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‘Amnesty Bonuses’ in Tax Code: Illegal Immigrants to Receive Earned Income Tax Credit

Could cost ‘more than \$24,000 to those who receive deferred action’

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President Barack Obama has promoted his recent executive action on immigration by arguing that he’s only deferring action – holding off on enforcement of the current immigration laws until an immigration reform he approves of passes Congress. But that’s not really true; in fact there’s a way for illegal immigrants immediately to receive “amnesty bonuses,” as Senator Ben Sasse of Nebraska terms it.

Here’s how. A recent Homeland Security Committee hearing on immigration revealed an alarming consequence of President Obama’s executive amnesty—that illegal immigrants with deferred status may be able to receive the Earned Income Tax Credit (EITC). Moreover, this person, who is here in the U.S. unlawfully, could be able to file an amended tax return for up to the last three tax years, possibly receiving upwards of \$24,000 in tax credits.

The discovery was made by Eileen J. O’Connor, a tax lawyer and the former head of the tax division of the United States Department of Justice, who used her congressional testimony in front of the Senate Homeland Security Committee to explain it. “The law makes a social security number a requirement of eligibility to receive the earned income credit,” O’Connor explained.

“But in 1999, the Chief Counsel’s office of IRS ruled (in a non-binding, non-precedential way, but no one but the IRS pays attention to those disclaimers) that when a person receives a social security number, he can file amended returns to claim the credit for the three preceding years during which he did not. The logic is puzzling: the credit is not available if you don’t have a social security number, but you can receive it retroactively for years during which you did not qualify for it because you didn’t have a social security number.”

Senator Sasse, who along with Senator Ron Johnson has written a letter addressed to the inspector general of the U.S. Treasury Department, has released a statement commenting on the “amnesty bonuses.”

“By offering illegal aliens new payments under the Earned Income Tax Credit, the IRS may encourage fraud from those claiming children living in other countries. The Administration may have blown open the doors for fraud with amnesty bonuses of more than \$24,000 to those who receive deferred action,” Sasse says in the statement.

“This is basic economics: if you want more of something, you subsidize it. By subsidizing illegal entry with four years’ worth of new tax credits, the IRS would promote lawlessness. This program severely undermines the White House’s lip-service to enforcing the law and would increase the burden on law-abiding taxpayers.”

In his own statement, Senator Ron Johnson, chairman of the Homeland Security Committee, seconds Sasse’s concerns. “Non-U.S. citizens who qualify for President Obama’s temporary deferred actions will now be eligible to receive permanent Social Security numbers. A Social Security number is the key that opens a whole treasure chest of benefits, including significant tax credits,” Johnson’s statement reads.

“Most notably, qualifying applicants for the president’s programs can now claim thousands – even tens of thousands – of dollars in payments from the Earned Income Tax Credit and, for some, the Additional Child Tax Credit. These two programs, which cost taxpayers \$89.6 billion in 2013, were responsible for \$21 billion in improper, potentially fraudulent payments that same year. Americans deserve to know where their taxpayer dollars are being spent and whether the Internal Revenue Service is failing to protect them from improper payments.”

Here’s the full text of Sasse’s letter, which is signed by Johnson, and nine direct questions for the inspector general:

Dear Inspector General George:

This week, witnesses at a hearing of the Senate Homeland Security and Governmental Affairs Committee discussed the implications of the President’s executive amnesty. We would appreciate your views on the testimony of Eileen O’Connor, formerly with the Department of Justice Tax Division, who discussed the tax consequences of the President’s new policies.

We would like to summarize her comments briefly and would appreciate your assessment of whether what we heard was accurate.

According to Ms. O’Connor, the President’s executive actions will not only allow illegal aliens to stay in the country for three years, but would also award them with free federal money.

Right now, the law requires anyone who lives and works in the country illegally to be returned to their home country. The law also prohibits these individuals from getting many federal benefits available to U.S. citizens and legal residents.

As Ms. O’Connor explained, however, the President effectively re-wrote the law in a way that significantly changed the status of some of those here illegally. From this point forward, any illegal alien who is approved under the new rules to stay in the U.S. – a process known as “deferred action” – will now be allowed to receive a Social Security Number.

The significance of this change, Ms. O’Connor noted, is that having a Social Security Number will allow individuals to get federal benefits that were previously unavailable. In particular, it could allow millions of people to receive a tax benefit known as the Earned Income Tax Credit, or EITC. Under the law, families with low to moderate incomes can get an EITC cash payment as high as \$6,143, but only if they have a Social Security Number.

For some people, the total amount could go even higher. This is because under EITC rules, anyone eligible for the program can also ask for payments to cover the three prior years as well. This means that an illegal alien with a new Social Security Number can get a payment of more than \$24,000 for years they were working illegally. On top of this, Ms. O’Connor noted, families could also get thousands more in payments through the Additional Child Tax Credit program. This means a family with three or more children might collect even more than \$24,000.

Ms. O’Connor concluded by pointing to the work of your office, which has found enormous fraud rates in both the EITC program and in the Additional Child Tax Credit program. Therefore, we are concerned that because the President’s new rules would let millions of people access these programs for the first time, the cost to the taxpayer could be billions of dollars.

When the President announced his new policies in November, these facts were not included. Moreover, none of the documents released by the administration provided any explanation for this, either.

In light of her testimony, we would greatly appreciate if you could provide answers to the following questions:

1. Is the above summary of Ms. O’Connor’s testimony an accurate description of the effects of the President’s executive actions?
2. Given the high rates of fraud in both tax credit programs, is there an incentive for tax filers to fraudulently claim more children than they have?
3. To be eligible for the Additional Child Tax Credit, is a tax filer required to provide a Social Security Number for each claimed child?
4. Is it possible for individuals to claim tax benefits under either program for children that do not live in the

United States? If so, can you estimate the amount of fraudulent claims?

5. If someone with children who has worked in the United States receives deferred action and gets a new Social Security Number, but has never filed their taxes, what is the highest amount that person might receive under both tax credit programs?

6. What additional tax benefits might someone be eligible for with a Social Security Number that they would not have been eligible for with merely an Individual Tax Identification Number?

7. What do you estimate will be the full cost of providing EITC benefits to illegal aliens under the President's executive actions?

8. How many people do you estimate will be eligible for EITC benefits under the President's executive actions who were not previously eligible?

9. Is the Internal Revenue Service equipped to detect and prevent fraud as it processes millions of new claims for EITC benefits?

We appreciate your assistance in better understanding this issue and believe both Congress and the American people will benefit from a full accounting of the facts.

The letter will be sent to the Treasury Department today.



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