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Obama Tax Hikes By Executive Action Versus The Constitution

President Obama's White House Press Secretary, Josh Earnest said his boss is ["very interested" in raising taxes through executive action](#). Perhaps Sen. Bernie Sanders (I-VT) started the fuss by wanting to raise over \$100 billion in taxes. What was controversial was suggesting that the tax hikes be taken via executive action, as [detailed in this letter](#). Following his controversial immigration 'reform,' Mr. Obama may think that his executive powers are broader than most people thought they were.

In any case, the President likes the idea of executive action on taxes. Yet there is new talk of separation of powers. It must seem déjà vu to the former Constitutional Law professor Mr. Obama once was. There is some backlash already. U.S. Rep. Vern Buchanan, a senior member of the tax-writing House Ways and Means Committee, strongly objected to the President's stated "interest" in raising taxes through executive action.



In a letter to the President, Rep. Buchanan reminded that, “we have a document called the United States Constitution that clearly spells out which branch of government has the authority to “lay and collect taxes,” — and it is the Congress — not the President.” Rep. Buchanan also sent a copy of the letter to Secretary of the Treasury Jacob Lew. It is at least indelicate to be reminding a sitting president that:

“Article 1, Section 8 of the U.S. Constitution is clear on this matter — only Congress has the power to tax. The statement by your press secretary this week that you are ‘very interested’ in reshaping the tax code through unilateral action would be a clear violation of the Constitution and continue a disturbing lack of bipartisanship.”

“I remind you that the last successful tax reform effort, nearly 30 years ago, required President Reagan and a Democratic Congress to find common ground. But unilateral action could poison the well of goodwill that is necessary to tackle this urgent challenge in a bipartisan manner.”

Up until now, of course, tax laws have been passed by Congress and administered by the IRS and Treasury Department. But in Mr. Obama’s defense, the precise line between administration of *existing* taxes and forging new ones can at times be blurred. Sen. Sanders who originally proposed the idea has characterized the tax hikes in question more in the nature of closing corporate tax loopholes.

The executive action, Sen. Sanders suggests, would not be implementing new taxes. Maybe, but the President seems enamored enough with his executive action powers that these reminders do not seem entirely specious. Even the IRS is traditionally reluctant to act by fiat.

Sen. Sanders appears to have opened a veritable barn door for the President to act more broadly than is customary. Although the actions recommended by Sen. Sanders target corporations, it is worth noting that the [tax hikes](#) included in the President’s budget are numerous. And, they are unlikely to be passed by a Republican-controlled Congress. That means Plan B.

According to Press Secretary Earnest, “the president has asked his team to examine the array of executive authorities that are available to him to try to make progress on his goals. So I am not in a position to talk in any detail at this point, but the President is very interested in this avenue generally.” President Obama likes to raise taxes and to enact new ones, as his budget makes clear.

Sen. Sanders wants the President to fix “check the box” rules that allow multinational corporations to shield profits from taxation. He also wants to end the tax break for carried interests. But as long as executive action may expand to tax, it is worth asking what else from President Obama’s budget might be considered. There are many [tax proposals in his budget](#).

It appeared that a Republican Congress made these and other proposed tax changes stillborn. Yet if President Obama can give work permits, Social Security numbers, and drivers licenses to approximately 4 million illegal immigrants, perhaps some tax increases would be easy.

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