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# Individual Taxpayer Identification Number (ITIN) Filers and the Child Tax Credit: Overview and Legislation

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## Overview of the Issue

The child tax credit was created by the Taxpayer Relief Act of 1997 (P.L. 105-34) to help ease the financial burden on families when they have children.<sup>1</sup> The credit offsets a taxpayer's federal income tax liability. It also includes a refundable portion, known as the additional child tax credit (ACTC). The ACTC is available to taxpayers with little or no federal income tax liability.

In order to claim the child tax credit (including the ACTC), the taxpayer must provide a taxpayer identification number for the taxpayer, his or her spouse if married filing jointly, and any children (a qualifying child must be a U.S. citizen, resident, or national).<sup>2</sup> These identification numbers can be Social Security numbers (SSNs) or individual taxpayer identification numbers (ITINs). SSNs are issued by the Social Security Administration to U.S. citizens and qualifying aliens.<sup>3</sup> ITINs are issued by the Internal Revenue Service (IRS) to aliens who do not have and are not eligible to receive SSNs,<sup>4</sup> including aliens who enter or remain in the United States in violation of federal immigration law. ITINs are issued so that aliens without SSNs have the unique taxpayer identifying number that is necessary to file tax returns, pay taxes, and otherwise comply with federal tax laws. Because the child tax credit (including the ACTC) may be claimed by taxpayers using ITINs, aliens are allowed to claim the credit even if they are in the country in violation of federal immigration law, assuming all other criteria for claiming the credit are met.<sup>5</sup>

Congressional interest in the child tax credit received by taxpayers without SSNs increased after a 2011 report by the Treasury Inspector General for Tax Administration (TIGTA).<sup>6</sup> The report found that ITIN filers whose returns were processed in 2010 claimed \$4.2 billion worth of the ACTC, increasing from \$924 million in 2005 and \$2.1 billion in 2008. For returns processed in 2010, the average ACTC claimed by ITIN filers was \$1,800.<sup>7</sup> Of note, these figures did not necessarily represent the *annual* revenue losses associated with ITIN filers claiming the ACTC. For example, the report detailed that for returns *processed* in 2010, approximately 11% of claimants submitted tax returns for multiple years, claiming a little more than \$1 billion in ACTCs.<sup>8</sup> The report

<sup>1</sup> 26 U.S.C. §24. For more information on the credit, see CRS Report R41873, *The Child Tax Credit: Current Law and Legislative History*, by (name redacted).

<sup>2</sup> 26 U.S.C. §§24(e), 6109, 7701(a)(41); 26 C.F.R. §301.6109-1. Under the recently enacted Protecting Americans from Tax Hikes Act of 2015 (PATH Act, P.L. 114-113, Div. Q, §205), the identification numbers must be issued on or before the due date for filing the return. The provision applies to returns filed after December 18, 2015. It prevents taxpayers who receive identification numbers from retroactively claiming the credit for prior years in which they lacked the number.

<sup>3</sup> See 42 U.S.C. §405(c)(2)(B)(i) (alien eligibility for SSNs); 20 C.F.R. §422.104 (same).

<sup>4</sup> 26 C.F.R. §301.6109-1(a)(1)(ii)(B). ITINs are issued for federal tax purposes only and do not affect an individual's immigration status. Section 203 of the PATH Act clarifies the procedures for receiving an ITIN and requires the Treasury Department to conduct a study on the administration of the ITIN program, including possible ways to reduce fraud and improper payments. For more information on ITINs, see CRS Report R43840, *Federal Income Taxes and Noncitizens: Frequently Asked Questions*, by (name redacted) and (name redacted).

<sup>5</sup> It might be asked whether another federal law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PWORA), restricts the ability of certain aliens to claim the ACTC. There is no indication the IRS treats the ACTC as being subject to PRWORA. For analysis of this issue, see CRS Report R44290, *Legal Authority for Aliens to Claim Refundable Tax Credits: In Brief*, by (name redacted).

<sup>6</sup> Treasury Inspector General for Tax Administration, *Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 Billion in Refundable Credits*, No. 2011-41-061 (July 7, 2011).

<sup>7</sup> See *id.* at 5.

<sup>8</sup> See *id.* at 5 (reporting that approximately 238,000 ITIN filers submitted more than 608,000 tax returns for multiple years at the same time and claimed slightly more than one billion dollars in ACTCs on those returns).

recommended “legislation to clarify whether a social security number which is valid for employment is needed to claim the ACTC.”<sup>9</sup>

Around the same time that the TIGTA report was issued, there were media reports on a different issue regarding ITIN filers and the child tax credit.<sup>10</sup> These reports focused on allegations that some ITIN filers who resided in the United States had claimed the ACTC for children who were not U.S. citizens or nationals and had never resided in the United States. If true, it appears these ITIN filers violated the law. The problem is not that they are ITIN filers—as discussed above, ITIN filers may claim the ACTC under current law. Rather, it appears these ACTC claims were improper because the children did not qualify for the credit since, by law, a qualifying child must be a U.S. citizen, resident, or national.<sup>11</sup>

### SSN Requirement for the EITC

The identification requirement for the ACTC can be contrasted with the requirement for another refundable credit—the earned income tax credit (EITC).<sup>12</sup> In order to claim the EITC, taxpayers must provide SSNs for themselves, a spouse if filing a joint return, and any qualifying children.<sup>13</sup> The SSNs must be valid for work purposes (i.e., the SSN holder is authorized to work in the United States). Some aliens have SSNs that are issued for non-work purposes,<sup>14</sup> but individuals with these types of SSNs are not eligible for the EITC.

Currently, the EITC is the only tax credit with an SSN requirement. The now-expired Making Work Pay and 2008 stimulus credits contained SSN requirements, although they did not specify that the SSN be valid for work purposes.<sup>15</sup>

## Recent Legislative History

### 114<sup>th</sup> Congress

In the 114<sup>th</sup> Congress, a variety of bills have been introduced to limit the ability of taxpayers without SSNs to claim the child tax credit or ACTC. These bills are compared in **Table 1**.

<sup>9</sup> See *id.* at 6.

<sup>10</sup> See, e.g., Bob Segall, *Will lawmakers act to close tax loophole for illegal immigrants?*, WTHR.com (Indianapolis, IN), April 27, 2012, available at <http://www.wthr.com/story/17861738/will-lawmakers-act-to-close-tax-loophole-for-illegal-immigrants>.

<sup>11</sup> 26 U.S.C. §§24(c)(2), 152(b)(3).

<sup>12</sup> For information on the EITC, see CRS Report R43805, *The Earned Income Tax Credit (EITC): An Overview*, by (name redacted) and (name redacted).

<sup>13</sup> 26 U.S.C. §32(m).

<sup>14</sup> Valid non-work reasons are (1) to satisfy a federal statute or regulation that requires an SSN in order to receive a federally funded benefit to which the individual has otherwise established entitlement; or (2) to satisfy a state or local law that requires an SSN in order to receive public assistance benefits to which the individual has otherwise established entitlement and the individual is “legally in the United States.” 20 C.F.R. §422.104(a)(3).

<sup>15</sup> 26 U.S.C. §§36A(d)(1)(B), 6428(e)(3)(A)&(h). Also, for the 2008 stimulus credit, the SSN requirement did not apply to a joint return if at least one spouse was a member of the Armed Forces during the taxable year.

**Table 1. Key Parameters of Legislation in the 114<sup>th</sup> Congress to Deny the Child Tax Credit to Taxpayers Without an SSN**

	What type of identification (ID) must the taxpayer provide?	If SSN, must the SSN be valid for work purposes (i.e., the SSN holder is authorized to work in the United States)?	For married taxpayers filing a joint return, is the ID requirement applicable to either spouse or both?	Does the legislation change the current ID requirement for qualifying children?	Is the ID requirement applicable to the entire child tax credit or only the ACTC?
H.R. 192	SSN or “otherwise demonstrates” authorization to work in the United States	No	Either spouse	No	ACTC only
H.R. 713	SSN	No	Both spouses	No	ACTC only
H.R. 1332	Would not change ID requirement. Rather, would deny credit to “any individual” who is “not lawfully present” in the U.S. or who is granted work authorization “pursuant to a program not specifically authorized by law which provides aliens with deferred action on removal.”			No	Entire child tax credit
H.R. 1333	SSN	No	Both spouses	No	Entire child tax credit
H.R. 2334	SSN	No	Either spouse	No	ACTC only
H.R. 2956	SSN	No	Either spouse	Yes, child’s SSN must also be provided	ACTC only
H.R. 4722	SSN	Yes	Either spouse	No	ACTC only
S. 53	SSN	No	Not expressly addressed	No	Entire child tax credit

**Source:** CRS analysis of H.R. 192, H.R. 713, H.R. 1332, H.R. 1333, H.R. 2334, H.R. 2956, H.R. 4722, and S. 53.

As illustrated in **Table 1**, some of the bills (H.R. 713, H.R. 1333) would require that both spouses provide an SSN if they filed a joint return. In other cases (H.R. 2334, H.R. 192, H.R. 2956, H.R. 4722), the SSN requirement would be imposed on either spouse, and one bill (S. 53) does not expressly address the issue. One bill (H.R. 2956) would impose an SSN requirement on both the taxpayer (or spouse if filing a joint return) and any qualifying child. Only H.R. 4722 would require that the SSN be valid for work purposes (i.e., that the SSN holder be authorized to work in the United States). On March 16, 2016, the House Ways and Means Committee reported H.R. 4722 favorably out of committee.<sup>16</sup> Since the identification restrictions would result in certain

<sup>16</sup> For a detailed vote count, see Committee on Ways and Means markup results, available at <http://waysandmeans.house.gov/wp-content/uploads/2016/03/20160316-Vote-Sheet-H.R.-4722.pdf>.

taxpayers being denied the ACTC, the Joint Committee on Taxation has estimated that this bill would save \$19.9 billion between 2016 and 2026.<sup>17</sup>

One bill (H.R. 2334) contains provisions relevant to the SSN requirement that are not included in the other bills. The first provision of the proposed bill is identical to one that has since been enacted into law by Section 207 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, P.L. 114-113, Div. Q), signed into law on December 18, 2015. Under the PATH Act, any taxpayer who files a fraudulent claim for the ACTC is prohibited from claiming the credit for 10 years, and any taxpayer whose ACTC claim was due to the “reckless or intentional disregard” of the law (but not due to fraud) is prohibited from claiming the credit for two years.<sup>18</sup> Further, any taxpayer denied the ACTC through a deficiency assessment must substantiate eligibility for the credit prior to claiming it again.<sup>19</sup> H.R. 2334 would also require the IRS to create a form on which paid tax return preparers would have to substantiate a taxpayer’s eligibility for the ACTC. Paid preparers who failed to meet due diligence requirements for claiming the ACTC would be subject to a \$500 fine, per failure. The PATH Act did not include a similar provision, although it does require the IRS to study the effectiveness of paid preparer due diligence requirements.

While most of the bills in **Table 1** would impose an SSN requirement intended to restrict the ability of certain aliens to claim the credit, another bill (H.R. 1332) takes a different approach. Rather than requiring an SSN, H.R. 1332 would deny the entire child tax credit to any individual who is “not lawfully present” in the United States or who “is granted employment authorization pursuant to a program not specifically authorized by law which provides aliens with deferred action on removal.”<sup>20</sup> Thus, such aliens would be prohibited from claiming the child tax credit, regardless of whether they filed a return using an SSN or ITIN.

## 113<sup>th</sup> Congress

In the 113<sup>th</sup> Congress, Congress had introduced a variety of bills similar to those introduced in the 114<sup>th</sup> Congress to limit the ability of taxpayers who did not furnish SSN numbers to claim the child tax credit. None of these bills became law.

Some bills (H.R. 556, H.R. 3788, H.R. 3885, Title III of S. 18, and S. 1869) would have required the taxpayer to provide his or her SSN to claim the ACTC, with this requirement deemed met if either spouse included their SSN in cases where taxpayers filed a joint return. Other legislation (H.R. 2778 and S. 91) would have prohibited taxpayers with ITINs from claiming any part of the child tax credit, not just the ACTC (these bills did not address the treatment of joint returns). Under H.R. 1674, meanwhile, a taxpayer would have been required to provide an SSN or “otherwise demonstrate” that he or she was authorized to work in the United States to claim the ACTC (this requirement would be met if either spouse provided an SSN or the documentation).

The 113<sup>th</sup> Congress also included legislation (Senator Ayotte’s proposed amendment S.Amdt. 2732 to S. 1963 and S. 1977) that would have required a taxpayer to provide the SSN of any

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<sup>17</sup> For more information, see Joint Committee on Taxation, Description of an Amendment in the Nature of a Substitute to the Provisions of H.R. 4722, A Bill to Amend the Internal Revenue Code of 1986 to Require Inclusion of the Taxpayer’s Social Security Number to Claim the Refundable Child Tax Credit, March 15, 2016, JCX-13-16, <http://waysandmeans.house.gov/wp-content/uploads/2016/03/20160316-JCT-Description-of-Amendment-in-the-Nature-of-a-Substitute-to-H.R.-4722-Green-Sheet.pdf>.

<sup>18</sup> 26 U.S.C. §24(g)(1).

<sup>19</sup> 26 U.S.C. §24(g)(2).

<sup>20</sup> H.R. 1332, §(3)(a)(G).

qualifying child in order to claim the ACTC. This SSN requirement would have only applied to the child, and not to the taxpayer or his/her spouse.

## 112<sup>th</sup> Congress

Bills similar to those introduced in the 113<sup>th</sup> and 114<sup>th</sup> Congresses had also been introduced in the 112<sup>th</sup> Congress (2011-2012). The relevant provisions of these bills, none of which became law, are discussed below.

Some of the bills in the 112<sup>th</sup> Congress would have required taxpayers to provide an SSN to claim the ACTC (H.R. 3275, Title VI of H.R. 5652, the House-passed version of H.R. 3630, and H.R. 1956).<sup>21</sup> One of these bills (H.R. 3275) would have imposed the SSN requirement on both spouses for married couples filing a joint return; the other bills would have only required that one spouse provide an SSN. Other legislation (H.R. 3444, S. 577) would have required taxpayers to provide an SSN to claim the entire child tax credit (i.e., both the refundable ACTC and nonrefundable portion which offsets income taxes). This legislation did not expressly address the treatment of married couples filing joint returns.

Another bill (H.R. 6074) would have required that the taxpayer provide an SSN or “otherwise demonstrate” that he or she is authorized to work in the United States to claim the ACTC. In the case of married couples filing a joint return, this requirement would have applied to either spouse.

Two bills (S. 3083 and H.R. 6165) would have required that taxpayers who are aliens attach photocopies of certain immigration documentation for themselves and qualifying children to their income tax returns to claim the ACTC. The bills did not expressly address the treatment of joint returns.

In addition to these bills, on April 18, 2012, the House Ways and Means Committee marked up legislative language in response to reconciliation instructions included in H.Con.Res. 112 (made effective by H.Res. 614). One of the legislative recommendations considered would have required a taxpayer to include his or her SSN to claim the ACTC (in the case of joint returns, only one spouse would have to provide an SSN), beginning in 2013. This legislative recommendation was similar to the SSN requirement included in the House-passed version of H.R. 3630. It was agreed to by a vote of 22-12, but was not taken up by the House.

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<sup>21</sup> In the House-passed version of H.R. 3630, this modification to the identification requirement for the ACTC was initially used to partially offset the cost of the legislation, which extended emergency unemployment insurance (UI) benefits, the Medicare “Doc-Fix”, and the payroll tax cut. According to the Congressional Budget Office, the House-passed provision of H.R. 3630 would have raised \$9.4 billion between 2012 and 2021. See Table 2 of Congressional Budget Office, *Budgetary Effects of H.R. 3630 as Introduced on December 9, 2011*, December 9, 2011, available at <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/costestimate/hr36303.pdf>. For information on these programs, see CRS Report R41662, *Unemployment Insurance: Legislative Issues in the 112th Congress*, by (name redacted) and (name redacted), CRS Report R40907, *Medicare Physician Payment Updates and the Sustainable Growth Rate (SGR) System*, by (name redacted) and (name redacted), CRS Report R42103, *Extending the Temporary Payroll Tax Reduction: A Brief Description and Economic Analysis*, by (name redacted) and (name redacted), and CRS Report R41648, *Social Security: Temporary Payroll Tax Reduction*, by (name redacted).

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