



Raise More than a Quarter Trillion Dollars of Tax Revenue by Ending Tax Subsidies for Unauthorized Employment of Illegal Aliens

Aliens enter the United States without authorization for many reasons, but for most of them the goal is to secure employment at much higher wages than are available in their native countries. While breaking the law provides very significant economic benefits to these illegal workers and to the businesses that hire them, it comes at a cost to American workers. According to Harvard economist George Borjas, recent empirical research indicates that American workers suffer a reduction of \$99 billion to \$118 billion in annual wages because of illegal immigration.¹

The economic rewards of unauthorized employment of aliens are not limited to the higher wages of the illegal workers and the lower labor costs of their employers. Unauthorized alien workers and their employers also enjoy multi-billion dollar tax deductions and tax credits that were enacted into law for the benefit of law-abiding workers and businesses.

When Congress returns from summer recess on September 5, it is expected to focus attention on a major reform of the federal income tax system, including a combination of lower rates and other tax incentives to families and to businesses. The largest challenge facing tax reformers is finding sufficient additional revenue to pay for the tax cuts and tax incentives they promised to the people who elected them. In fairness to the American families and businesses to whom these tax cuts have been promised, and in particular to the American families whose household incomes have been diminished by illegal immigration, Congress should consider eliminating unwarranted tax breaks to unauthorized alien workers and their employers.

Each of the following reforms — one that eliminates a tax subsidy for employers of unauthorized aliens and the other that eliminates a tax subsidy for the unauthorized workers — comes with an estimate of the additional revenues that would be raised by the reform. Together they could raise \$296 billion over 10 years — more than a quarter-trillion dollars.

1. No Deduction for Wages Paid to Illegal Aliens. Section 162(e) of the Internal Revenue Code denies a deduction for “illegal payments”. Even though it is illegal to employ unauthorized alien workers, the IRS has ruled that section 162(e) does not apply to the wages paid to those aliens, even if the employer knowingly broke the law.² On January 3, 2017, Rep. Steve King and eight other members of Congress introduced H.R. 176, the New Illegal Deduction Elimination Act, Section 2 of which would amend section 162(e) to clarify that no deduction is allowed for wages paid to unauthorized alien workers. H.R. 176 provides employers a “safe harbor”, allowing a deduction to employers that used the Department of Homeland Security’s free, online E-Verify system to confirm the employee’s eligibility to work.

The amount of wages paid to unauthorized alien workers cannot be known with certainty. One of the most extensive studies of unauthorized immigrants in the United States was conducted by the Pew Hispanic Center in 2009.³ According to that study, there were approximately 8.3 million undocumented immigrants in the U.S. labor force,⁴ a figure that Pew more recently estimated had fallen to 8.0 million.⁵ Pew estimated the median household income of unauthorized worker families to be approximately \$36,000 and that there were approximately 1.75 workers per household, implying median per-worker earnings of \$20,571.⁶ Multiplying Pew’s estimated number of unauthorized alien workers by the earnings-per-worker estimate yields an estimated total of wages paid to unauthorized alien workers of approximately \$165 billion.

Many unauthorized workers are employed in the “underground economy”, i.e., by households and other employers that are not reporting or paying payroll taxes and presumably are not deducting the wages. A 2013 report by the Social Security Administration estimated that, of approximately seven million alien workers in various irregular work statuses in 2010, approximately 3.1 million (44 percent) had Social Security numbers (mostly false or fraudulently secured), while approximately 3.9 million (56 percent) were working in the “underground economy”⁷ On the assumption that employers reported payroll taxes and claimed wage expense deductions only for the 44 percent of unauthorized workers who could produce an SSN, and that most employers deducted wages at or near the corporate tax rate of 35 percent, we estimate that disallowing a deduction for wages paid to unauthorized alien workers would increase federal tax revenues by approximately \$25.4 billion per year (35 percent x 44 percent x \$165 billion), or \$254 billion over 10 years.

2. Deny Refundable Tax Credits to Illegal Aliens. Section 24(a) of the Internal Revenue Code allows a \$1,000 per-child tax credit for taxpayer’s whose earnings fall below a specified threshold. The Child Tax Credit is refundable to the extent it exceeds the taxpayer’s tax liability, in which case it is referred to as the Additional Child Tax Credit or ACTC. A 2011 report by the U.S. Treasury Inspector General for Tax Administration explained that aliens authorized to work in the United States are required to obtain a Social Security number (SSN).⁸ For aliens who need to file U.S. federal tax returns for other reasons, such as to claim refunds of withholding tax on dividends, the IRS issues Individual Tax Identification Numbers (ITINs). Unfortunately, according to the inspector general, the IRS had been permitting aliens to claim ACTCs on returns that reported an ITIN rather than a Social Security number.

The payment of ACTCs to illegal aliens is arguably a direct violation of the Personal Responsibility and Work Opportunity Act of 1996 (“PRWOA”), which expressly provides that an illegal alien “is not eligible for any Federal public benefit.” The IRS has applied the PRWOA rule to prohibit payments of Earned Income Tax Credits to ITIN filers, but based on a questionable interpretation of the law has allowed ITIN filers refunds of ACTCs.⁹

According to the Inspector General, “[b]ased on claims made in Processing Year 2010, disallowance of the ACTC to filers without a valid SSN would reduce Federal outlays by approximately \$8.4 billion over 2 years,” i.e., \$4.2 billion per year. Although the inspector general’s figures are based on 2010 fiscal data, Treasury Department tax expenditure estimates indicate that the total child tax credit expenditure was virtually unchanged between 2010¹⁰ and 2017.¹¹ Accordingly, based on the inspector general’s report, we estimate that limiting the Child Tax Credit to taxpayers with Social Security numbers would increase federal tax revenues by approximately \$4.2 billion per year, or \$42 billion over 10 years.

End Notes

¹ George Borjas, [“Immigration and the American Worker”](#), Center for Immigration Studies, April 2013.

² NSAR 09235, Vaughn # 9235.

³ Jeffrey S. Passel and D’Vera Cohn, [“A Portrait of Unauthorized Immigrants in the United States”](#), Pew Research Center, April 2009.

⁴ *Id.* at i.

⁵ Jens Manuel Krogstad, Jeffrey S. Passel, and D’Vera Cohn , [“5 facts about illegal immigration in the U.S.”](#), Pew Research Center, April 2017.

⁶ *Supra* n. 3 at 16.

⁷ Stephen Goss, Alice Wade, J. Patrick Skirvin, Michael Morris, K. Mark Bye, and Danielle Huston, [“Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds”](#), Social Security Administration Actuarial Note Number 151, April 2013.

⁸ [“Individuals Who Are Not Authorized to Work in the United States Were Paid \\$4.2 Billion in Refundable Credits”](#), Treasury Inspector General for Tax Administration, July 2011.

⁹ Jan Ting, [“IRS Ignores Appeals Court Decision; Continues Paying ‘Child Tax Credits’ to Illegal Aliens”](#), Center for Immigration Studies, June 2017.

¹⁰ [“Fiscal Year 2011 Tax Expenditures”](#).

¹¹ [“Fiscal Year 2017 Tax Expenditures”](#).