

Child Tax Credits for Illegal Immigrants

By Peter A. Schulkin

Summary: The Treasury Department reports that illegal immigrants filing tax returns using the Individual Tax Identification Number are receiving more than \$1.5 billion each year from the federal government through the Child Tax Credit and the Additional Child Tax Credit.

Many illegal immigrants are regularly accessing welfare benefits in the United States in different ways.¹ They may do so through those state and local governments that do not verify citizenship or that accept false proof of citizenship. In many cases, they access welfare benefits through their citizen children born in the United States. Additionally, and this is the focus of this report, there are ways illegal immigrants can obtain a form of federal welfare that is available to income tax filers. Since a significant percentage of illegal immigrants have low incomes, work “off the books,” or work with false names and Social Security numbers, it is likely that many report little or no income when applying for federal, state, or local benefits.

An illegal immigrant cannot qualify for a legitimate Social Security number to use to file income tax returns or for any other purposes. Thus, a major facilitator for illegal immigrant access to income tax-based welfare benefits is the nine-digit Individual Tax Identification Number (ITIN) established by the IRS in 1996. It was initially established for people like foreign investors, who are required to file U.S. income tax forms but can not legally obtain a Social Security number. However, the IRS has allowed illegal immigrants to apply for and use the ITIN for filing income taxes returns related to income earned in the United States. Consequently, the ITIN quickly became a vehicle for illegal immigrants to obtain refunds of part or all of income taxes withheld (if any) from their pay and for obtaining refundable tax credits above and beyond any withholding. All but a small minority of people using ITINs today are illegal immigrants.²

Since Congress did not explicitly limit the Child Tax Credit (CTC) and the Additional Child Tax Credit (ACTC) to holders of Social Security numbers, the IRS has allowed ITIN filers to obtain billions of dollars of refund checks related to these tax credits. If the CTC results in negative total tax due, it may be converted into an ACTC, which is the vehicle that the ITIN filer (or Social Security number filer) may use to collect the negative tax in the form of a check from the IRS. By IRS rules, the ACTC is a refundable credit available to individuals with no tax liability.

A Treasury Inspector General for Tax Administration report dated March 31, 2009, “Actions Are Needed to Ensure Proper Use of Individual Taxpayer Identification Numbers and to Verify or Limit Refundable Credit Claims,” indicates that, for the 2007 tax year, Child Tax Credits (774,000 filings for \$0.62 billion) and Additional Child Tax Credits (1,220,000 filings for \$1.78 billion), together totaling \$2.4 billion, were given to ITIN filers.³ By definition, none of the 1,220,000 filers who received the ACTC refunds had any tax liability, and as a group they received IRS checks totaling at least \$1.78 billion. The report goes on to say: “While the law also prohibits aliens residing without authorization from receiving most Federal public benefits, IRS management’s view is that the law does not provide sufficient legal authority for the IRS to disallow the ACTC to ITIN filers. Nonetheless, as it now stands, the payment of Federal funds through this tax benefit appears to provide an additional incentive for aliens to enter, reside, and work in the United States without authorization, which contradicts Federal law and policy to remove such incentives.”⁴

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A Treasury Inspector General for Tax Administration report dated December 8, 2009, “Individual Taxpayer Identification Numbers are Being Issued Without Sufficient Supporting Identification,” indicates that total refunds due for new ITINs issued in the January 1, 2008, through November 21, 2008, period were projected to amount to \$1.929 billion based on a statistical sampling.⁵ Without the CTC and ACTC, these ITIN filers were projected to have collected in the aggregate only \$0.412 billion of refunds instead of the \$1.929 billion, a difference of \$1.517 billion.⁶ The December 8 report goes on to note that, based on a statistical sampling, 87 percent of ITIN applications submitted by Certified Acceptance Agents contained

errors, primarily in supporting ID documents being missing or illegible and that “In addition, more than 55,000 ITINs were used multiple times on approximately 102,000 tax returns, with refunds totaling more than \$202 million.”⁷

Any illegal immigrants who in some way obtained Social Security numbers that they could use to file tax returns and obtain refunds (by, for instance, having been legal temporary workers who didn’t depart when they were supposed to) are not included in the above numbers for ITINs. Moreover, such illegal immigrants may have also accessed the Earned Income Credit or the Making Work Pay Credit.

End Notes

¹ “Senate Amnesty Could Strain Welfare System,” Center for Immigration Studies *Announcement*, June 2007, <http://www.cis.org/node/502>, shows in the table titled “Use Of Welfare Programs Based on Nativity of Household Head” that a little more than 50 percent of Mexican illegal immigrant households have at least one person who is using at least one major welfare program, not counting the income tax-based programs discussed in this *Memorandum*.

² See “Giving Cover to Illegal Aliens: IRS Tax ID Numbers Subvert Immigration Law,” by Marti Dinerstein, Center for Immigration Studies *Background*, October 2002, <http://cis.org/IRSTaxID-Immigration-Law>.

³ See p. 14 of Treasury Inspector General for Tax Administration report dated March 31, 2009 (Reference Number 2009-40-057), at <http://www.treas.gov/tigta/auditreports/2009reports/200940057fr.pdf>.

⁴ *Ibid.*, Memorandum Synopsis p. 3.

⁵ See p.13 of Treasury Inspector General for Tax Administration report dated December 8, 2009 (Reference Number: 2010-40-005), at <http://www.treas.gov/tigta/auditreports/2010reports/201040005fr.pdf>.

⁶ *Ibid.*

⁷ *Ibid.*, Memorandum Synopsis pp. 2-3.