Taxing Undocumented Immigrants: A Primer

ABA – Tax Section
Pro Bono Week Webcast
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Undocumented immigrants are subject to income tax on their worldwide income AND payroll taxes on their earned income as well as state income, sales and property taxes (paid over $11 billion in state/local taxes as well as $10-15 billion in Social Security taxes annually with very limited benefits)
Undocumented Immigrant Families and Our Federal Income Tax

1. Filing accurate tax returns is critical
2. ITINs Required for ALL
3. Filing status and dependency issues
4. Earned income tax credits
5. Child tax credits
6. Economic Stimulus credits
7. Social Security benefits
Individual Taxpayer Identification Numbers (ITINs)

- Use Form W7 for TIN if cannot qualify for SSN
- Generally must attach to a federal income tax return for every person without a SSN on return
- Must have original valid documents certified by a qualified individual to establish foreign status/identity
Filing Status Matters

- **Married Filing Jointly**
  - Nonresident alien spouse
- **Head of Household**
  - Loss of greater standard deduction
  - Loss of personal exemption
- **Married Filing Separately**
  - Loss of greater standard deduction
  - Loss of personal exemptions
  - Loss of EITC
- **Unmarried**
  - Only appropriate if NOT married
New in 2005 and thereafter
Uniform Definition of a Child

- Must be a son, daughter, brother, sister, or eligible foster child or descendant of the foregoing.

- Must have lived with you in your principal place of abode for more than one-half of the year.

- Must be a U.S. citizen or resident OR a resident of Mexico or Canada.
Qualifying Relative

- Relationship test
- Gross income test
- Support test
- Citizenship/resident test
- Joint return test
- Not qualifying child of anyone
Undocumented working families do not qualify for the EITC (federal benefit)

The EITC is intended to encourage work (with authorization) and ensure that low-income working families do not pay taxes.

Congress requires that every member of the household (whether working or not) have a Social Security number.

This requirement is overbroad and poorly targeted . . .
EITC and Retroactive Benefits

- If SSNs are obtained before SOL expires taxpayers may amend and claim EITC (up to $5,751 in 2011) retroactively (even if work was not authorized at the time of performance)
- This may reduce refundable CTC but should result in a net refund to taxpayers
But undocumented working families do qualify for the refundable CTC

While designed and targeted for middle-class Americans, this credit is refundable up to $1,000 per qualifying child and does NOT require a SSN for qualifying children or their parents. Ironically, because undocumented families do not qualify for the EITC they often receive this benefit.
Qualifying Children for CTC

- Must be under age 17 as of the close of the tax year AND
- Must be U.S. citizens or residents (NOT a resident of Mexico or Canada).
Most Undocumented Immigrant Families Do NOT Qualify for Economic Stimulus Tax Rate Cuts/Credits

- **2008** Up to $1,200 plus $300 per child
- **2009** and **2010** Up to $800 per family
- **2011** Social Security 2% rate cut for ALL!
“The decision to prohibit undocumented immigrants from receiving tax rebates in the stimulus bill highlights the injustice in our immigration system. It proves that these workers pay into the tax system and help support our economy. It also reveals the hypocrisy of our laws.”

Bishop John Wester

Chairman, U.S. Conference of Catholic Bishops Committee on Migration
Social Security Benefits

- Undocumented immigrants must pay social security/medicare taxes on their wages, but will not be eligible for benefits unless they obtain authorization to work in the United States
  - HORRIBLY REGRESSIVE
  - LOST BENEFITS ARE ENORMOUS
Example of Lost Benefits

- Average Annual Earnings (highest 35 years) of $24,000
  
  First  $750 \times 90\% = 675$
  
  Next  $1,250 \times 32\% = 400$

  $1,075 \text{ per month}$

  PLUS MEDICARE (for $100 \text{ per month}$)

  Or $12,000 \text{ per year tax free for life!!}$

This is a benefit that will last the duration of the worker’s life and the life of any spouse (1/2) and dependents (through age 18)
Resources to HELP?

LITCs (Updated list on IRS website)

Taxing Undocumented Immigrants
http://SSRN.com/author=334178

The Illegal Tax (forthcoming 2011)

Publication 17 at www.irs.gov

Publication 519 (US Tax Guide for Aliens)

Francine.Lipman@unlv.edu