

Lessons From Barack and Michelle Obama's Tax Returns

By Dorothy A. Brown

Dorothy A. Brown, J.D. (Georgetown), L.L.M. in tax (New York University), is vice provost for academic affairs and professor of law at Emory University. The views expressed herein are solely hers and do not represent the views of Emory University. She would like to thank Carol Anderson, Paul Caron, Tressie Cottom, Sherman James, Francine Lipman, Marisela Enedina Martinez-Cola, and the participants at the 2014 Pepperdine Tax Symposium for their helpful comments. She would especially like to thank David Jordan of the IRS Statistics of Income division for his patient assistance navigating through IRS data. She would also like to thank Yousef Annab for his excellent research assistance.

Copyright 2014 Dorothy A. Brown.
All rights reserved.

Introduction

This project asks whether Barack and Michelle Obama have transcended race and resemble their financial peers who are disproportionately white, or whether they more closely resemble their racial peers, who disproportionately have much lower incomes. If the president and his wife compare to their financial peers, it could be argued that class trumps race and the Obamas have preserved horizontal equity.¹ However, if we find that they are more like their lower-income black peers, we may not be post-racial yet. My analysis examines five years of the first family's tax return data and shows that the Obamas more closely resemble their black peers than their financial peers. Race still matters, even for this upper-middle-income black family.

I have analyzed the Obamas' 2000 through 2004 tax returns,² which provide a rare window into the

black middle class, albeit the upper-middle class.³ As Benjamin Bowser wrote, "Important aspects of middle-class life in the United States cannot be fully understood or appreciated unless real race-based differences in social class are acknowledged and explored."⁴ In analyzing the Obamas' tax returns, I conclude that the Obamas paid more in taxes than their financial peers for two primary reasons.⁵ First, they paid a steep marriage penalty because of the significant amount that Michelle Obama contributed to household income.⁶ Second, they had virtually no income from stock ownership and thus were ineligible for the preferential rate on any portion of their income. The early Obama tax returns give us a bird's-eye view of one upper-middle-income black family and show how horizontal equity norms are violated based largely on a taxpayer's race.

Definitions are in order. Who comprises the middle class is subject to much disagreement and

returns, and although their income for that period puts them in the upper reaches of the middle class, they are still well within its parameters. See *infra* text accompanying note 7 defining the term "middle class." My prior work has examined their higher-earning income years and described how their income is taxed very differently from their financial peers. See Dorothy A. Brown, "The 535 Report: A Pathway to Fundamental Tax Reform," 40 *Pepp. L. Rev.* 1155 (2013); Brown, "Why the Obamas Paid Too Much in Taxes," *Tax Notes*, May 17, 2010, p. 805. See <http://1.barackobama.com/tax-returns/> for tax returns.

³The black middle class is different from the white middle class. Cf. Mary Pattillo-McCoy, *Black Picket Fences: Privilege and Peril Among the Black Middle Class 2* (University of Chicago Press, 1999) ("The reality, however, is that even the black and white middle classes remain separate and unequal. . . . We know, for example, that a more appropriate socioeconomic label for members of the black middle class is 'lower middle class'" (emphasis in text)).

⁴Benjamin P. Bowser, *The Black Middle Class: Social Mobility — And Vulnerability 1* (Lynne Rienner 2007).

⁵As measured by a comparison between the Obamas' effective tax rates and the IRS published data on average tax rates for the years 2000 through 2004. SOI Tax Stats — Individual Income Tax Rates and Tax Shares, available at http://www.irs.gov/uac/SOI-Tax-Stats-Individual-Income-Tax-Rates-and-Tax-Shares#_article.

⁶Cf. Brown, "Race, Class, and Gender Essentialism in Tax Literature: The Joint Return," 54 *Wash. & Lee L. Rev.* 1469 (1997); Brown, "The Marriage Penalty/Bonus Debate: Legislative Issues in Black and White," 16 *N.Y.L. Sch. J. Hum. Rts.* 287 (1999); Brown, "Racial Equality in the Twenty-First Century: What's Tax Policy Got To Do With It?" 21 *U. Ark. Little Rock L. Rev.* 759 (1999); see *infra* text accompanying notes 37-39.

¹Joel S. Newman, *Federal Income Taxation: Cases, Problems, and Materials* 23 (2012) ("Horizontal equity stands for the proposition that people in similar circumstances should be taxed in similar ways.").

²I study the tax years 2000 through 2004 because those returns showed the least earnings of all the released Obama tax
(Footnote continued in next column.)

debate. I will use the following parameters: Lower-middle income is defined as \$30,000-\$49,999; middle income is defined as \$50,000-\$99,999; and upper-middle income is defined as \$100,000 and above.⁷ The Census Bureau provides racial and ethnic household income data for households greater than \$100,000. For household income between \$100,000 and \$149,999, we find 8.1 percent of blacks; 8.2 percent of Hispanics; 15.7 percent of whites; and 19.4 percent of Asians. For household income between \$150,000 and \$199,999, we find 2.3 percent of Hispanics; 2.4 percent of blacks; 6 percent of whites; and 8.9 percent of Asians. For household income between \$200,000 and \$249,999, we find .7 percent of blacks; .9 percent of Hispanics; 2.5 percent of whites; and 4.4 percent of Asians. For household income greater than \$250,000, we find .9 percent of blacks; 1 percent of Hispanics; 2.8 percent of whites; and 5.0 percent of Asians.⁸ Seventeen percent of blacks and 20 percent of whites fall in the lower-middle income range. Eight percent of blacks and 14 percent of whites are in the middle income range. One percent of blacks and 4 percent of whites are found in the upper-middle income range. The Obamas' tax returns place them in the highest-earning 1 percent of black middle-income households in America.

That single fact could subject this study to two criticisms. First, given that so few blacks (26 percent) are even middle income — let alone have income as high as the Obamas — how does such a study provide insight into the struggles faced by the majority of poor blacks in America?⁹ A second, related question is why should we care about the highest-upper-income blacks?

My response is twofold. First, if you do not look, how will you ever know what lessons could be learned? What I found suggests that in many instances the Obamas are similar to their lower-income racial peers. Alleviating problems for the Obamas could lead to improvements for the majority of blacks who have lower incomes. Second, if the highest-income blacks are making it into the middle class but are economically struggling because they have to pay more in taxes than their financial peers,

⁷Karyn R. Lacy, *Blue-Chip Black: Race, Class, and Status in the New Black Middle Class 4* (University of California Press, 2007).

⁸Table 695, Money Income of Families — Number and Distribution by Race and Hispanic Origin: 209, US Census Bureau, Statistical Abstract of the United States: 2012; <http://www.census.gov/compendia/statab/2012/tables/12s0696.pdf>.

⁹Rarely, however, are there any complaints raised about why so many articles focus on the white middle class, even though they represent only 38 percent of whites.

I hope to begin a conversation that will lead to change. Horizontal equity requires more out of our tax laws.

Effective Tax Rates

The Obamas' combined annual income fluctuated between 2000 and 2004. The lowest was \$207,647 on their 2004 tax return and the highest was \$272,759 on their 2001 tax return. However, their effective tax rates — as measured by dividing total tax by adjusted gross income — are higher when they earned more. Here are their incomes listed from low to high (rather than in chronological order):

Income	Effective Tax Rate	Year
\$207,647	19.47	2004 ^a
\$238,327	21.76	2003 ^b
\$240,505	26.50	2000 ^c
\$259,394	26.58	2002 ^d
\$272,759	31.56	2001 ^e

^a40,426/207,647.
^b51,856/238,327.
^c63,732/240,505.
^d68,958/259,394.
^e86,072/272,759.

For the Obamas, the progressive rate schedule worked the way it is supposed to work. As their income rose, effective tax rates also rose. However, the Obamas paid more in taxes than their financial peers. Consider the following, which also includes average tax rates from the years in question, as calculated by the IRS Statistics of Income division:

Income	Obamas' Effective Tax Rate	Average Effective Tax Rate ^a	Year
\$207,647	19.47	20.6 ^b	2004
\$238,327	21.76	21.0 ^c	2003
\$240,505	26.50	23.9 ^d	2000
\$259,394	26.58	22.8 ^e	2002
\$272,759	31.56	23.3 ^f	2001

^aThis represents the average tax rate for households with AGI between \$200,000 and \$499,999.
^bSee <http://www.irs.gov/pub/irs-soi/04inrate.pdf> at 24 (Figure B).
^cSee <http://www.irs.gov/pub/irs-soi/03inrate.pdf> at 21 (Figure B).
^dSee <http://www.irs.gov/pub/irs-soi/00inrate.pdf> at 8 (Figure B).
^eSee <http://www.irs.gov/pub/irs-soi/02inrate.pdf> at 23 (Figure B).
^fSee <http://www.irs.gov/pub/irs-soi/01taxsh.pdf> at 11 (Figure B).

In four of the five years the Obamas' effective tax rate was higher than the average tax rates paid by their financial peers. In reality, the disparity is even greater than the chart suggests because the average tax rates were calculated for income levels between \$200,000 and \$500,000. In at least three of the years studied, the upper threshold is more than twice the Obamas' actual AGI levels. Even so, the Obamas had a higher effective tax rate in four of the five years.

The disparity was the greatest in 2001 and lowest in 2003. Each year except one, however, the Obamas paid a higher tax rate than their peers. How could this happen? At this point, I will consider three arguably race-neutral explanations.

First, do the Obamas own a home? (Owning a home and having a mortgage interest deduction make it far more likely that a taxpayer will itemize deductions.) Although homeownership rates vary by race (with the majority of blacks being renters¹⁰), at high income levels the disparity almost disappears.¹¹ In 1993, a year after they were married, the Obamas bought a two-bedroom condominium in the Hyde Park section of Chicago for \$277,500.¹² (There may, however, be a race-related difference between the Obamas and their financial peers. We do not have access to the interest rate the Obamas paid on their mortgage or how it compared with the interest rates paid by their financial peers.)

Second, did the Obamas itemize their deductions? If they did not, it is possible that their tax bill might be higher than their financial peers who did itemize. Two-thirds of Americans do not itemize deductions.¹³ For 2010, 33 percent of Americans itemized their deductions.¹⁴ For taxpayers with an AGI above \$200,000, the share who itemized ranged from 95 to 97 percent.¹⁵ If the Obamas itemized, the

next question is whether the amount of their itemized deductions is less than that taken by their financial peers? If the Obamas' itemized deductions were lower than their financial peers, we would expect their tax rate to be higher.

Year	Obamas' Itemized Deductions	Average Itemized Deductions	
		Household Income ^a	
		100-200	200-500
2000	\$20,281	\$24,166	\$42,426 ^b
2001	\$17,443	\$25,230	\$69,548 ^c
2002	\$22,272	\$25,931	\$46,240 ^d
2003	\$24,030	\$26,049	\$44,930 ^e
2004	\$25,028	\$26,270	\$45,177 ^f

^aAvailable at [For each year studied, the Obamas had lower itemized deductions than their financial peers. In fact, they had lower itemized deductions than their lower-income financial peers — those with household income between \\$100,000 and \\$200,000. This could be a partial explanation for their higher tax rate.](http://www.irs.gov/uac/SOI-Tax-Stats-Individual-Income-Tax>Returns-Publication-1304-(Complete-Report) Table 1.2; Divide Column 5 by Column 4 for years 2000-2004. Information was given for AGI for households between $100,000 and $199,999; and for households between $200,000 and $499,999.</p>
<p>^b<i>Id.</i> $100-199: 175,201,318,000/7,249,967; $200-499: 84,614,841,000/1,994,390.</p>
<p>^c<i>Id.</i> $100-199: 196,028,224,000/7,715,862; $200-499: 88,813,535,000/1,910,378.</p>
<p>^d<i>Id.</i> $100-199: 199,789,087,000/7,704,664; $200-499: 83,415,127,000/1,803,941.</p>
<p>^e<i>Id.</i> $100-199: 208,816,881,000/8,016,424; $200-499: 84,315,913,000/1,876,601.</p>
<p>^f<i>Id.</i> $100-199: 230,552,713,000/8,776,391; $200-499: 100,098,177,000/2,215,675.</p>
</div>
<div data-bbox=)

Third, did the Obamas have access to tax preparers? For tax years 2000 and 2001, the Obamas prepared their tax returns themselves. For tax years 2002 through 2004, they hired tax return preparers. Thus, access to tax return preparers does not explain the rate-based differential.

Next I consider two race-based explanations: the marriage penalty and stock ownership. The marriage penalty is greatest when spouses contribute roughly equal amounts to household income.¹⁶ Today, marriage penalties tend to affect couples who fall into tax brackets higher than the 25 percent bracket, which ends at \$137,050 for married couples.¹⁷ However, marriage penalties for the

¹⁰Brown, "Shades of the American Dream," 87 *Wash. U. L. Rev.* 329, 348 (2010).

¹¹*Id.* at 329, 353 (Table 4.2 showing that once income exceeds \$119,999, 93 percent of whites and almost 88 percent of blacks are homeowners).

¹²Dennis Rodkin, "Renters Snap Up Obamas' Former Condo," *Chicago Magazine*, available at <http://www.chicagomag.com/Radar/Deal-Estate/August-2010/Renters-Snap-Up-Obamas-Former-Condo/>.

¹³Sean Lowry, "Itemized Tax Deductions for Individuals: Data Analysis," Congressional Research Service, 2 (Mar. 21, 2013). For 2000, 33 percent of Americans itemized their deductions. For 2001, 34 percent of Americans itemized their deductions. For 2002, 35 percent of Americans itemized their deductions. For 2003, 34 percent of Americans itemized their deductions. For 2004, 34 percent of Americans itemized their deductions. Publication 1304, Table 1.2, available at <http://www.irs.gov/uac/SOI-Tax-Stats-Individual-Statistical-Tables-by-Size-of-Adjusted-Gross-Income>.

¹⁴*Id.*

¹⁵*Id.*

¹⁶See Brown, *supra* note 6.

¹⁷Section 1.

years studied were quite different. Marriage penalties began at the 15 percent bracket for tax years 2000, 2001, and 2002.¹⁸ For 2003 and 2004, the penalty started at the 25 percent bracket.¹⁹ As a result of their household income levels, the Obamas would have been subject to *significant* marriage penalties if either spouse contributed close to 50 percent of household income.

For 2000 and 2001, there are no data on how much income was contributed by each spouse because for those two years the Obamas prepared their tax returns and that information was not provided. For the tax years 2002 through 2004, however, spousal contribution information was provided and we see Michelle contributing an ever-increasing amount to household income. For each year, however, the Obamas are subject to the greatest penalty because the lower-earning spouse contributes between 40 and 50 percent. In 2002 Michelle Obama contributed 43.67 percent of wage income to the household.²⁰ In 2003 she contributed 48.63 percent to the household.²¹ In 2004 Michelle Obama contributed 58.80 percent to the household.²²

Between 2002 and 2004, the median contribution to household income by wives was approximately 35 percent.²³ Labor historian Jacqueline Jones documented how black wives have historically worked outside the home more than white wives.²⁴ Sociologists have also shown how black wives contribute more to household income than white wives.²⁵ Similarly, my prior research showed through an examination of Census Bureau data that even at the

highest income levels, married black couples were more likely to pay a penalty than married white couples, largely because married black husbands and wives were the most likely to contribute roughly equal amounts to household income.²⁶ The Obamas are no exception.

For each year studied, Michelle Obama contributed significantly more toward household income than most wives, according to the Bureau of Labor Statistics. She contributed 8 percentage points more in 2002, 13 percentage points more in 2003, and 23 percentage points more in 2004. The Obamas' tax bill was significantly higher than their peers in part because they were married to each other.²⁷ In this instance, they are not like their financial peers but more like their black peers, regardless of their household income. While there has been much public policy analysis of government programs that have a racially disparate impact on low-income (and no-income) Americans, this study suggests that equal attention should be given to policies (in this case, the marriage penalty) that affect the highest-income Americans differently because of race.

The second potential explanation for why the Obamas' taxes are higher than their financial peers is their lack of stock ownership and income eligible for capital gains treatment. In 2000 the Obamas received \$1,836 in a demutualization payment²⁸ and no dividend payments. In tax years 2001 through 2004, the Obamas received no capital gains or dividend payments.

¹⁸*Id.* (For any year that the marriage filing jointly is not double the single amount, there is a marriage penalty.)

¹⁹*Id.*

²⁰For 2002: $98,826/226,300 = 43.67$ percent. In this year, the couple's AGI is greater than just their wages by \$34,491, which includes speaking fees received presumably by Barack Obama. If those fees are included on his side of the ledger the math becomes $\$98,826/\$260,791 = 37.90$ percent, which still places the Obamas in significant marriage penalty territory.

²¹For 2003: $\$115,889/\$238,327 = 48.626$ percent.

²²For 2004: $\$121,910/\$207,342 = 58.797$ percent.

²³Women in the Labor Force: A Databook, BLS.gov, Table 24, at 81, available at <http://www.bls.gov/cps/wlf-databook-2012.pdf>.

²⁴Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family From Slavery to the Present* (Basic Books 2010).

²⁵See, e.g., Sarah Winslow-Bowe, "Husbands' and Wives' Relative Earnings," 30 *Journal of Family Issues* 1405, 1409-1410 (2009) ("When these income differentials are combined with racial/ethnic variation in labor force participation, there is evidence that Black women are more likely than both White and Hispanic women to have annual incomes that reach or exceed their husbands'"); Sara B. Raley, Marybeth J. Mattingly, and Suzanne M. Bianchi, "How Dual Are Dual-Income Couples? Documenting Change From 1970-2001," 68 *Journal of Marriage and Family* 11, 24 (2006) ("In all years, Black couples were

(Footnote continued in next column.)

significantly more likely than other couples to be dual providers. . . . Blacks were also more likely than Whites to be in arrangements where the wife was an equal rather than secondary provider.").

²⁶Brown, *supra* note 6. I would like to note that my earlier research published in 1996 was during a time when same-sex couples were not legally allowed to marry and have their marriage respected for federal tax purposes, which is why the limiting language of husbands and wives was used. The same is not true today.

²⁷President George W. Bush signed into law marriage penalty relief at the lower end of the tax rate schedule, but not at the higher end. The Obamas would still have been subject to the marriage penalty.

²⁸This appears to represent a cash-out of the equity interest in a mutual life insurance company. I would like to thank Martin J. McMahon Jr. for helping me figure this out. See also <http://www.unclaimed-demutualization.com> ("Demutualization is the process of converting a mutual life insurance company, owned by its policyholders, to a publicly traded stock company owned by shareholders, pursuant to a plan of conversion approved by government regulators. . . . Mutual life policyholders (and heirs) continue to be entitled to receive whatever policy benefits may be due, but in addition receive stock, cash and/or policy credits in exchange for their ownership interest in the old mutual insurance company.").

Tax Policy Center data for 2005 indicate that greater than 75 percent of all capital gains and dividend income flows to households with income above \$200,000.²⁹ According to IRS data from 2003, the percent of capital gains and dividend income as a share of all income is 1.4 percent for the average household making less than \$100,000.³⁰ For households making between \$200,000 and \$1 million, this income accounts for 12.2 percent of total income.³¹ Again, the Obamas do not resemble their financial peers — they appear more like those households making less than \$100,000, which is less than half of their household income.

It is well documented that blacks do not invest in the stock market to the extent that whites do — regardless of their income level. As I have explained previously, the first family's experience "is consistent with numerous studies that show whites have higher stock ownership than blacks, Latinos, and other people of color, even after controlling for income."³² While many may assume that once

²⁹Joel Friedman and Katherine Richards, "Capital Gains and Dividend Tax Cuts: Data Make Clear That High-Income Households Benefit the Most," Center on Budget and Policy Priorities, at 3 (Jan. 30, 2006) ("Only 11 percent of capital gains and dividend income goes to the 86 percent of households with incomes of less than \$100,000.").

³⁰*Id.* at Figure 1 ("For those making less than \$100,000, capital gains and dividend income makes up an average of 1.4 percent of total income.").

³¹*Id.*

³²See Brown, "The 535 Report," *supra* note 2, at 1155, 1164 (citing a 2007 study by Wang and Hanna finding that whites had higher stock ownership than blacks, Latinos, and other people of color, even after controlling for income, risk tolerance, and business ownership, among other things); Sherman D. Hanna, Cong Wang, and Yoonkook Yuh, "Racial/Ethnic Differences in High Return Investment Ownership: A Decomposition Analysis," *Journal of Financial Counseling & Planning*, Vol. 21, Issue 2, at 44 (Dec. 2010).

blacks earn more money, their stock ownership will mirror that of their equal-earning white peers because they believe stock ownership is a class issue, the Obamas' tax return data proves that assumption to be false. Higher household income has not allowed the Obamas to transcend race.

Conclusion

This tax return analysis has attempted to shed light on the black middle class through the lens of one family's tax returns over a period of five years. I believe that Barack and Michelle Obama represent many others — of all racial and ethnic backgrounds — whose stories are equally compelling. Future research should provide a more complete examination of middle-income tax returns by race to see whether the first family was a financial outlier. Unfortunately, the IRS does not collect tax return data by race, and the Obamas' tax returns are the only publicly available tax returns of black middle-income taxpayers that I have been able to examine.

A new study from the Center for Responsive Politics shows that for the first time a majority of members of Congress are millionaires.³³ A more robust study might demonstrate just how many middle-income families are paying a higher tax bill because the mostly millionaire Congress enacts laws that benefit other millionaires. Black middle-income families should not be paying more in taxes than their financial peers. Horizontal equity requires that attention be paid to this issue.

³³Matt Berman, "Most Members of Congress Are Millionaires," *National Journal* (Jan. 9, 2014), available at <http://www.nationaljournal.com/congress/most-members-of-congress-are-millionaires-20140109> ("For the first time, most U.S. lawmakers are millionaires, according to a new analysis from the Center for Responsive Politics. At least 268 current members, out of 534, had an average 2012 net worth of at least \$1 million.").