

**Fair Share Act of 2008**  
**(Representatives Ellsworth and Emanuel/Senator Kerry)**

**Background:** Social Security benefits and certain Medicare benefits are financed primarily by payroll taxes on covered wages. Both employers and employees pay these taxes, contributing equal shares. American employers are required to pay the employer share of the Federal Insurance Contributions Act (FICA) taxes to fund Social Security and Medicare for their U.S employees. For 2008, the employer rate of the Social Security Act payroll tax is 6.2 percent of the first \$102,000 of the employee's wages. The employer rate of the Medicare tax is 1.45 percent of the employee's wages. The Medicare Part A program is primarily financed through the Medicare payroll tax which is credited in the Hospital Insurance (HI) trust fund. Currently, American employers with foreign affiliates have the option to pay employment taxes for services performed outside the United States and performed by Americans in the employ of the foreign affiliate. The United States has entered into international Social Security agreements, commonly referred to as totalization agreements, with 21 countries. These agreements eliminate dual Social Security taxation, the situation that occurs when a worker from one country is required to pay Social Security taxes to both countries on the same earnings.

**Problem:** American companies who are benefiting from U.S. government contracts are able to set up foreign subsidiaries in tax havens and treat American workers employed in connection with the contract as employees of the subsidiary. As a result, those employers can avoid Social Security and Medicare payroll taxes. On March 6, 2008, Farah Stockman of the *Boston Globe* reported that Kellogg Brown & Root has avoided payroll taxes by hiring workers through shell companies in the Cayman Islands.

**What the Legislation Would Do:**

The Fair Share Act of 2008 will end the practice of U.S. government contractors setting up shell companies in foreign jurisdictions to avoid payroll taxes. The legislation amends the Internal Revenue Code and the Social Security Act to treat foreign subsidiaries of U.S. companies performing services under contract with the United States government as American employers for the purpose of Social Security and Medicare payroll taxes. The legislation will apply to foreign subsidiaries of a U.S. parent. The degree of common ownership applied by the legislation is 50 percent, meaning that the U.S. parent would have to own more than 50 percent of the subsidiary.

In addition, the legislation addresses the situation in which a U.S. subsidiary of a foreign corporation subcontracts with its foreign subsidiary to perform a contract with the U.S government. In this situation, the legislation would apply to wages paid by the foreign subsidiary to its U.S. employees. The legislation does not address the situation in which the foreign parent contracts directly with the U.S. government. Present law will continue to apply to totalization agreements.

**Effective Date of Legislation:**

This legislation applies to services performed after the date of enactment.