

## 2015 TAX EXTENDER LEGISLATION

### IMMIGRANT-SPECIFIC PROVISIONS

#### Summary

While this bill makes permanent certain key tax credits, including the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC), which will positively impact the lives of low-income immigrants, these provisions came at the expense of serious restrictions in other ways to this same population of taxpayers. In doing so, the bill effectively creates a two-tiered tax system.

#### Concerns in brief

- The bill rewrites existing tax law to:
  - **Deny retroactive EITC claims to anyone, regardless of status, who receives a new Social Security number.**
  - **Deny retroactive claims of the CTC and its refundable component, the Additional Child Tax Credit (ACTC), for years the tax filer did not have an ITIN.**
  - **Deny retroactive claims of American Opportunity Tax Credit (AOTC) for years the tax filer did not have an ITIN.**
  - **Establish major barriers for individuals applying for Individual Tax Identification Numbers (ITINs) for themselves and their dependents.**
- In denying these vital economic supports to immigrants who—even those who have been playing by the tax rules and filing their taxes—the bill establishes different tax law requirements for millions of immigrant tax filers than for other tax filers with identical economic circumstances.
- The bill could severely impact the family income of up to 5.5 million children – 4.5 million of whom are U.S. citizens.
- Rather than allow the IRS to continue to do its job and treat all taxpayers fairly based on the wages they report rather than their immigration status, the bill offers a dangerous endorsement for a two-tiered, discriminatory tax system.
- Millions of undocumented immigrant families as well as lawfully present immigrants--including DACA and DACA recipients, humanitarian immigrants such as asylees and survivors of domestic violence and trafficking—will be harmed.
- By creating additional barriers to ITINs, the bill undermines tax compliance and reduces tax revenues from immigrants.

## **Background on ITINs:**

- As of August 2012, there were 21 million ITINs issued by the IRS since the program was created in 1996.<sup>1</sup> The majority of ITINs issued are for dependents.
- With extremely limited exceptions, you can only apply for an ITIN at the same time that you file a tax return. Normal processing times for ITINs have been roughly 6-8 weeks (this excludes the time for processing the tax return), though there are often delays--in some cases due to the IRS losing original identity documents.
- The IRS implemented new rules for ITIN applications as of January 2013, making the process stricter and more burdensome. Since the new IRS rules on ITINs went into effect, the National Taxpayer Advocate (NTA) has recorded a dramatic decline in the number of ITIN applications, which it attributed to the barriers of requiring either in-person applications or a mailing in of original or certified copies of valuable identity documents.
- In the first year after changes went into effect, the NTA reported a 50% decline in applications and a 50% increase in application denials.<sup>2</sup> According to the NTA, between January and November 2012, the IRS received 1,947,836 ITIN applications. During the same period in 2013, it received 1,069,612 ITIN applications. In 2014, it received only 824,256. Applications from January through March 2015 were at lower levels than during the same period the prior year.
- Currently, Certified Acceptance Agents (CAAs) can only do in-person verification of identity documents for principal and secondary ITIN applicants—not dependents. There are also too few CAAs, due to a burdensome and backlogged application process. What is needed is both: a) more CAAs to remove geographic/financial barriers to accessing the in-person application option and b) CAA authority to verify identity documents for dependents.
- The combined effect of these changes has placed enormous barriers to obtaining an ITIN. Barriers to ITINs prevent overall tax compliance; conflict with the IRS mission to collect taxes; prevent compliance with the Affordable Care Act; and bar access to important safety net tax credits.

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<sup>1</sup> U.S. Taxpayer Advocate Service, “The IRS’ Handling of ITIN Applications Imposes an Onerous Burden on ITIN Applicants, Discourages Compliance, and Negatively Affects the IRS’ Ability to Detect and Deter Fraud,” *2012 Annual Report to Congress*, p. 155, <http://www.taxpayeradvocate.irs.gov/2012-Annual-Report/downloads/Most-Serious-Problems-ITIN-Individual-Taxpayer-Identification-Number.pdf>.

<sup>2</sup> U.S. Taxpayer Advocate Service, *2013 Annual Report to Congress*, p. 214 <http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/INDIVIDUAL-TAXPAYER-IDENTIFICATION-NUMBERS-ITIN-Application-Procedures-Burden-Taxpayers-and-Create-a-Barrier-to-Return-Filing.pdf>.

## **Impact of the legislation's ITIN requirements**

- Under section 203, anyone issued an ITIN prior to 1/1/13 must file for a new ITIN (during a staggered period between 2017-2020), regardless of whether they have actively used their ITIN to file taxes.
- For those with ITINs issued prior to January 2008, they will need to file by January 2017, and all of the estimated 21 million ITIN filers who were issued ITINs before January 2013—even if they are actively using them every year to file their federal income taxes, will be required to file for a new ITIN.
- Given the limitations on when and how a taxpayer can apply for an ITIN, many millions of ITIN applications will need to be filed by January 2017. The ITIN processing center would collapse under this demand, and it would cause extraordinary delays in processing ITIN applications as well as tax returns.
- Additionally, given how burdensome the new ITIN application rules have proven to be and the impact they have had on reducing the number of newly issued ITINs, many ITIN applicants who have used their ITIN for years to comply with federal tax laws will find themselves unable to obtain a renewed ITIN.
- For anyone issued an ITIN on or after January 2013, they will have to use their ITIN on at least one federal tax return every three years in order to keep it valid.
- While section 203 attempts to expand the CAA program with more eligible CAAs, it does not reform the application process or CAA authority to verify the documents of dependent ITIN applicants. It will not have the intended effect of increasing the option/geographic range of in-person applications.
- While these reforms are allegedly intended to contribute toward program integrity for ITINs, there is no language on penalties or requirements for tax preparers. The burden is entirely on a vulnerable and low-income immigrant population. With the overwhelming need for immigrant taxpayers to renew their ITINs, this will increase the market for bad actors in the tax preparer field without any oversight.

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