Understanding the Impact of the Tax Cuts and Jobs Act on Immigrant Entrepreneurs and Students

ABA Tax Section 2019 Fall Meeting
October 4, 2019

Moderator: Catherine Sullivan, US Tax Court
Panelists: Katharine Gin, Immigrants Rising,
          Iliana Perez, Immigrants Rising,
          Professor Francine Lipman, UNLV School of Law
          Michael Wallace, EA, Agostino & Associates
Immigrants Rising empowers undocumented young people to achieve educational and career goals through personal, institutional and policy transformation.
● **September 5, 2017**: U.S. Attorney General Jeff Sessions announced that the government was terminating the DACA program.
  ○ Since then, no new DACA applications have been accepted and Advance Parole has been cancelled.
  ○ All litigation around DACA has focused only on renewals.

- Nearly 100,000 undocumented immigrants graduate from high school every Year (MPI, 2019)
Complexity of Immigrant Community
Not all undocumented students have access to the same support.
Spreading the UndocuHustle
Income generation opportunities for all immigrants, regardless of immigration status!

- Resources & Information
- Trainings/Presentations
- Entrepreneurship Fellowship
- Entrepreneurship Fund
- Festival of UndocuInnovation
- Referrals
Overview of Entrepreneurship Resources

ENTREPRENEURSHIP
INCOME GENERATION THROUGH ENTREPRENEURSHIP
- BASIC FACTS ABOUT ENTREPRENEURSHIP
- LIFE AFTER COLLEGE
- #UNDOCUHUSTLE FILM
- ENTREPRENEURSHIP FLYER

PLANNING AND STARTING A BUSINESS
- ITIN GUIDE
- WORKING FOR YOURSELF
- COMENZANDO TU CAMINO DE EMPRENDIMIENTO
- BUSINESS STRUCTURES
- WORKER COOPERATIVES & LLC’S
- BUSINESS PLANS
- BUSINESS MODEL CANVAS & DESIGN THINKING

FINANCING A BUSINESS
- CREDIT AND FINANCIAL CAPITAL
- FINANCING/BOOTSTRAPPING YOUR BUSINESS
- MARKETING AND FINANCING: HOW SOCIAL MEDIA CAN LEAD TO FUNDRAISING FOR YOUR STARTUP

MANAGING A BUSINESS
- ITINS, EINS AND TAXES
- GETTING READY FOR 2019 TAX SEASON
- ACCOUNTING & FINANCIAL MANAGEMENT FOR BUSINESS

BENEFITS FOR IMMIGRANT ENTREPRENEURS
- RETIREMENT OPTIONS FOR IMMIGRANT ENTREPRENEURS
- IMMIGRATION REMEDIES THROUGH ENTREPRENEURSHIP
Overview of Fellowships
Why Are Fellowships Important?

- Way to support educational and professional development of all students *regardless of immigration status or work authorization*
- Can provide a stipend - or sum of money - to aid in pursuit of study or research
What Are “Inclusive Fellowships”?

- “Inclusive Fellowships” (a term coined by Immigrants Rising) are fellowships that are accessible to individuals regardless of immigration status.
- Do not require recipients to have a social security number, work authorization or immigration status.
- “Inclusive Fellowships” are flexible mechanisms by which educational institutions can provide paid opportunities to individuals regardless of immigration status.
Get your #undocuhustle on!

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Director and Co-Founder
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Iliana G. Perez
Director of Research & Entrepreneurship
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Everyday Tax Issues for IMMIGRANTS after (and before) #TCJA

Francine J. Lipman
William S. Boyd School of Law
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Unauthorized/Authorized Immigrant Workers Are Subject To ALL Fed/State Taxes
Unauthorized Immigrants Pay Billions in Taxes Each Year

ITIN holders pay $10s of billions in federal, state, and local income, payroll, sales, excise, property & other taxes each year.

$12 billion is paid annually into state & local governments

About $12 billion is paid into Social Security trust fund annually by unauthorized workers. The Social Security mismatch account most likely generally from payroll taxes paid in by unauthorized workers is > $100 billion for the last 10 years.

ITIN holders pay almost $1 billion in federal taxes annually
Resident versus Nonresident for TAX

**Resident** = US citizen, Green Card holder, “substantial presence test” in US for at least 31 days during the current year AND 183 days for three year period (two year lookback/1/3 of last year and 1/6 of prior year days).
(excludes certain temporarily present Visa holders like students, teachers, athletes, but not H2A or H2B)

**OR**

**Nonresident** = subject to tax on US source income
Filing Annual/Timely Income Tax Returns is CRITICAL

- **REFUNDS!!$**
  - Social benefits are now predominately delivered through the income tax system through refundable tax credits
  - Statutes of limitations: 3 years (2015 and after still open)
- Immigration Reform/Good moral character
- College financial aid applications, education tax credits
- Tax debt does not disappear if ignored it GROWS!
  - But addressing it timely helps mitigate the damage
- Loans, banking, housing, proving income, residency
- Affordable Health Care Coverage subsidy or avoiding the penalty for 2018 and prior years
Everyone On A Tax Return Must Have a Valid TIN:
SSN/Individual Tax Identification Number

- Apply with federal income tax return on Form W7
- Need identifying original documents (or certified copies) proving identity and foreign status/passport stand-alone or two documents
- Starts with a 9XX-7, 8 or 9X-XXXX comes on a letter not a card
- DOES NOT PROVIDE WORK AUTHORIZATION
- Pub 1915 (www.irs.gov)
ITIN Renewal Process

What ITINs are Expiring and When?

Any ITIN not used for the 3 consecutive tax yrs
IRS sends letters to ITIN holders warning them of expiration

<table>
<thead>
<tr>
<th>If the ITIN Was Issued</th>
<th>The ITIN Expires On</th>
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<tr>
<td>Before January 1, 2008*</td>
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Plus family members who are ITIN holders of the above

* Middle digits of 70-83 and nonfilers for three consecutive years
ITIN Holders Must Prove Identity & Foreign Status

• Passport (only document that provides proof of both)
  • Dependents from countries other than Canada, Mexico, or depends of military members overseas need a passport with an entry date into the US for this purpose.
  
• Alternatively, such dependents must also provide medical records (for children under 6) or school records (for those under 18). Dependents older than 18 or not in school can (submit a rental agreement, bank statement, or utility bill with the applicant’s name and US address).
USE a Certified Acceptance Agents (CAAs)

• Can verify documents so that originals do not have to be sent with the W7 and can help process the form

• List of CAAs on IRS Website based upon geography

• CAAs often charge for services so be proactive about asking for fee structure; some paid preparers are offering “free” ITIN renewals, but proceed with caution
What Happens if I Don’t Renew My ITIN? JUST Do it!!

Tax return will be processed, but refund will not be issued until ITIN is renewed. Best to renew ITIN ASAP and then submit return with renewed ITIN

Renewal process in March through April will be VERY slow (4 to 11 weeks to process)

Although documents submitted with W7 should be returned within 60 days, but USE a CAA!!! UNLV Law LITC provides the service for free.

Richest 20%, -$225
Richest 1%, $85
Next Richest 19%, $140
Foreign Investors, -$48
Poorest 20%, -$3
Second 20%, -$13
Fourth 20%, -$43

Source: Institute on Taxation and Economic Policy, December 2017
INDIVIDUAL #TCJA Tax Changes

**Personal & Dependency Exemption Deduction ($4,150):**
REPEALED (2018-2025)

**Child Tax Credit:**
*Increased to $2K,* but only refundable up to $1.4K (inflation adjusted after 2018) & limited to 15% of earned income above $2.5; phased out thresholds increased to $200K (S/HofH) or $400K (MFJ); qualifying child must have a SSN (effective for 2018-2025).

Imperfect overlap with dependency exemptions (e.g., CTC is for child/grandchild/niece or nephew under age 17 as of 12/31).

**NonQualifying Child Credit:** $500 not refundable, also phases-out at above thresholds (effective for 2018-2025)
NO HUMAN BEING IS ILLEGAL

Human beings can be beautiful or more beautiful, they can be fat or skinny, they can be right or wrong, but illegal? How can a human being be illegal?

- Elie Wiesel
Francine.Lipman@unlv.edu
Everything You Need to Know About The NEW Individual Taxpayer Identification Number (ITIN) Renewal Process

Francine J. Lipman, William S. Boyd Professor of Law
University of Nevada, Las Vegas
Francine.lipman@unlv.edu
What is an Individual Taxpayer Identification Number (ITIN)?

- Beginning in 1996, the federal government started issuing ITINs to individuals who have a tax obligation, but who do not qualify for a Social Security number (SSN). Before such date these individuals received SSNs that can be used on current tax returns, but are not valid for work.

- ITIN Holders include individuals who are not legally present, individuals who are foreign investors, and individuals who are legally present, but not allowed to work (e.g., spouse and dependents of certain visa holders).

- ITINs are used for tax return processing purposes only. They cannot be used for work as they do not authorize an individual for U.S. work.
How Many ITIN Holders are There?

- IRS has issued about 21 million ITINs, but only about 5 million are currently being used actively on tax returns. There are about 11 million undocumented immigrants in the USA.
  - Nevada has over 200,000 undocumented immigrants many of whom probably have ITINs.

- ITIN holders pay many $10s of billions in federal, state, and local income, payroll, sales, excise, property, and other taxes each year. The Social Security mismatch account most likely generally from payroll taxes paid in by unauthorized workers is about $100 billion for the last ten years.
Unauthorized Workers Must and Do Pay Taxes

- U.S. citizens and residents are subject to U.S. income tax on their worldwide income.
- A non-U.S. citizen is treated for tax purposes as a resident (subject to U.S. tax) if she is a legal permanent resident, a green card holder, or physically present in the USA under IRS’ Substantial Presence Test:
  - 31 days during the current yr &
  - 183 days during the 3 yr period that includes the current yr & the 2 yrs immediately before that, counting:
    - All the days present in the current yr, &
    - 1/3 of the days present in the first prior yr &
    - 1/6 of the days present in the second prior yr.
ITINs and Perceptions of Fraudulent Use

2012: IRS Implemented 5 Yr Expiration Date for all ITINs and then changed it in

2014: IRS Implemented 5 Yr Expiration Date for all ITINs not used during that period until

PATH Act 2015: Congress enacted 3 Yr Expiration Date for Unused ITINs and a staggered renewal for all ITINs Issued Before More Strict Requirements Enacted in 2008
ITIN Renewal Process

What ITINs are Expiring and When?

Any ITIN not used for the 3 consecutive tax yrs
IRS Sends letters to ITIN holders warning them of expiration

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Plus family members who are ITIN holders of the above

* Middle digits of 70-87 have expired by 12.31.19.
Nonfilers for Three Consecutive Years

For a non-filer to prevent their ITIN from expiring, the non-filer will need to submit a tax year 2017, 2018, or 2019 tax return prior to December 1, 2019 to ensure the return has completed processing before the end of December 2019.

Processing delays of a tax return for this three year period may result in the ITIN expiring.
IRS Send Letters (5821) to Current ITIN Holders & Dependents

- Top States receiving ITIN letters have been CA, TX, Illinois, Utah, & Washington State

- Top Counties include LA, CA, Harris, TX, Cook, IL, & SLC, UT
How Do I Renew My ITIN?:

USE IRS Form W-7 (available at www.IRS.gov)
An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.

Before you begin:
• Don’t submit this form if you have, or are eligible to get, a U.S. social security number (SSN).
• Getting an ITIN doesn’t change your immigration status or your right to work in the United States and doesn’t make you eligible for the earned income credit.

Reason you’re submitting Form W-7. Read the instructions for the box you check. Caution: If you check box b, c, d, e, f, or g, you must file a U.S. federal tax return with Form W-7 unless you meet one of the exceptions (see instructions).

<table>
<thead>
<tr>
<th>Application Type (Check one box):</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Apply for a New ITIN</td>
</tr>
<tr>
<td>□ Renew an Existing ITIN</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name (see instructions)</th>
<th>1a First name</th>
<th>Middle name</th>
<th>Last name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name at birth if different</td>
<td>1b First name</td>
<td>Middle name</td>
<td>Last name</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Applicant’s mailing address</th>
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</thead>
<tbody>
<tr>
<td>Street address, apartment number, or rural route number. If you have a P.O. box, see separate instructions.</td>
</tr>
<tr>
<td>City or town, state or province, and country. Include ZIP code or postal code where appropriate.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Foreign (non-U.S.) address (if different from above) (see instructions)</th>
</tr>
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<tbody>
<tr>
<td>Street address, apartment number, or rural route number. Don’t use a P.O. box number.</td>
</tr>
<tr>
<td>City or town, state or province, and country. Include ZIP code or postal code where appropriate.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Birth information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth (month / day / year)</td>
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</table>

<table>
<thead>
<tr>
<th>Other information</th>
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</thead>
<tbody>
<tr>
<td>Country(ies) of citizenship</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issued by:</th>
<th>No.:</th>
<th>Exp. date:</th>
</tr>
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<table>
<thead>
<tr>
<th>6e Have you previously received an ITIN or an Internal Revenue Service Number (IRSN)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ No/Don’t know. Skip line 6f.</td>
</tr>
<tr>
<td>□ Yes. Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6f Enter ITIN and/or IRSN (and name under which it was issued) (see instructions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First name</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6g Name of college/university or company (see instructions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>City and state</td>
</tr>
</tbody>
</table>

Sign:

Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying
Qualifying Documents for ITIN Renewal

- Only original or certified copies of original documents
  
  - Certified copies are provided from the original issuing agency certifying that it is an exact copy with an official stamped seal
  
  - Embassy or consulate often issue certified copies
ITIN Holders Must Prove Identity & Foreign Status

- Passport (only document that provides proof of both)
  - Dependents from countries other than Canada, Mexico, or dependents of military members overseas need a passport with an entry date into the US for this purpose. Alternatively, such dependents must also provide medical records (for children under 6) or school records (for those under 18). Dependents older than 18 or not in school can (submit a rental agreement, bank statement, or utility bill with the applicant’s name and US address).
Documents that Prove
Identity (Photo Unless Student < 18) & Foreign Status

U.S. Driver’s license
Foreign driver’s license
State ID card
US military ID

US Citizenship & Immigration Ser ID
Visa issued by US Dep of State
Foreign Military ID
National ID Card (current w/ photo, name, address, date of birth, & exp)
Foreign voter registration card
Civil birth certificate
Medical records (under age 6)
School records
What Happens if I Don’t Renew My ITIN?

Tax return will be processed, but refund will not be issued until ITIN is renewed. Best to renew ITIN now and then submit return with renewed ITIN.

Renewal process in February through April will be VERY slow (9 to 11 weeks to process).

Although documents submitted with W7 should be returned within 60 days.
Certified Acceptance Agents (CAAs)

- Can verify documents so that originals do not have to be sent with the W7 and can help process the form.

- List of CAAs on IRS Website based upon geography.

- CAAs often charge for services so be proactive about asking for fee structure; some paid preparers are offering “free” ITIN renewals, but proceed with caution.
Consider Applying for CAA Status

There are four steps that need to be taken by new/renewing applicants:

- Complete the Application Form 13551 IRS Application to Participate in the IRS Acceptance Agent Program & attach fingerprint card (if applicable).
- Take the Mandatory Acceptance Agent training, then sign/submit the certification form.
- Attach the certification form for each authorized representative (person listed in block 5 of the application) to Form 13551.
- Complete forensic training and submit the certificate of completion to the IRS (CAAs must process at least five W-7 applications a year to remain in the program).
Next Steps

- Get engaged with your local LITC, VITA, or other outreach organization

- Paid preparers are offering “FREE” ITIN renewals … watch for tax filing season schemes

- Pro Bono matters – ABA, local tax bar, law school, etc.

- Francine.Lipman@unlv.edu
Compliance Requirements for Undocumented Workers
Compliance Requirements for Undocumented Workers

• Return filing requirements:
  • Resident aliens must report their worldwide income.
  • Nonresident aliens must report their income effectively connected with the U.S. and their U.S. sourced income.
Compliance requirement for Undocumented Workers

• IRS has said it is not the U.S. Department of Homeland Security. It believes that filing returns is a potential pathway to citizenship.

• Under Internal Revenue Code section 6103, the IRS is generally prohibited from disclosing taxpayer information, including to other federal agencies.
Compliance Requirements for Undocumented Workers

• In 1996, the IRS created the Individual Taxpayer Identification Number (ITIN)

• ITINs are a tax processing number issued by the IRS for taxpayers who are not eligible to obtain SSNs

• Individuals eligible for an ITIN include:
  • Undocumented immigrants,
  • Lawfully present individuals, and
  • U.S. resident aliens/nonresident aliens
Individual Taxpayer Identification Number (ITIN)

• Applications must include documentation to prove foreign status and identity.

• Documents include original passports, USCIS photo ID, U.S. driver’s license, visa issued by the U.S., foreign military ID, birth certificate, medical records, birth records, etc.
Benefits of the ITIN

• Facilitate compliance

• Ensure all workers report income and pay taxes.

• Ensure all workers receive tax benefits.

• Support immigration petitions/applications
ITIN Issues

• IRS requires original and/or certified copies of documents used to support information on Form W-7

• Common Errors in completing W-7:
  • Reason for applying box not check on Form W-7
  • Not submitting the required original identification documents with the renewing Form W-7
  • Submitting a federal tax returns with an expired ITIN
More ITIN Issues

• Procedures increase the processing time for applications;

• The original document requirement affects the ability of students and business travelers to comply with visa time limits;

• Procedures impose high burdens on taxpayers who are required to obtain original or certified copies from foreign government agencies.
Employer Identification Number (EIN)

• The IRS does not authorize the use of nominees to obtain EINs.

• All EIN applications must disclose the name and Taxpayer Identification Number (SSN, ITIN, or EIN) of the true principal officer, general partner, grantor, owner or trustor.
Employer Identification Number (EIN)

- How to Get an EIN Without a SSN
  - apply for the required SSN before applying for an EIN; or,
  - apply for an Individual Taxpayer Identification Number, (ITIN)
PATH ACT Effects on Undocumented Workers

• Individuals cannot file an amended return to claim EITC for prior years that a qualifying child did not have a Social Security Number.

• Individuals cannot file an amended return to claim the Child Tax Credit or the American Opportunity Education Credit for prior years that a qualifying child did not have an ITIN or SSN.
TCJA Effects on Undocumented Workers

• Eliminated the dependency exemption which could previously be claimed for ITIN holders

• Denies the Child Tax Credit to immigrant children without a Social Security Number (SSN)
  • Taxpayer may have a social security or ITIN
  • Child must have a social security number

• SSN must be issued before the due date for the filing of the return for the taxable year

• Children are eligible for the new non-refundable $500 other dependent tax credit without an SSN.
Undocumented Student Higher Education Barriers

• Ineligibility for federal aid

• In-state tuition rates in some states

• Work Authorization to assist with tuition costs

• Different federal, state, local, and university-specific policies
Translation and Interpreting Services
Commitment to assist non-English speaking taxpayers understand their tax obligations states “The IRS is committed to providing top quality service to each taxpayer, including those who lack a full command of the English language.”
Over-the-Phone Translation Service

• 22.31.1.6 (10-19-2018)

• Over-the-Phone Interpreter (OPI) Service
  • OPI Service is available 24 hours per day/7 days per week. It supports the
    Internal Revenue Service’s mission to provide top-quality service for all
    taxpayers, specifically for those whose native language is not English.
  • This is in compliance with Executive Order 13166, as well as Department of
    Justice LEP Guidance 67 FR 41455-41472, Department of Treasury LEP Guidance
    70 FR 6067, and the IRS Taxpayers’ Bill of Rights.
Document Translation Services

- IRS translation and interpreting services are offered free to taxpayers if they qualify as someone whose primary language is not English.
- The IRS provides translations in, but not limited to: French, Haitian/Creole, German, Italian, Portuguese, Arabic, Iranian Farsi, Spanish, and several African languages.
- I.R.M. 22.31.1.5.1.1 (10-19-2018)
Document Translation Services

• After a request for translation is made by a taxpayer, the IRS employee can submit a request for translation using *Form 14078, Request for Translation and/or Quality Review of Non-Vital Documents.*
IRS OPI Service

• The IRS also provides an over-the-phone interpreter service (i.e., OPI).
• OPI is a telephone interpreter-assisted service provided through the IRS that allows IRS employees to communicate with taxpayers through interpreters who speak over 350 languages.
IRS OPI Service

- All IRS organizations and their agents must make these free language services available to LEP taxpayers.
- If an IRS employee refuses to provide an LEP taxpayer with the benefit of the free services TAC recommends that the taxpayer file Form 911.
Additional Assistance

• If you believe that you have been discriminated against on the basis of national origin (LEP), a written complaint should be sent to:
  • Operations Director, Civil Rights Division
    Internal Revenue Service, Room 2413
    1111 Constitution Avenue, NW Washington, DC 20224

• Where can I find more information?
  • Department of Justice LEP website: https://www.lep.gov/
Questions?
Contact Information

Professor Francine Lipman : francine.lipman@unlv.edu
Katharine Gin : kathy@immigrantsrising.org
Iliana Perez : iliana@immigrantsrising.org
Michael Wallace : MWallace@agostinolaw.com