

E-Newsletter

Special Issues for Immigrants filing income tax returns

Like other workers, immigrants working in the United States are generally required by law to file federal income taxes, which are due yearly on April 15. Besides the legal requirements, there are many good reasons to file federal income tax returns, including that tax filing is necessary in order to show eligibility for most immigration benefits, and that low- and moderate-income immigrant families may actually be entitled to a refund of taxes paid.

Immigrants working in the United States, especially those in irregular employment situations face many challenges when filing income tax returns. This publication focuses on two issues: worker access to Individual Taxpayer Identification Numbers (ITINs) and how to file taxes when employers misclassify workers as "independent contractors."

Are all workers required to file income tax returns?

Certain very low-income workers are not required to file tax returns. However, IRS encourages them to file, and filing may result in certain tax benefits being paid to a family.

For tax year 2003, a single individual under 65 must generally file a tax return if his or her income was above \$7,800. A married couple filing jointly whose income was below \$15,600 is exempt from filing. Complete instructions on those who are exempt are available at <http://www.irs.gov/pub/irs-pdf/i1040.pdf>.

What about filing taxes with an ITIN?

The Internal Revenue Service (IRS) began issuing the ITIN to individuals required to file income tax returns, but who are not eligible for a SSN in July of 1996. To date, the IRS has issued seven million ITINs. In tax year 2001 alone, over one half million income tax returns were filed using ITINs, contributing \$305 million to the U.S. Treasury.

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Note: The IRS has said that applications and returns must be filed in advance of the April 15 income tax due date in order to be timely processed.

What is the Individual Tax Identification Number (ITIN)?

The ITIN is a nine-digit number similar to the SSN. If someone is eligible for a valid SSN, however, they are not eligible to apply for an ITIN. Some examples of persons who might be eligible for an ITIN are:

- An individual who has earned income in the U.S., but who is not eligible for a SSN;
- An individual who is listed as a spouse or dependent (i.e. child) on the tax return of a U.S. citizen, national, or legal permanent resident must apply for an ITIN if she is not eligible for a SSN. Then, the person filing can claim an exemption for that spouse or dependent;
- An individual who has interest-bearing accounts in a bank, or who received dividends from money invested in stocks, but who is not eligible for a SSN; or
- An individual who successfully obtains an award or settlement from a legal claim (i.e. an administrative claim or lawsuit for unpaid wages, discrimination, or sexual harassment) can also apply for an ITIN to satisfy any potential tax requirements they might have to report the amount of money they have won.
- The ITIN is available to a range of foreign-born persons. Use of an ITIN does not therefore create an inference regarding a person's immigration status.

Important Reminder

Workers should never use the ITIN for employment. The ITIN is neither a work authorization card nor a social security card. Workers should not use the ITIN in lieu of a SSN when filling out the I-9 Form at a new job to establish employment eligibility.

The ITIN should not be used in attempts to qualify for public benefits that are available only to certain groups of legal immigrants, such as unemployment insurance compensation and certain welfare benefits. The ITIN is accepted in some states as identification for drivers' licenses, and by many banks. Its use as an identifier on bank accounts is authorized under the USA PATRIOT Act.

Recent Changes to ITIN eligibility and processing.

In December 2003, the IRS made some important changes to the ITIN. The IRS reduces from 40 to 13 the number of documents that it will accept as proof of identity in order to support issuance of the ITIN. It also changed the appearance of the ITIN, from a card to a letter, so that the ITIN would not be confused with a social security number.

Most importantly, IRS will not issue an ITIN unless the application is accompanied by proof that the ITIN is necessary for tax return purposes. An applicant for an ITIN must fill out his or her income tax return and mail the return with the ITIN application to the IRS processing center, which will forward the tax return to the tax processing office after the ITIN has been issued. There are some limited exceptions to this procedure. For example, a person who has opened an interest-bearing bank account may supply proof that the account has been opened and submit that to IRS with their ITIN application.

Helpful Resources

Many community groups and low-income taxpayer clinics have programs that can help fill out tax return forms and even process applications for an ITIN. These programs can advise as well about deadlines and possible extensions for filing. The [Center for Economic Progress](#) has a nationwide listing of clinics available on its website, at <http://www.tax-coalition.org/programs.htm>.

What Can A Worker Do About Her Taxes if Her Employer Misclassifies Her as an Independent Contractor?

Employers often call workers "independent contractors" to avoid responsibilities under labor and employment protections and to save the payroll costs associated with having employees on the books. If the worker is classified as an "independent contractor" that means the employer did not withhold and pay in any federal employment or income taxes for that worker. Sometimes the employer does not provide any tax forms or make any reports to the IRS, especially if the worker is paid in cash. If the worker does get a Form 1099 from the employer at tax time, the worker will owe employer- and employee-side employment taxes as if the worker was self-employed, which is over 15% of wages paid, instead of the 7.65% an employee would owe in employment taxes.

Misclassified employees can correct their employers' misclassification by preparing their tax returns to reflect the reality that they were an employee. By submitting a Form 4852, Substitute W-2, the worker tells the IRS that the employer's 1099 information for the employee is incorrect. The worker also needs to submit a declaration or statement explaining why the worker was an "employee" and not an independent contractor. If employees received more than one 1099, or some 1099"s and some cash with no forms, substitute W-2s can be used for all periods of employment. The IRS can and does correct these misclassifications and credit the employee's account. The steps for filling out this form are available at: www.workerstaxcommittee.com. Workers should seek out tax preparers to help them and be sure to tell the tax preparers that they've been misclassified and should not have received 1099 Forms.

How to Get an ITIN

In order to get an ITIN, an immigrant worker needs to fill out Internal Revenue Service form W-7. The form is available on-line at www.irs.gov/pub/irs-fill/fw7.pdf. It is available in Spanish as well, at www.irs.gov/pub/irs-fill/fw7sp.pdf, or by calling 1 800 TAX FORM. ITIN applications are submitted by mail to: **Internal Revenue Service, Philadelphia Service Center, ITIN Unit, P.O. Box 447, Bensalem, PA 19020**. The IRS has said that applications and returns must be filed in advance of April 15 income tax due date in order to be timely processed.

Are there risks in applying for and using the ITIN?

Immigrants and advocates have some concerns about information sharing between the IRS and other federal agencies. IRS has recently stated that it has "not shared any information from applicants with any other agency." It is not in the IRS's tax collection interest to disclose information to immigration authorities. At present, the IRS does not have the authority to engage in a wholesale information exchange with other federal agencies. Taxpayer privacy provision in the tax laws are a cornerstone of the US tax system. Advocates should oppose any efforts to erode taxpayer privacy and thus erode taxpayer confidence.

There have been isolated, but disturbing reports of employees of the Treasury Inspector General for Tax Administration agents using ITIN information to prosecute immigrants. Thus far, there have been only isolated cases, all out of Kentucky. The agent involved is currently under investigation. TIGTA has also recommended broader information-sharing, which would require a change in federal law. While immigrant taxpayers should be made aware of this risk, immigrant taxpayers must also be informed that they are obligated to pay their income taxes.

The ITIN has been caught up in the post-September 11th national security debate, with some in the Administration urging greater information sharing among federal agencies. The controversy is unrelated to tax filing – the IRS says there is no difference in accuracy of filing between returns filed with ITINs and with Social Security Numbers