLC WEEKLY

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## *GOING GREEN*

Do you claim your products and services are "eco-friendly" or they possess some other environment-related quality? If you do, the Federal Trade Commission (FTC) has released an updated set of what they refer to as their "Green Guides" and you might want to become familiar with them.

Technically, the FTC does not regulate environmental claims. The Green Guides are not regulations. The Green Guides describe the types of environmental claims the FTC may or may not find deceptive under Section 5 of the FTC Act. Under Section 5, the agency can take enforcement action against deceptive claims, which ultimately can lead to Commission orders prohibiting deceptive advertising and marketing and fines if those orders are later violated. There is no private right of action for enforcing deceptive claim provisions.

The guides apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals. The guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.

If you are thinking, "I do not sell my goods and services to consumers and therefore I do not have to worry about this," the FTC notes the Green Guides also apply to business-to-business transactions.

Among the "claims" covered by the guides are General Environmental Benefit Claims; Carbon Offsets; Certifications and Seals of Approval; Compostable Claims; Degradable Claims; Free-Of Claims; Non-Toxic Claims; Ozone-Safe and Ozone-Friendly Claims; Recyclable Claims. Recycled Content Claims; Refillable Claims; Renewable Energy Claims, Renewable Materials Claims; and Source Reduction Claims.

According to the FTC, the Green Guides:

- advise marketers not to make an unqualified degradable claim for a solid waste product unless they can prove that the entire product or package will completely break down and return to nature within one year after customary disposal;

- caution that items destined for landfills, incinerators, or recycling facilities will not degrade within a year, so marketers should not make unqualified degradable claims for these items; and

- clarify guidance on compostable, ozone, recyclable, recycled content, and source reduction claims.

- contain new sections on: 1) certifications and seals of approval; 2) carbon offsets, 3) free-of claims, 4) non-toxic claims, 5) made with renewable energy claims, and 6) made with renewable materials claims.

- do not address use of the terms "sustainable," "natural," and "organic" either because the FTC lacks a sufficient basis to provide meaningful guidance or wants to avoid proposing guidance that duplicates or contradicts rules or guidance of other agencies. Organic claims made for textiles and other products derived from agricultural products are covered by the U.S. Department of Agriculture's National Organic Program.

The Green Guides include examples of how the FTC would apply their analyses. The FTC also updated its website to provide additional information on how to understand and evaluate the Green Guides. It can be found at: http://business.ftc.gov/advertising-and-marketing/environmental-marketing.

PS. By the way, with regard to the eco-friendly reference, the FTC cautions marketers not to make broad, unqualified claims that a product is "environmentally friendly" or "eco-friendly" because the FTC's consumer perception study confirms that such claims are likely to suggest that the product has specific and far-reaching environmental benefits. According to the FTC, very few products, if any, have all the attributes consumers seem to perceive from such claims, making these claims nearly impossible to substantiate.

***BY THE NUMBERS***

While we are waiting for the election outcome, the Congressional Budget Office (CBO) has issued its report on the federal government's past fiscal year's deficit. (Odd as it may seem to say it, we can take heart from one part of the report in particular- the growing tax revenue numbers - usually a sign of a growing economy.) The rest of the article is their words and numbers.

CBO estimates that the federal budget deficit for the year was about $1.1 trillion, approximately $200 billion lower than the shortfall recorded in 2011. The 2012 deficit was equal to 7.0 percent of gross domestic product, CBO estimates, down from 8.7 percent in 2011, 9.0 percent in 2010, and 10.1 percent in 2009, but greater than in any other year since 1947. CBO's deficit estimate is based on data from the Daily Treasury Statements; the Treasury Department will report the actual deficit for fiscal year 2012 later this month.

The estimated deficit is $38 billion below what CBO projected in its August Budget and Economic Outlook because revenues were higher and outlays were lower than expected near the end of the fiscal year.

Total Receipts Were Up by 6 Percent in Fiscal Year 2012.

Receipts in fiscal year 2012 totaled $2.5 trillion, $148 billion more than those in the same period last year. Compared with collections in fiscal year 2011:

- Net receipts from corporate income taxes grew by $61 billion (or 34 percent), largely because of changes in tax rules in recent years.
- Individual income tax receipts grew by $37 billion (or 3 percent), as wages and salaries grew modestly, pushing up withheld tax payments; nonwitheld tax payments rose as well.
- Receipts from social insurance taxes rose by $32 billion (or 4 percent), reflecting greater withholding for payroll taxes and an increase in unemployment insurance taxes as states continued to replenish trust funds that were depleted by the recession.
- Receipts from other sources increased, on net, by about $18 billion (or 9 percent).

Outlays Were Down by 1.6 Percent in Fiscal Year 2012.

Outlays in fiscal year 2012 totaled $3.5 trillion, $59 billion (or 1.6 percent) less than spending in the same period last year. Excluding adjustments recorded in the budget for the estimated cost of credit programs (mainly the Troubled Asset Relief Program), however, the government's outlays decreased by 2 percent relative to spending in 2011.

By CBO's estimates, outlays decreased for several major categories of spending:

- Medicaid—Outlays fell by $24 billion (or 9 percent) because legislated increases in the federal share of the program's costs expired in July 2011.
- Unemployment benefits—Spending dropped by $30 billion (or 24 percent), mostly because fewer people have been receiving benefits in recent months.
- Defense—Outlays fell by $19 billion (or 3 percent), after adjusting for timing shifts, in part because of lower spending for military operations in Afghanistan and Iraq.
- Education programs—Net outlays were lower by $29 billion (or 30 percent), excluding changes recorded in the budget for the estimated cost of student loans. That decline has occurred largely because of waning spending from funding provided by the American Recovery and Reinvestment Act. (Most of that spending occurred before 2012.)