

**PRESENT LAW AND BACKGROUND RELATING
TO INDIVIDUAL TAXPAYER IDENTIFICATION
NUMBERS (“ITINS”)**

Scheduled for a Joint Hearing
Before the
SUBCOMMITTEE ON OVERSIGHT
and the
SUBCOMMITTEE ON SOCIAL SECURITY
of the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 10, 2004

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Subcommittee on Oversight and Subcommittee on Social Security of the House Committee on Ways and Means have scheduled a joint hearing for March 10, 2004, on ITINs. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the present law and background relating to ITINs and recent developments.

¹ This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Relating to Individual Taxpayer Identification Numbers (“ITINS”)* (JCX-16-04), March 5, 2004.

Background and Present Law

In general

There are two types of taxpayer identification numbers issued to and used by individuals for Federal tax purposes: (1) a Social Security Number (“SSN”) assigned by the Social Security Administration; and (2) an ITIN assigned by the Internal Revenue Service (“IRS”) to an alien individual ineligible to obtain a SSN.²

Income tax filing requirements for U.S. citizens, residents, and nonresidents

The Internal Revenue Code of 1986 (“Code”) requires an individual to file a U.S. income tax return if the individual has gross income subject to U.S. tax that equals or exceeds the exemption amount.³ Any person required to make a return, statement, or other document is required to include an identifying number for purposes of securing proper identification of such person.⁴ Each person listed as a taxpayer on the return must have a valid taxpayer identification number (“TIN”), either a SSN or an ITIN.⁵ If a return requesting a refund is filed without a SSN or ITIN for the primary filer and spouse, the refund will be delayed until an identification number is obtained. Also, if a dependent’s or qualifying child’s SSN or ITIN has been omitted, the dependency exemption, child credit, and earned income credit (“EIC”) will be denied and tax liabilities will be adjusted accordingly.⁶

A U.S. citizen generally is subject to U.S. individual income tax on his or her worldwide taxable income.⁷ Thus, all income earned by a U.S. citizen, whether from sources within or without the United States, is taxable whether or not the individual lives within the United States.

For purposes of U.S. income tax, alien individuals generally are divided into two classes: resident aliens and nonresident aliens.⁸ An alien who resides in the United States generally is

² Treas. Reg. sec. 301.6109-1(a). There are two other types of taxpayer identification numbers not pertinent here: (1) an Employer Identification Number assigned by the IRS to various business entities; and (2) an Adoption Taxpayer Identification Number assigned by the IRS to a child placed in the household of a prospective adoptive parent for legal adoption. *Id.*

³ Sec. 6012(a).

⁴ Sec. 6109(a)(1).

⁵ The term “TIN” means the identifying number assigned to a person under section 6109. Sec. 7701(a)(41).

⁶ Secs. 24(e); 32(c)(3)(D)(i); and 151(e).

⁷ Treas. Reg. sec. 1.1-1(b). The determination of who is a U.S. citizen for tax purposes, and when such status as a citizen ceases, is governed by the provisions of the Immigration and Nationality Act, 8 U.S.C. sec. 1401, et seq. *See* Treas. Reg. sec. 1.1-1(c).

⁸ Treas. Reg. sec. 1.871-1(a).

taxed in the same manner as a U.S. citizen if the individual meets the definition of a “resident.”⁹ An alien is considered a resident of the United States if the individual: (1) has entered the United States as a lawful permanent U.S. resident (the “green card test”) and is such a resident at any time during the relevant year; (2) is present in the United States for 31 or more days during the current calendar year and has been present in the United States for a substantial period of time -- 183 or more weighted days during a three-year period weighted toward the present year (the “substantial presence test”); or (3) makes an election to be treated as a resident of the United States (the “first year election”).¹⁰

An alien who does not meet the definition of resident alien is considered to be a nonresident alien for U.S. tax purposes.¹¹ A nonresident alien is subject to U.S. tax on income from U.S. sources or income that is effectively connected with the conduct of a trade or business within the United States.¹² Foreign-source income earned by a nonresident alien generally is not subject to U.S. tax.¹³ Bilateral income tax treaties may modify the U.S. taxation of a nonresident alien.

In general, the Code does not contain special rules regarding the treatment of illegal aliens, or the tax identification number requirements with respect to illegal aliens. Thus, for Federal tax purposes, non-citizens are treated as either resident or non-resident aliens.

Social security numbers

In general

The Social Security Act of 1935 authorized the Social Security Administration to establish a recordkeeping system with respect to the Social Security benefit program. The SSN was created in 1936 as a means to track workers’ earnings and eligibility for Social Security benefits. SSNs are issued by the Social Security Administration upon application by a citizen, a qualified alien (an alien individual legally admitted to the United States for permanent residency), by a parent on behalf of a qualified child,¹⁴ or by persons in other immigration categories that authorize U.S. employment.¹⁵ The application for a SSN is made on Form SS-5, the Application for Social Security Account Number (or Replacement of Lost Card). Applicants

⁹ Treas. Reg. sec. 1.1-1(b).

¹⁰ Sec. 7701(b)(1)(A).

¹¹ Sec. 7701(b)(1)(B).

¹² Sec. 871(b)(1).

¹³ Sec. 864(c)(4).

¹⁴ See generally 20 C.F.R. secs. 422.101 through 422.112 (2000).

¹⁵ Treas. Reg. sec. 301.6109-1(d)(3).

who apply for a SSN are required to submit documentary evidence to establish their identity, age, and citizenship or lawful alien status.

The issuance of a SSN results in the creation of: (1) a record at the Social Security Administration of the applicant's earnings for purposes of determining the old-age, survivors, and disability insurance and other benefits to which a person may be entitled, and (2) a numerical identifier unique to the applicant that is used by a variety of governmental and private entities. Each year, the Social Security Administration receives copies of Forms W-2 issued by employers to their employees. The Social Security Administration matches the name and SSN provided on Form W-2 against its database of all SSNs issued. When a match occurs, the earnings reported on each particular Form W-2 are recorded in the relevant individual's lifetime earnings history contained in the Social Security Administration record.

The SSN as an identifier

Except as otherwise specified under Treasury regulations, a SSN is used as an individual's identifying number for tax purposes.¹⁶ Taxpayers are required to list on their tax return the SSN of every dependent claimed, regardless of age.¹⁷ A SSN is identified in the records and database of the IRS as a number belonging to a U.S. citizen or resident alien. A SSN may be used for all Federal tax purposes even if the individual is, or later becomes, a nonresident alien. Any individual assigned a SSN or entitled to a SSN will not be issued an ITIN. If a SSN application is pending with the Social Security Administration, an individual will be issued an ITIN only after the Social Security Administration has notified the individual that a SSN cannot be issued to that individual.

Types of social security cards

The Social Security Administration issues three types of Social Security cards depending on an individual's citizen or alien status and whether or not an alien is authorized by the Department of Homeland Security to work in the United States (a "for-work SSN" card). The first type of Social Security card shows the individual's name and SSN only. The card shows that the holder can work in the United States without restriction. Persons eligible to receive this type of card include U.S. citizens or aliens who are lawfully admitted to the United States for permanent residence therein, or who have permission from the Department of Homeland Security to work permanently in the United States.

The second type of Social Security card bears, in addition to the individual's name and SSN, the legend, "NOT VALID FOR EMPLOYMENT." This card is issued to aliens who do

¹⁶ Sec. 6109(d); Treas. Reg. secs. 301.6109-1(a)(1)(ii)(A) and 301.7701-11. Alternate arrangements may apply to the children of taxpayers (such as the Amish) who are members of recognized groups that have religious objections to participation in the Social Security program, who have filed Form 4029 (Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits), and who have received approval of their Form 4029 application.

¹⁷ Sec. 151(e) (formerly sec. 6109(e)). This has been required (starting with higher age thresholds) for returns filed on or after January 1, 1988.

not obtain permission to work permanently in the United States from the Department of Homeland Security. The Social Security Administration currently issues SSNs to aliens who are not otherwise eligible for SSNs for the following nonwork purposes: (1) a Federal statute or regulation requires that the alien provide his or her SSN to get the particular benefit or service; (2) a State or local law requires the alien to provide his or her SSN to get general assistance benefits to which the alien has established entitlement; or (3) a State or local law requires the non-citizen to provide his or her SSN to get a driver's license. Under these circumstances, the application for a SSN must be accompanied by documentation from the appropriate government entity explaining the need for the SSN. The Department of Homeland Security then verifies the documentation before the Social Security Administration is allowed to issue the SSN.

The third type of Social Security card bears, in addition to the individual's name and SSN, the legend "VALID FOR WORK ONLY WITH INS¹⁸ AUTHORIZATION." The Social Security Administration issues this type of card to individuals who have been granted a temporary visa and who have permission from the Department of Homeland Security to work temporarily in the United States.

TIN requirements for the earned income credit

To claim the EIC, an individual and his or her spouse (if filing a joint return) must have a qualifying SSN issued by the Social Security Administration.¹⁹ If a taxpayer is claiming the EIC with respect to a qualifying child, the qualifying child is also required to have a qualifying SSN.²⁰ A Social Security card that bears the legend "VALID FOR WORK ONLY WITH INS AUTHORIZATION" is considered a valid SSN for EIC purposes.²¹ An individual who has applied for and been granted an ITIN is not eligible for the EIC.

Individual taxpayer identification numbers

Prior to 1996, tax returns filed by alien individuals who were not eligible for SSNs were assigned IRS temporary identification numbers ("IRSNs"). A different IRSN was issued for each return filed by a taxpayer, which in some instances resulted in numerous numbers issued to the same taxpayer. Initially, ITINs were issued to foreign nationals to enable more efficient and effective tax processing and to eliminate the confusion in identifying foreign nationals, dependents and spouses. On July 1, 1996, regulations were issued²² and the IRS commenced assigning ITINs to aliens who are otherwise not eligible for SSNs but who are required to have a

¹⁸ The Immigration and Naturalization Service is now called U.S. Citizenship and Immigration Services.

¹⁹ Secs. 32(c)(1)(F) and (m).

²⁰ Secs. 32(c)(3)(D) and (m).

²¹ IRS Publication 596, Earned Income Credit (EIC) (2003), at 6.

²² Treas. Reg. sec. 301.6109-1(d)(3)(iii).

U.S. taxpayer identification number to report income for tax purposes. The IRS stopped issuing IRSNs and persons with IRSNs are required to obtain an ITIN.

An ITIN is a 9-digit number, beginning with the number "9", formatted like a SSN (NNN-NN-NNNN).²³ An ITIN is a tax processing number and is intended to be used for Federal tax purposes only.²⁴ An ITIN is not a SSN or an account number for use by the Social Security Administration in employment for wages. The issuance of an ITIN does not entitle the recipient to Social Security benefits or the EIC, does not create any inference regarding an individual's immigration status, and does not grant permission for an individual to work in the United States.²⁵ ITINs are not intended to be used as proof of identity for nontax purposes. Unlawful uses of the ITIN include, for example, using an ITIN as formal identification in obtaining other types of official identification, including a driver's license.²⁶

An ITIN is a taxpayer identifying number issued to an alien individual by the IRS, upon application, for certain use requirements imposed by the Code.²⁷ Individuals who are eligible for SSNs do not qualify for ITINs.²⁸ An individual who is not eligible to obtain a SSN and who is required to furnish a taxpayer identifying number must apply for and use an ITIN.²⁹ Examples of persons who are required to obtain ITINs include the following: (1) an alien dependent of a

²³ Under the new requirements, the IRS announced that it will change the appearance of the ITIN from a card to an authorization letter to avoid any possible similarities with a SSN card. *See Internal Revenue Service, IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003).

²⁴ *See Form W-7, Application for IRS Individual Taxpayer Identification Number* (revised December 17, 2003). Form W-7 states, in bold, "An IRS individual taxpayer identification number (ITIN) is for Federal tax purposes only."

²⁵ Form W-7 states "Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit."

²⁶ *See George Guttman, National Security May Require Rethinking the ITIN*, 2002 Tax Notes 130-2 (July 8, 2002), at 181; George Guttman, *Can the IRS Stop the Use of ITINs for Nontax Purposes*, 2003 Tax Notes 108-5 (June 2, 2003), at 1316.

²⁷ Treas. Reg. sec. 301.6109-1(d)(3)(i). ITIN applications are processed at the IRS ITIN Unit's Philadelphia Service Center. Although taxpayer assistance centers receive applications nationwide, the majority of applications are concentrated in nine states: Arizona, California, Colorado, Florida, Illinois, New York, North Carolina, Texas, and Washington. The IRS projects that by the year 2006, approximately 11 million ITINs will be issued. It is estimated that seven million ITINs have been issued currently. *See Internal Revenue Service, IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003).

²⁸ Form W-7 states "Do not submit this form if you have, or are eligible to obtain, a U.S. social security number (SSN)." [bolding omitted]

²⁹ Treas. Reg. secs. 301.6109-1(d)(3)(ii) and (a)(1)(ii)(B).

U.S. citizen or resident alien; (2) an alien spouse of a U.S. citizen or resident alien; (3) a U.S. resident alien (based on days present in the United States) filing a U.S. tax return and not eligible for a SSN; (4) a nonresident alien filing a U.S. tax return and not eligible for a SSN; (5) a nonresident alien required to obtain an ITIN to claim a tax treaty benefit; (6) a nonresident alien student, professor, or researcher filing a U.S. tax return and not eligible for an SSN; and (7) a dependent or spouse of a nonresident alien visa holder.³⁰ An individual must submit acceptable documentary evidence to establish alien status and identity. Examples of such acceptable documentary evidence may include an original (or certified copy of the original) passport, driver's license, birth certificate, identity card, or immigration documentation.³¹

The application for an ITIN is made on Form W-7, Application for IRS Individual Taxpayer Identification Number, or on any other form prescribed by the IRS. Form W-7 may be obtained from any IRS office, U.S. consular office abroad, or any acceptance agent. An individual is required to furnish information on the form (or accompanying instructions), including the individual's name, foreign address, mailing address (if different from the foreign address), birth information, foreign identification number (if any), and a specific reason for obtaining an ITIN.

Acceptance agents

An acceptance agent³² facilitates the application process and issuance of ITINs to alien individuals and foreign persons. An acceptance agent is a person or entity, such as a financial institution or educational institution, authorized in writing by the IRS to assist alien individuals and other foreign persons. To facilitate the issuance of an ITIN, the nondisclosure provisions of section 6103³³ are waived when a taxpayer is acting through an acceptance agent. An acceptance agent forwards the completed Form W-7 (together with the required documentary evidence) to the IRS Philadelphia Service Center for processing. According to the IRS, there are over 900 IRS acceptance agents in 36 U.S. States and the District of Columbia and in 10 foreign countries.

The types of acceptable documentary evidence that an acceptance agent reviews may vary, for example, depending on the applicant's country of citizenship, nationality, or residency at the time of the application. Examples of documentary evidence supporting alien status include a foreign passport or a foreign birth record. Examples of documentary evidence supporting identity include a driver's license, identity card, school record or marriage record. An applicant

³⁰ See "General Instructions" and "Specific Instructions" to Form W-7.

³¹ Treas. Reg. sec. 301.6109-1(d)(3)(iii).

³² For a more detailed discussion of the application procedures for becoming an acceptance agent, see Rev. Proc. 96-52, 1996-2 C.B. 372.

³³ Section 6103 embodies the policy that returns are confidential, and provides that tax returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as otherwise provided.

typically submits the required documentation³⁴ during a personal interview with the acceptance agent. The acceptance agent reviews the applicant's documentation in order to determine whether the documentation is of a type that the IRS regards as reliable evidence of alien status and identity. The applicant's signature on Form W-7 provides the power of attorney to the acceptance agent, authorizing communication with the IRS with respect to that application.

Certifying acceptance agents

If permitted under agreement with the IRS, a person may assume greater responsibility as a certifying acceptance agent.³⁵ A certifying acceptance agent is a person authorized under an agreement with the IRS to submit a Form W-7 on behalf of an applicant without having to furnish supporting documentary evidence to the IRS. Instead, the certifying acceptance agent certifies to the IRS that he or she has reviewed the appropriate documentation evidencing the ITIN applicant's identity and alien status, that the agent has maintained a record of such documentation, and that the agent has reviewed the required documentation and, to the best of his or her knowledge and belief, such documentation is authentic, complete, and accurate. The certification is not binding on the IRS; accordingly, the certifying acceptance agent may be required to furnish further supporting documentary evidence to the IRS, upon written request by the IRS, before the issuance of the ITIN.

Recent developments

Revised Form W-7

On December 17, 2003, the IRS revised Form W-7 and its accompanying instructions.³⁶ Under the new requirements for ITIN applications, acceptable documentary evidence to establish alien status has been reduced from 40 to 13 documents. The 13 documents consist of the following: (1) original valid passport (or a notarized or certified copy of a valid passport), or at least two of the following: (2) national identification card; (3) U.S. driver's license; (4) civil birth certificate; (5) foreign driver's license; (6) U.S. State identification card; (7) U.S. military identification card; (8) foreign voter's registration card; (9) foreign military identification card;

³⁴ The IRS generally requires that an original (or certified copy of the original) be submitted along with Form W-7. All original documents will be returned to the acceptance agent (i.e., no later than three business days from receipt of a complete application by the IRS, Philadelphia Service Center). Copies of original documents, if allowed to be submitted under the acceptance agent agreement, will not be returned to the acceptance agent. *See* Rev. Proc. 96-52, 1996-2 C.B. 372.

³⁵ For a more detailed discussion of the application procedures for becoming a certifying acceptance agent, *see* Rev. Proc. 96-52, 1996-2 C.B. 372.

³⁶ *See* Internal Revenue Service, *IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003); *see also* Internal Revenue Service, Notice 2004-1, 2004-2 I.R.B. 268 (January 12, 2004).

(10) visa; (11) U.S. Citizenship and Immigration Services identification card; (12) medical records (dependents only); and (13) school records (dependents and/or students only).³⁷

All new ITIN applications are required to show a Federal tax purpose for seeking the ITIN.³⁸ This purpose is shown by attaching the taxpayer's original, completed tax return for which the ITIN is needed, such as Form 1040, to the Form W-7.³⁹ Certain taxpayers such as non-U.S. residents who require an ITIN to report income under a tax treaty and some U.S. resident and nonresident applicants who require an ITIN to report income from a U.S. bank or brokerage account are not required to file a tax return along with the ITIN application.⁴⁰ In these cases, nonresident applicants are required to furnish proof of ownership of the assets that generate the reporting requirements whereas resident applicants are required to provide evidence of actual ownership in the bank or brokerage account.⁴¹

Recent revision of application and filing requirements

Under present law, any taxpayer who is required to furnish an ITIN must apply for an ITIN on Form W-7.⁴² Until recently, an application was required to be made far enough in advance of the taxpayer's first required use of the ITIN to permit the issuance of the ITIN in time for the taxpayer to comply with the required use (e.g., the timely filing of a tax return). Under the IRS's new ITIN application process, announced on December 17, 2003, ITIN applicants

³⁷ See "General Instructions" to Form W-7. Copies of the original documents may be submitted, however, such copies are required to be: (1) certified by the issuing agency or official custodian of the original record or (2) notarized by a U.S. notary public legally authorized within his or her local jurisdiction to certify that the document is a true copy of the original. In order to do this, the notary public must see the valid, unaltered original document and verify that the copy conforms to the original. *Id.*

³⁸ See Internal Revenue Service, *IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003). "ITIN applications without proof of need for tax administration purposes will be rejected." *Id.*

³⁹ See "Important Changes" to Form W-7, which states, "If you are a resident or nonresident alien applying for an ITIN to file a tax return, you must now attach your original, completed return to Form W-7 to get the ITIN." Form W-7 specifies that such form must be attached to the front of the tax return. See "General Instructions" to Form W-7.

⁴⁰ See Internal Revenue Service, *IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003); see also Internal Revenue Service, Notice 2004-1, 2004-2 I.R.B. 268 (January 12, 2004).

⁴¹ See "Specific Instructions" to Form W-7 for additional categories of applicants for whom an exception applies.

⁴² Treas. Reg. sec. 301.6109-1(d)(3)(ii).

(unless an exception applies) are required to submit a Form W-7 along with (not in advance of) the original, completed tax return for which the ITIN is needed.⁴³

The original, completed tax return and Form W-7 must be filed with the IRS office specified in the instructions to Form W-7 regardless of where the taxpayer might otherwise be required to file the return.⁴⁴ The tax return will be processed in the same manner as if it were filed at the address specified in the tax return instructions. No separate filing of the tax return (e.g., a copy) with any other IRS office is requested or required. Taxpayers remain responsible for filing the original, completed tax return, with Form W-7, by the due date applicable to the tax return for which the ITIN is needed (generally April 15 of the year following the calendar year covered by the tax return). In the event that a taxpayer requires an ITIN for an amended or delinquent return, then the Form W-7 must be submitted together with the return to the IRS office specified in the instructions accompanying Form W-7. An application for an ITIN may also be filed in person by submitting completed forms and documentation to any IRS Taxpayer Assistance Center in the United States and most IRS offices abroad. An application for an ITIN may also be made through an acceptance agent authorized by the IRS.⁴⁵

⁴³ See Internal Revenue Service, *IRS Announces Revisions to ITIN Applications*, IR-2003-140 (December 17, 2003). Accordingly, taxpayers who comply with the new ITIN application process will be deemed to have satisfied the requirements of section 301.6109-1(d)(3)(ii) with respect to the time for applying for an ITIN.

⁴⁴ See “Where to Apply” to Form W-7.

⁴⁵ The IRS’s website (www.irs.gov) contains a list of acceptance agents organized by State and by country.