

Label

(See instructions on page 16.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign
(See page 16.)

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Filing Status

Check only one box.

Exemptions

If more than four dependents, see page 16.

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

Do not attach Form 1040-EZ.

THE IRS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER:

An Operational Guide to the ITIN Program



THE IRS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN):

An Operational Guide to the ITIN Program



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The **Annie E. Casey Foundation** is a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States. It was established in 1948 by Jim Casey, one of the founders of United Parcel Service, and his siblings, who named the Foundation in honor of their mother. The primary mission of the Foundation is to foster public policies, human-service reforms, and community supports that more effectively meet the needs of today's vulnerable children and families. In pursuit of this goal, the Foundation makes grants that help states, cities, and neighborhoods fashion more innovative, cost-effective responses to these needs. For more information, visit the Foundation's website at www.aecf.org.

The **Center for Economic Progress** seeks to increase economic opportunities for low-income families, children and individuals by improving access to public, private and non-profit programs and services. Through advocacy, direct service, capacity-building and partnerships, the Center challenges barriers facing its constituency, promoting economic empowerment and encouraging self-sufficiency. The Center leads the National Community Tax Coalition, which seeks to increase access to tax credits, benefits and asset-building opportunities. Representing more than 300 affiliate organizations from 42 states, the Coalition provides capacity building tools to the growing field of free tax preparation service and asset-building, while also bringing the voices of working families and individuals to the tax policy arena. The ITIN Working Group is one of four active working groups facilitated by the Coalition.

**THE IRS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN):
AN OPERATIONAL GUIDE TO THE ITIN PROGRAM**

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I. EXECUTIVE SUMMARY

The Internal Revenue Service introduced the Individual Tax Identification Number (ITIN) in 1996. Since that date, the number of ITIN users has increased exponentially. The group of taxpayers using ITINs is diverse, including workers who do not currently qualify for a Social Security Number (SSN), or those who are in the midst of immigration proceedings that might allow them to legalize their status and qualify for a valid SSN.

ITINs allow workers without a valid SSN to (1) report their earnings to the Internal Revenue Service (IRS) and to (2) open interest-bearing bank accounts. Both purposes facilitate the reporting of income and interest income to the IRS. Without an ITIN, immigrant workers would not be able to file an income tax return and receive a refund of the tax credits and tax benefits offered them under the Internal Revenue Code.

The appearance of an ITIN is substantially similar to that of a SSN. ITINs consist of nine digits, though always beginning with the number “9.” Also similar to SSNs, ITINs are in some cases being used for broader purposes than originally intended. Due to this, the IRS is taking steps to curb ITIN use for purposes other than the filing of income tax returns. The IRS has openly discouraged, for instance, the use of ITINs for the issuance of driver’s licenses.

ITINs do not authorize a taxpayer to secure employment within the United States. The ITIN’s sole purpose is to assist taxpayers without a SSN to report their U.S. earnings. However, many anti-immigration groups denounce ITINs, viewing them as a vehicle to circumvent national immigration policy and a threat to national security. Conversely, pro-immigrant organizations view ITINs as a way to allow all workers within the U.S. to report their employment earnings and receive tax benefits to which they are legally entitled. These organizations are also well aware that immigration petitions requiring evidence of an applicant’s ability to support an individual and their family rely on the proof that tax returns provide.

Over 7 million ITINs have been issued since the ITIN program began in July 1996. A large majority of ITINs issued have been used for tax filing purposes. However, beginning in December 2003, the IRS administration tightened the requirements for obtaining an ITIN. For example, as of December 2003, the IRS ITIN unit will not accept Form W-7 (Application for ITIN) without a completed Form 1040 and Form W-2 attached. ITIN applications can be completed in various ways, including at IRS walk-in sites, sent via U.S. mail, or completed by an Authorized Acceptance Agent. Administrative changes to the ITIN program include an Acceptance Agent screening function where current and prospective Acceptance Agents must undergo FBI background checks, credit checks and review of IRS filing history and compliance.

In December 2003, the first known cases of prosecution and detention of ITIN users were reported. A Treasury agent in Kentucky filed charges against two undocumented workers for misuse of a SSN. Both individuals were detained and reports of their detention quickly spread to local and national advocacy organizations. The Kentucky cases brought into question privacy concerns, information sharing among governmental entities and the future of the ITIN program. Advocacy groups joined in requesting clarification from IRS and Treasury officials of the action and information sharing that had

taken place in the Kentucky cases. The risks that had always been a potential threat to ITIN taxpayers throughout the country suddenly became very real.

These risks immediately affected the manner in which ITIN taxpayers could be served by nonprofit and community organizations. For example, tax advice formerly dispensed by volunteer or staff CPAs and accountants was no longer sufficient to adequately protect the rights of prospective ITIN applicants. Due to the fact that prospective applicants now faced the possibility of criminal prosecution by the Department of Justice, the tax advice dispensed by a non-attorney would jeopardize the applicant's rights. Although certain communications are protected when a CPA gives tax advice to a client, this privilege does not extend to criminal tax matters. Therefore, low income tax clinics (LITCs) and community organizations around the country were quickly forced to carefully consider how to best protect client rights when offering ITIN services.

The history of the ITIN, the current application environment and future considerations are discussed in detail herein. As a whole, organizations offering ITIN services must conduct a thorough cost-benefit analysis when providing assistance to individuals. Ultimately, time and additional knowledge will determine the true costs and benefits of the ITIN program. In the meantime, countless organizations across the country are assisting taxpayers in complying with the golden rule of the nation, adopted via Article I, Section 8 of the Constitution, holding that if income is earned within the U.S., Congress has the power to collect taxes due on that income. The key is to carefully assist each ITIN applicant in order to safeguard all of their rights, also enumerated within our nation's Constitution.

II. INTRODUCTION

The purpose of this guide is to discuss the practical and operational issues currently surrounding the Internal Revenue Service's Individual Tax Identification Number (ITIN). The ITIN is simply a tax identification number issued by the IRS. It is used to file a U.S. tax return when an individual is not eligible to obtain a Social Security Number (SSN). Since its introduction in 1996, the Individual Tax Identification Number program has undergone many changes and, not unlike SSNs, the ITIN is being used in ways never envisioned by its issuing agency. Due to the fact that ITINs are now widely used, demand has dramatically increased.

This handbook will guide users through the current ITIN application process. It will also examine the IRS ITIN program, including past, current and future concerns. This handbook will seek to provide guidance to practitioners working in immigrant communities who face the dilemma of how to effectively address the needs of immigrant taxpayers. The dramatic growth in demand for ITINs, coupled with apparent lapses in government confidentiality provisions that govern the release of taxpayer information, have only complicated the dilemmas faced by community leaders and service providers. Among the questions to be faced by practitioners are:

- ***Is there now a greater risk to taxpayers who use an ITIN?***
The answer appears to be yes. Given the current emphasis on national security, it is easy to see the temptation to use information about ITIN applicants for the purpose of enforcing immigration laws. (See Section VII: Current Operating Environment.)
- ***Will an ITIN become increasingly difficult to apply for and obtain?***
The rules for ITIN application are already more stringent than they were even one year ago. Whereas in the past, almost anyone without an SSN could obtain an ITIN, current rules allow only those persons with a verified tax reporting requirement to apply. (See Section IV: Recent Changes to the ITIN.)
- ***Will administration of the program include increased information sharing among governmental agencies?***
The IRS takes privacy laws very seriously but it is not the only agency with access to information about ITIN applicants. Though there are no current provisions for greater information sharing within the ITIN program itself, it remains an open issue. (See section V: IRS Privacy Rules and Confidentiality of ITIN Information.)
- ***Will administration of the program include assurances to prospective ITIN applicants and acceptance agents that ITIN usage is secure?***
Simply put, there are no iron clad guarantees. Social service agencies, acceptance agents and applicants themselves would do well to approach the situation with knowledge of the risks involved. However, even the IRS recognizes that it is not in their interest as tax collectors to compromise the privacy of taxpayers. (See Section V.)

- ***What decisions has the IRS made regarding the overall future of the ITIN program?***

The IRS appears to be committed to providing all taxpayers with a means to report income and pay taxes. Currently the IRS plans to revise the acceptance agent program to include more stringent requirements including an FBI background check for those who wish to become acceptance agents. See Section IV.

III. HISTORY OF THE ITIN

In July 1996, the Internal Revenue Service (IRS) created the Individual Tax Identification number (ITIN) to improve tax administration for individuals not eligible for a Social Security Number.¹ An ITIN closely resembles a SSN. ITINs are nine digit numbers, separated by dashes, and always begin with the number 9, e.g. 923-12-1234. An ITIN can be issued to a nonresident alien who must report investment income in the U.S. It is most often issued to resident aliens who are not eligible for a SSN but who have earned income inside the U.S.”²

The ITIN was created to help bridge the gap between workers who are required to report income earned within the U.S. but who were prevented from doing so due to lack of a valid SSN—either because they did not qualify for a SSN or were immersed in immigration proceedings. ITIN applicants must be advised that an ITIN is to be used for federal tax filing purposes only. Once a valid SSN is received, an ITIN must no longer be used. The IRS then transfers all prior tax records to correspond to the new, valid SSN. Workers with a valid SSN can also amend their earnings record with the Social Security Administration (SSA) and get credit for previous earnings. The process is the same as that used by individuals who, when in applying for Social Security benefits, notice that SSA has missed some of their earnings in prior years.³

Note that ITIN holders are not all undocumented workers. Universities including Massachusetts Institute of Technology, Yale, University of Chicago, Harvard, and Johns Hopkins Medical School post

¹ *Internal Revenue Service: Individual Tax Identification Numbers Can Be Improperly Obtained and Used*, United States General Accounting Office, Statement of Michael Brostek, Director, Tax Issues, GAO-04-529T.

² The “resident alien” designation for tax purposes is not determinative of a particular immigration status. For example, an undocumented worker who has income to report in the U.S. may be designated as “resident alien” for tax reporting purposes based on a “substantial presence test.” Substantial presence test – A resident of the U.S. for income tax purposes is taxable on worldwide income, so technically employment or income earned in the U.S. is not necessary. To qualify as a U.S. resident for *tax purposes*, an individual must tally the number of days they were physically present in the U.S. for 2001, 2002 and 2003. If (1) the number of days present for 2003 was at least 31 and (2) the number of “adjusted days” over the past three years was at least 183 (an average of roughly 120 per year) an individual qualifies as a resident alien under the substantial presence test. *Internal Revenue Code*, § 7701(b)(3); *Treas. Reg.* § 301.7701(b)-1(c). For an explanation of the history of these provisions, see Testimony of Nina E. Olson, National Taxpayer Advocate, Before the House Ways and Means Subcommittee on Oversight and Subcommittee on Social Security on Individual Taxpayer Identification Numbers (ITINs), March 10, 2004. A formula for finding “adjusted days” is available at www.ustax.ca. To find “adjusted days” add the number of days present in 2001 x 1/6 plus the number of days present in 2002 x 1/3 plus the number of days present in 2003 x 1. International Tax Services Group, Tax Return Questionnaires, Substantial Presence Test, www.ustax.ca.

³ Marielena Hincapié, Program Director, National Immigration Law Center, www.nilc.org.

information online for foreign students to advise of income tax filing requirements, with an SSN or ITIN: “It is important to note that a foreign national who initially receives an ITIN but later becomes eligible for a SSN based on receipt of U.S.-source income must have his/her ITIN rescinded and apply for a SSN instead. Individuals without a valid SSN may NOT be paid U.S.-source wages (emphasis theirs).”⁴ Other ITIN holders may include foreign artists performing in the U.S. The United States Embassy in New Zealand provides information regarding the ITIN as does the American Symphony Orchestra League and Association of Performing Arts Presenters.⁵

While 17 countries made up 85 percent of ITIN applicants for calendar years 1999, 2000 and 2001, Mexican nationals constituted over 53 percent of ITIN applicants.⁶ The reason is apparent given Mexico’s proximity to the U.S., the state of the Mexican economy and the opportunity to find employment within the U.S. It is important to make this distinction in light of the current politicized environment within which the ITIN finds itself. Some advocates, such as Katherine M. Culliton, legislative staff attorney with the Mexican American Legal Defense and Education Fund (MALDEF) believe that opposition to ITINs and other forms of identification for immigrants is “anti-immigrant and anti-Latino.”⁷ All in all, taxpayers using ITINs to file tax returns reportedly paid \$300 million to the IRS in 2001⁸.

Conversely, some groups in favor of lower immigration feel that ITINs grant de facto back-door amnesty and that the IRS “appears to be blind or indifferent to the reality that it has created an official U.S. Tax number that illegal aliens are using as identification, thereby making it easier for them to meld unnoticed into our society.”⁹ Like the ITIN, the matricula consular identification card has come under attack, with some groups stating, “Only criminals need these ridiculous, unverifiable cards.”¹⁰

Another use of ITINs is to meet the requirements to open a bank account, both in terms of identification (*see section on Use of ITINs for Bank Accounts*) and tax reporting requirements for interest bearing accounts. Wells Fargo Bank was among the first to accept the ITIN and matricula consular, a Mexican National ID card, as identification. Within the first six months, Wells Fargo opened more than 30,000 bank accounts for Mexican immigrants.¹¹ The need for bank accounts is crucial among undocumented workers for a number of reasons, including the fact that lack of a bank account makes undocumented workers robbery targets. Joyce Graciela Stellick, a court interpreter and liaison to the Hispanic community in Minnesota found that of the 1,800 undocumented workers she had encountered in the

⁴ The Johns Hopkins Medical Institutions, Office of International Student, Faculty & Staff Services, www.hopkinsmedicine.org.

⁵ <http://usembassy.org.nz/faq/taxnum.shtml> and <http://artistsfromabroad.org/taxes>

⁶ National Taxpayer Advocate, 2003 Annual Report to Congress, Dec. 31, 2003, at 65 citing ITIN Applicant Profile, Project 4-03-09-2-040N, Interim Report, September 11, 2003, Wage & Investment Research Group 4, W-7 ITIN Database.

⁷ Mary Shaffrey, *Changes in the Cards*, The Washington Times, September 7, 2003.

⁸ *IRS Keeps Tabs on Illegal Immigrant Filers*, Fox News, April 22, 2003.

⁹ Marti Dinerstein, *Giving Cover to Illegal Aliens: IRS Tax ID Numbers Subvert Immigration Law*, Center for Immigration Studies, 12-02.

¹⁰ Glenn Spencer’s American Patrol Report, www.americanpatrol.com/REFERENCE/MatriculaConsularShamIDs.html

¹¹ *Banking Latino Immigrants: A Lucrative New Market for Progressive Financial Institutions*, Elizabeth R. Kelderhouse, Federal Reserve Bank of St. Louis, Bridges, Autumn 2002.

last year, over 700 were carrying no less than \$2,000 in their pockets due to lack of identification sufficient to open a bank account.¹²

Currently only a handful of states accept ITINs for driver's licenses. North Carolina, for example, requires customers to have a valid SSN or ITIN to receive a license, permit or identification card. However an ITIN is not acceptable for any type of commercial driver's license (CDL).¹³ Most states require that applicants for driver's licenses produce proof of identity as well as a Social Security number (SSN). However, 7 states do not require an SSN at all, and 36 states provide exemptions from the requirement. For example, 34 states require an SSN only of persons who have been assigned one, and 5 states have other exceptions.¹⁴

In response to some states' acceptance of ITINs as an identifying number for driver's licenses, in August 2003 Henry O. Lamar, Jr., IRS Wage and Investment Division Commissioner, sent a letter to each state motor vehicle department director discouraging ITIN acceptance because of the potential security threat perceived by the IRS. Commissioner Lamar's letter noted that the IRS does not "subject ITIN applicants to the same rigorous document verification standards as Social Security number or visa/passport applicants." He entreated each motor vehicle department director and governor.¹⁵ "If your state is considering legislation to accept ITINs as proof of identity for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings."

IV. RECENT CHANGES TO THE ITIN

The IRS has issued over 7.2 million ITINs from July 1996 through December 2003. According to the IRS, a vast majority (about 75%) of the ITINs issued have been used for their intended purpose, filing tax returns.¹⁶ Partly in response to increasing national security concerns, however, beginning December 17, 2003, ITIN applications were held to a stricter standard than before. One major change is the requirement that completed tax returns must accompany Form W-7 as proof that the ITIN will be used solely for federal tax filing purposes.¹⁷ There are several exceptions to this requirement; the most

¹² Cynthia Porter, *Life in U.S. will be easier for Mexican nationals*, The Winona Post, August 31, 2003.

¹³ www.ncdot.org. In the 2003 state legislative sessions, approximately 119 bills in forty (40) states addressed the rights of immigrants to obtain driver's licenses. The majority sought to restrict access to licenses.

¹⁴ DRIVER'S LICENSES FOR IMMIGRANTS: BROAD DIVERSITY CHARACTERIZES STATES' REQUIREMENTS *Immigrants' Rights Update*, Vol. 16, No. 7, November 22, 2002 (overview of states' requirements updated 2/6/03)

¹⁵ A copy of Commissioner Lamar's August 8, 2003 letter was mailed to each state motor vehicle department director and a courtesy copy was sent to each state governor.

¹⁶ U.S. General Accounting Office, Testimony Before the Subcommittee on Oversight and Social Security, Committee on Ways and Means, House of Representatives, GAO-04-529T.

¹⁷ Form W-7 (Application for IRS Individual Taxpayer Identification Number, Rev. 12-17-03) Exceptions to the provision of a tax return apply for 1. Passive income –treaty benefits or third party withholding; 2. Other income (wages, salary, compensation) –treaty benefits or foreign student receiving scholarship or fellowship; 3. Third party reporting –mortgage interest and 4. Disposition by foreign person of U.S. real property interest. Form W-7 Instructions, page 3. (Rev. 12-17-03)

important is that an ITIN may be issued if the applicant has an interest-bearing bank account in a US financial institution.¹⁸

The second major administrative change to the ITIN application process includes a shortened list of acceptable supporting documentation. Previously, as many as forty (40) supporting documents could be submitted with a Form W-7. Accepting fewer supporting documents may help ease the administrative burden of processing the large amount of ITIN applications received at the Philadelphia Service Center ITIN Unit (located in Bensalem, PA).¹⁹ Prior to December 17, 2003, small but significant changes were being instituted by the ITIN Unit. Applications began to get rejected where expired documents were provided (e.g. foreign voter registration cards, passports) and where the individual did not list their date of entry into the U.S. (Section 6d, Form W-7).

Currently, supporting documents are used to verify an individual's identity (name and photograph) and to support the individual's claim of foreign status. Where an original, valid or certified copy of a valid passport is presented, no additional documentation is needed because a passport is deemed to provide both proof of identity and foreign status. Otherwise, as of December 17, 2003, only an additional twelve (12) documents are accepted and a combination of two or more documents must be furnished to prove identity and foreign status.²⁰

The third recent change involves issuing a letter instead of an ITIN card to inform an individual of the taxpayer identification number assigned to him or her. The IRS-issued ITIN card was believed to have substantial similarities in appearance to a SSN card. Issuance of an ITIN letter was instituted to specifically remedy this concern.

While the ITIN was created for federal filing purposes only, state income taxes are also filed using an ITIN versus a SSN²¹. The requirement that a federal tax return must now be included with all W-7 applications for taxpayers and dependents means the ITIN Unit processes applications, assigns the taxpayer or dependent an ITIN number, then forwards the return for appropriate IRS service center processing. Therefore, when an ITIN application is approved, the ITIN Unit mails a letter to the applicant indicating the assigned ITIN. Once all ITINs are received, the taxpayer may then proceed with the filing of any state returns. This may create problems for ITIN applicants in filing their state tax returns in time to meet state deadlines.

¹⁸ This exception is actually for applicants who own an income-generating asset that subjects them to information reporting or withholding requirements, or that they need to claim tax treaty benefits. Other exceptions include 1. Other income (wages, salary, compensation) –treaty benefits or foreign student receiving scholarship or fellowship; 2. Third party reporting –mortgage interest and 3. Disposition by foreign person of U.S. real property interest. Form W-7 Instructions, page 3. (Rev. 12-17-03)

¹⁹ “While 53% of applicants are from Mexico, there are six (6) bilingual Spanish-speaking employees available to translate applications and documents among the 196 staffers assigned to customer contact related work at the campus that processes Form W-7 applications” National Taxpayer Advocate 2003 Report to Congress, at 71, fn 45

²⁰ Form W-7 Instructions, at page 2.

²¹ The Treasury Inspector General for Tax Administration (TIGTA) issued an audit report in January 2004, stating that in tax year 2000 353,000 Forms 1040 were filed with an ITIN, including approximately 265,000 W-2s showing SSNs never assigned to the ITIN holder and 89,000 SSNs never issued by SSA. *The Internal Revenue Service's Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration*, January 2004, Reference Number: 2004-30-023

A copy or original ITIN designation letter may also be mailed to a certified acceptance agent; however, at the time of this writing, no data is available as to the percentage of acceptance agents receiving ITIN number confirmation or the turn-around time for same. In addition, changes to the acceptance agent program are also being recommended, including FBI background checks of acceptance agents.²² To date, nothing is concrete in terms of acceptance agent program changes, however, proposed changes currently under consideration include: (1) the expiration of all acceptance agent contracts as of 12/31/05; (2) those who want to continue as an acceptance agent will have to re-apply for the program by December 2005; and (3) All applicants will have to undergo a credit history check, an IRS review of tax filing history (to ensure all returns were timely filed) and the aforementioned FBI background check.

V. IRS PRIVACY RULES AND CONFIDENTIALITY OF ITIN INFORMATION

One of the most critical issues with respect to ITINs is the confidentiality of ITIN information. This information presents a tempting database (especially concerning undocumented immigrants) for other agencies, such as the Social Security Administration and the Department of Homeland Security. This is especially risky for undocumented immigrants, because one can easily discern from the IRS Form W-7 that an applicant is undocumented or can uncover from examining an ITIN taxpayer's Form 1040 and W-2 that the taxpayer used a false Social Security Number for employment purposes.

ITIN information is protected to some extent by IRS rules, particularly Internal Revenue Code § 6103, which generally prohibits the IRS from disclosing taxpayer information, including to other federal agencies. However, § 6103 contains a long list of exceptions, several of which are significant for ITIN holders and may permit their information to be disclosed.

First, the IRS is required to disclose taxpayer information upon request of Treasury Department employees whose duties require inspection or disclosure for tax administration purposes.²³ This is probably the exception that the Treasury Inspector General for Tax Administration (TIGTA) used to gain access to IRS data on ITIN holders in the Kentucky case, discussed in Section VI.²⁴ Thus, TIGTA is the one agency that appears to have broad access to taxpayer and ITIN information, which is somewhat unsettling given that agency's apparent disdain toward undocumented workers. However, one could argue that TIGTA oversteps its authority when it obtains ITIN information for purposes other than tax administration, e.g., to bring criminal charges against an ITIN holder under Social Security or immigration laws.

²² TIGTA identified the lack of required background checks of Acceptance Agents as a problem with the use of Acceptance Agents. National Taxpayer Advocate 2003 Report to Congress, citing TIGTA's *Management Oversight of the Acceptance Agent Program is Needed to Assure That Individual Taxpayer Identification Numbers are Properly Issued*, November 6, 2002, Ref. # 2002-30-026.

²³ 26 U.S.C. § 6103(h)(1).

²⁴ TIGTA was established in 1999 to provide independent oversight of Internal Revenue Service activities. TIGTA's focus is devoted entirely to tax administration. While it is organizationally placed within the Department of Treasury, it is independent of the Department and all other Treasury offices.

Second, the IRS is permitted to disclose tax information to other federal agencies for use in non-tax, criminal investigations or proceedings, but only under certain conditions.²⁵ The other federal agency must obtain a court order from a federal court,²⁶ unless the taxpayer information is third party information (i.e., not provided on a tax return or by the taxpayer herself).²⁷

Note that TIGTA is also bound by § 6103 prohibitions against information disclosure. Thus, TIGTA cannot re-disclose information unless an exception applies. One exception significant to the Kentucky case is that tax information may be disclosed in a court or administrative proceeding in a criminal or civil forfeiture matter, but only if it pertains to tax administration or there is a court order or approval.²⁸ Thus, TIGTA agents should not be able to disclose ITIN information for the purposes of initiating a prosecution under non-tax criminal statutes, unless a court approves of it.

The IRS has reaffirmed its commitment to the non-disclosure provisions under § 6103. Despite initial reports that he was seeking Congressional authority to expand information sharing with immigration authorities,²⁹ IRS Commissioner Mark Everson has subsequently stated “the [IRS] believes at this time that any sharing of confidential taxpayer information, directly or indirectly, with immigration authorities would have a chilling effect of efforts to bring ITIN holders, and potential ITIN holders, into the U.S. tax system.”³⁰

Given all of the above, it is important for undocumented immigrants to understand that, while IRS rules do protect their information to some extent, applying for an ITIN and filing a tax return with an ITIN is not risk-free. Even though TIGTA has made reassurances that it does not have a list of undocumented workers it intends to prosecute, the Kentucky case and the above legal analysis show an undocumented worker cannot be absolutely guaranteed that the information she submits to IRS will not be used against him or her in a criminal or immigration proceeding.

VI. USE OF ITINs FOR BANK ACCOUNTS AND FINANCIAL PRODUCTS

A significant and growing use of ITINs has been to open bank accounts for immigrants who cannot obtain a SSN. ITINs are useful for two reasons – as an identifying number for a bank to keep track of a customer, and when the bank needs to report interest income to the IRS.

²⁵ 26 U.S.C. § 6103(i).

²⁶ 26 U.S.C. § 6103(i)(1).

²⁷ With third party information, a court order is not required, but the other federal agency must make a written request. The IRS may also disclose third party information on its own initiative if it suspects criminal or terrorist activities, but only to the head of the other federal agency. 26 U.S.C. §§ 6103(i)(2) and (3).

²⁸ 26 U.S.C. §§ 6103(h)(4) and (i)(4).

²⁹ Amy Hamilton, *Everson Makes Changing Nondisclosure Rules a Top Priority*, Tax Notes, August 29, 2003.

³⁰ Prepared Testimony of Mark W. Everson before The House Ways and Means Subcommittee on Oversight and Subcommittee on Social Security on Individual Taxpayer Identification Numbers (ITINs) and Social Security Number Matching, March 10, 2004.

ITINs became more critical in establishing bank accounts for immigrants after the Treasury Department issued its customer identification regulations under the U.S.A. Patriot Act.³¹ The Patriot Act regulations require banks to collect certain identifying information from their customers, such as name, address, date of birth, and an identifying number.³² For non-US citizens, the Patriot Act regulations specifically mention that an IRS-issued tax identification number (such as the ITIN) can be used as an identifying number.³³ Thus, an immigrant without a SSN must have an ITIN or other sanctioned number in order to open a bank account.

Note that another requirement of the Patriot Act regulations is that the banks verify the identity of their customers. The regulations permit the use of a photo identification issued by foreign governments, including the Mexican matricula consular, to verify identity.³⁴ In July 2003, under pressure from the anti-immigrant lobby, the Treasury Department issued a request for additional comments on whether the regulations should be revised to prohibit the use of certain forms of identification issued by foreign governments, such as the matricula.³⁵ The Treasury Department received 34,000 comments, with an overwhelming number supporting the current regulations permitting use of the matricula.³⁶

With the new Patriot Act regulations, ITINs are now crucial to the effort to expand immigrant access to bank accounts and mainstream financial products such as home mortgages. Yet the new ITIN processing rules significantly restrict the availability of ITINs to only interest-bearing accounts. Thus, immigrants will not be able to obtain ITINs for non-interest bearing accounts, including those types of electronic-based accounts that may be most appropriate for their needs. Furthermore, the new ITIN processing rules place immigrants and the banks and credit unions hoping to serve them in a logistical conundrum. The immigrants need an ITIN to open the account, but they cannot obtain the ITIN without showing they already have an account for which they need to report interest income.³⁷

VII. CURRENT OPERATING ENVIRONMENT

The ITIN program has been accompanied by its share of controversy and public debate. In December 2003, the first known prosecution and incarceration of ITIN users occurred for misuse of a SSN. The cases received wide public attention and various community and civil rights organizations called for clarification of the information sharing that went on between government agencies in the particular cases.

³¹ 31 C.F.R. § 103.121.

³² 31 C.F.R. § 103.121(b)(2).

³³ 31 C.F.R. § 103.121(b)(2)(i). Other permitted identifying numbers include an alien identification card (green card) number; foreign passport number, or a number from any other government-issued photo identification.

³⁴ 31 C.F.R. § 103.121(b)(2)(ii)(A)(1).

³⁵ 68 Federal Register 39,039 (July 1, 2003). See also Rob Blackwell, *30K Letters, Many Backing ID Status Quo*, American Banker, August 12, 2003, at 1.

³⁶ Press Release, *Treasury Announces Results of PATRIOT ACT Section 326 Notice of Inquiry*, U.S. Dept. of Treasury, September 18, 2003; Press Release, *MALDEF Pleased With the Overwhelming Response Reaffirming the Acceptance of Matriculas*, Aug 5, 2003.

³⁷ One reported suggestion to avoid this conundrum is for the bank to write a letter stating that they have opened an interest bearing account and will have it open pending the receipt of the ITIN.

The complaints filed on December 12, 2003, by Jimmy Cupp, a TIGTA agent in Kentucky, were affidavits sworn out against two unrelated undocumented workers. The first was against an immigrant agricultural worker who used a false SSN on a Form W-2 for tax year 2001. He was charged with falsifying a SSN on a Form W-4, improperly using a Social Security Card and a resident alien card. The second complaint stated that another immigrant taxpayer furnished two different SSNs on an apartment rental application and on an employer-provided Form W-4. Both immigrant workers were detained. One of the workers has been released on bond. TIGTA officials are investigating the cases in order to determine whether Agent Cupp exceeded the scope of his authority.³⁸

TIGTA officials have previously expressed concerns about a number of aspects of the IRS ITIN program. In particular, TIGTA stated they do not approve of restrictions on the IRS when it comes to the sharing of ITIN-related information. A recent report stated restrictions on information sharing prevent the IRS from “addressing unauthorized immigration or unauthorized work.”³⁹

TIGTA officials have recently fielded growing public concerns around the ITIN. In a March 10, 2004 hearing before the House Subcommittees on Oversight and Social Security, Pamela J. Gardiner, Acting Inspector General for Tax Administration responded “to press reports suggesting that TIGTA has compiled a list of people whom we suspect are illegal aliens and that we intended to prosecute them. I can assure you that this is completely false. We do not have any such list, initiative or program designed to identify persons who are not authorized to work in the United States.”⁴⁰

Internal Revenue Commissioner Mark W. Everson testified at the same Congressional hearing on ITINs held before the House Subcommittees on Oversight and Social Security. He expressed support of the ITIN program, stating that a “substantial majority of ITIN holders are compliant with Federal tax laws. This is reflected in the number of ITINs used in tax filing and the repetition and frequency of tax filings by ITIN holders.” He went to say that the IRS is broadly restricted under Internal Revenue Code (IRC) § 6103 from sharing taxpayer information, except in limited circumstances.⁴¹

B. John Williams Jr., former IRS chief counsel commented on the information-sharing issue between IRS and other governmental agencies stating: “We ask people to strip, basically naked, for their government in reporting their assets and income and everything about them for tax purposes. I’m not sure everyone is going to be willing to strip for the government if the IRS is going to start showing photographs of what

³⁸ Sheryl Stratton, *TIGTA Agent Uses IRS ITIN Records to Detect Social Security Fraud, Identity Theft*, 2004 TNT 15-1, Jan. 23, 2004.

³⁹ *Internal Revenue Service’s Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration*, Treasury Inspector General for Tax Administration, Jan. 2004, Reference Number 2004-30-023.

⁴⁰ Testimony of Pamela J. Gardiner, Acting Treasury Inspector General for Tax Administration, Hearing Before the U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Oversight, Subcommittee on Social Security, March 10, 2004.

⁴¹ Prepared Testimony of Mark W. Everson before The House Ways and Means Subcommittee on Oversight and Subcommittee on Social Security on Individual Taxpayer Identification Numbers (ITINs) and Social Security Number Matching, March 10, 2004.

they look like to everyone else in the federal government.”⁴² Echoing that sentiment, Nina Olson, the National Taxpayer Advocate, who among other duties oversees the low income taxpayer clinic (LITC) program, stated “Taxes are the life blood of government, and sometimes there are reasons for the tax administrator to essentially adopt a ‘don’t ask, don’t tell policy.’”⁴³

Elected officials such as U.S. Representative Tom Tancredo (R- Colorado) have issued public statements deriding a perceived alliance between the IRS and immigrant taxpayers. In a letter to Attorney General John Ashcroft, Tancredo expressed his concerns that tax assistance to undocumented workers is in direct conflict with Justice Department goals and federal law: “In my view, the actions of tax providers and banks across the country—actions that the Treasury Department has either acquiesced to, or encouraged—run contrary to the intent of laws of Congress enacted to discourage the aiding and abetting of illegal immigration.”^{44 45}

VIII. COMMUNITY AND ADVOCACY CONCERNS

Community and advocacy group responses have been varied in reaction to recent events surrounding the ITIN. When Mary P. Cartwright, an attorney with a low-income taxpayer clinic (LITC) in Louisville, Kentucky posted the case of the immigrant worker arrested by TIGTA Agent Cupp on an email listserv, organizations serving immigrants began weighing their options.

One response was to inform both the low income tax preparer community and immigrant taxpayers of the risks and concerns raised by the Kentucky cases. For example, in a recent edition of the Low Income Tax Practice (LITP) Newsletter, editor and attorney Mary Gillum discussed the ethical implications of advocates in representing low income, limited English proficiency (LEP) taxpayers. She wrote that disclaimers should be provided stating advocates “are not qualified to advise clients of the plethora of immigration and criminal consequences of misusing a SSN and then providing evidence of the misuse to the Treasury Department. Advocates should properly limit the scope of their representation or they could incur other liabilities. Advocates need to insure that client communications are protected and that the client understands the risks inherent in misusing SSNs.”⁴⁶

⁴² Warren Rojas, *Ex-IRS Officials Urge TIGTA to Stay Out of Policy Arena*, Tax Analysts, Feb. 26, 2004.

⁴³ Daily Tax Report, *Taxpayer Privacy: Privacy Concerns Threaten Tax Collections, IRS Commissioner Tells House Subcommittees*, March 11, 2004.

⁴⁴ Press Release, Office of Tom Tancredo, Colorado’s Sixth District Representative, February 9, 2004.

⁴⁵ Senator Orrin G. Hatch (R-Utah), Chairman of the Senate Judiciary Committee acknowledges that many young undocumented students find themselves in a “catch-22 situation. As illegal immigrants, they cannot work legally. Moreover, they are effectively barred from developing academically beyond high school because of the high cost of pursuing higher education.” Senator Hatch introduced legislation that would allow states to charge in-state tuition rates to undocumented students who meet certain conditions, including the “good moral character” required of many as part of immigration petitions. Like the ITIN debate, the legislation has sparked controversy. Mary Shaffrey, *Changes in the Cards*, The Washington Times, September 7, 2003.

⁴⁶ Mary Gillum, *New Rules for Individual Taxpayer Identification Number (ITIN) Applications*, The LITP Newsletter, February 2004, Issue 16.

Similarly, David Marzahl, Executive Director of the Center for Economic Progress, communicated to other community tax organizations via email that “we have advised our immigrant taxpayers to return to our tax sites this Saturday, January 31 (2004), at which time we hope to commence with processing ITINs and ITIN tax returns. This action is not taken lightly and we realize that there are consequences in meeting the needs of immigrant taxpayers—however, we felt we needed to protect the organization from any liability that might occur should one of our ITIN taxpayers be subsequently deported.” A Boston community-based advocacy group has advised their constituents against filing altogether following the Kentucky TIGTA arrests. However, this is a minority view. Most organizations continue to assist immigrant taxpayers in filing tax returns while also providing advice on the inherent risks of filing because of their immigration status.

The Kentucky TIGTA arrests also resulted in increased advocacy. Prior to the arrests, in an October 22, 2003 letter to Treasury Officials, over 100 community and civil rights organizations, labor unions, consumer and immigrant rights activists on behalf of thousands of immigrant workers wrote a letter to IRS and Treasury raising concerns about potential changes to the ITIN program. In particular, these groups stated that they opposed: “any measure to make ITIN information available to the Department of Homeland Security (DHS), including the Bureau of Citizenship and Immigration Services (BCIS) and Bureau of Immigration and Customs Enforcement (ICE) beyond what is currently permitted in IRS Code § 6103.”⁴⁷ After the Kentucky arrests, a core group of these organizations sent a letter to Treasury, TIGTA, and IRS asking for assurances that similar incidents would not occur.

Others believe “Legalization would expand our tax base in a significant and meaningful way. Millions of undocumented currently live and work in the US who would gladly contribute to Uncle Sam’s coffers. We have but to welcome these hardworking immigrants into our polity and tax base just as their American neighbors, friends, and employers have already made them part of our society.”⁴⁸

IX. CHALLENGES AND REWARDS FOR IMMIGRANT WORKERS

Immigrant workers face many difficult decisions as they adapt to life in the United States. For those who are undocumented there are countless decisions they must make around announcing their legal status to the authorities. The decision about whether or not to file an income tax return is a big concern for many. There is no guarantee that a refund awaits them should they file a U.S. income tax return, nor are there any concrete assurances that prosecution will not follow. At the same time, there may be numerous rewards. The following profiles describe some of the difficult options and decisions that face hard-working immigrants electing to use the ITIN.

⁴⁷ *Potential IRS Actions on the Individual Taxpayer Identification Number (ITIN)*, Letter to Treasury, Center for Economic Progress, Consumer Federation of America, Consumers Union, National Consumer Law Center, National Council of La Raza, National Employment Law Project, National Immigration Law Center, October 22, 2003.

⁴⁸ *Taxes And Immigration*, Editor’s Comments, Sec.1, Immigration Daily, April 16, 2004. www.ilw.org

PROFILES:

- “Miguel” used his ITIN to file nine (9) years worth of tax returns and because of the amounts owed, he is currently on a payment plan to pay \$250 each month for the next five (5) years. “Armando” an electrician, filed tax returns for tax years 1999, 2000, 2001 and 2002. Because he worked to support his family but never claimed any withholdings (he claimed “0” withholdings on his W-4 employment form), he received a total refund of \$17,000. He recently used that money as a down payment on a home.
- “Rosa” has a more complex set of issues. She received a collection notice from the IRS after she filed her taxes with an ITIN. Unfortunately, the IRS incorrectly issued her the Earned Income Tax Credit (EITC). The EITC was introduced by President Ronald Reagan to help pull working families out of poverty. It was intended as an incentive to work. Because the EITC is still considered as a public benefit of sorts, it is only given to those with legal status in the U.S. who thus have a valid SSN. The EITC varies in amount depending on the income earned and the number of dependents an individual taxpayer is supporting. However, the EITC can be a substantial amount, as much as \$4,300 in some cases.

Unfortunately, in Rosa’s case, the EITC was only one of the problems with her tax return. Rosa was not aware that she was also receiving the Advance EITC in her paycheck. The Advance EITC allows eligible taxpayers to receive up to 60% of their EITC on a pro-rated basis -- issued in advance through a taxpayer’s paycheck after a Form W-5 is filled out and submitted to the employer.⁴⁹

In Rosa’s case she was not eligible for the EITC or Advance EITC because she did not have a valid SSN and filed her taxes with her ITIN. When her taxes were prepared for her, they did not reflect the Advance EITC payments she received and they incorrectly calculated the EITC as part of her refund. The IRS did not discover they had issued the EITC in error until several months later. Rosa alone supports her two children, earning approximately \$11,000 a year as a day laborer. She now owes the IRS over \$5,000.

Rosa is receiving assistance with her tax controversy from the Midwest Tax Clinic (the Clinic), one of the programs of the Center for Economic Progress (the Center). This past tax season the Clinic filed over 350 ITIN applications. The Center’s Tax Counseling Project prepares income taxes for low-income taxpayers and in 10 years has brought back \$100 million in refunds to Illinois working families. The tax sites operated by the Center have seen a marked increase in Advance EITC issues, especially for ITIN filers. Many of their tax sites now print out W-5 forms for individuals to take to their employers to cancel the Advance EITC. Many individuals who cancelled the Advance EITC were not aware they were receiving the credit. Instead, they received the credit after following an employer’s instruction to fill out Form W-5 as part of the regular employment paperwork.

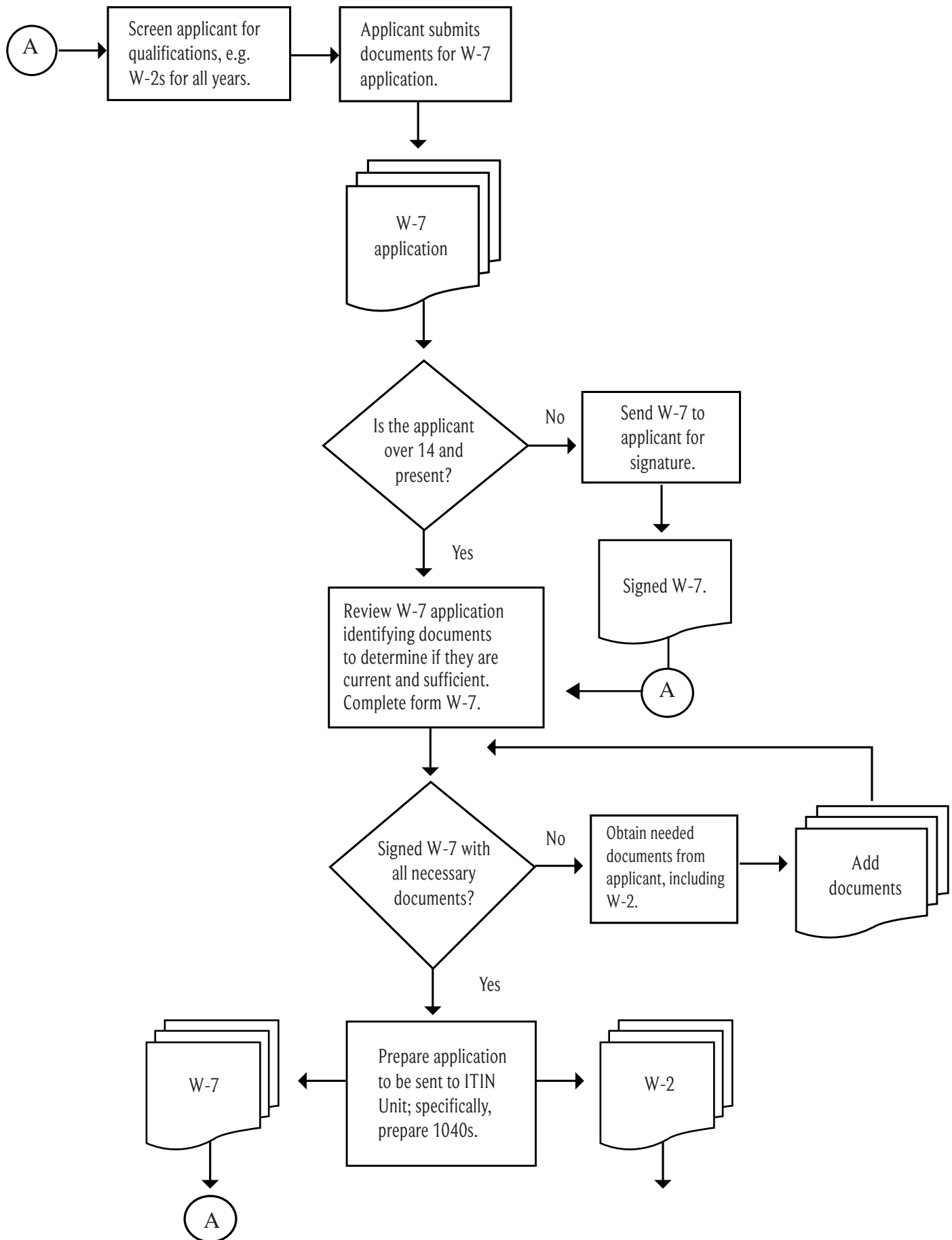
⁴⁹ Therefore, the EITC may be claimed (1) at the end of the tax year (although this group of taxpayers face increasing scrutiny year after year as part of an ongoing IRS effort to ensure the EITC is properly distributed), or (2) as the Advance EITC, where up to 60% of the EITC may be issued via a taxpayer’s paychecks. Eligibility for Advance EITC payments for 2004 depends on whether the taxpayer expects (1) to have at least one qualifying child; (2) that earned income and adjusted gross income (AGI) for the tax year will be less than \$30,338 (for a head of household 2004 return); and (3) that s(he) is able to claim the EITC. 2004 Form W-5 Instructions, p. 1, <http://www.irs.gov/pub/irs-pdf/fw5.pdf>

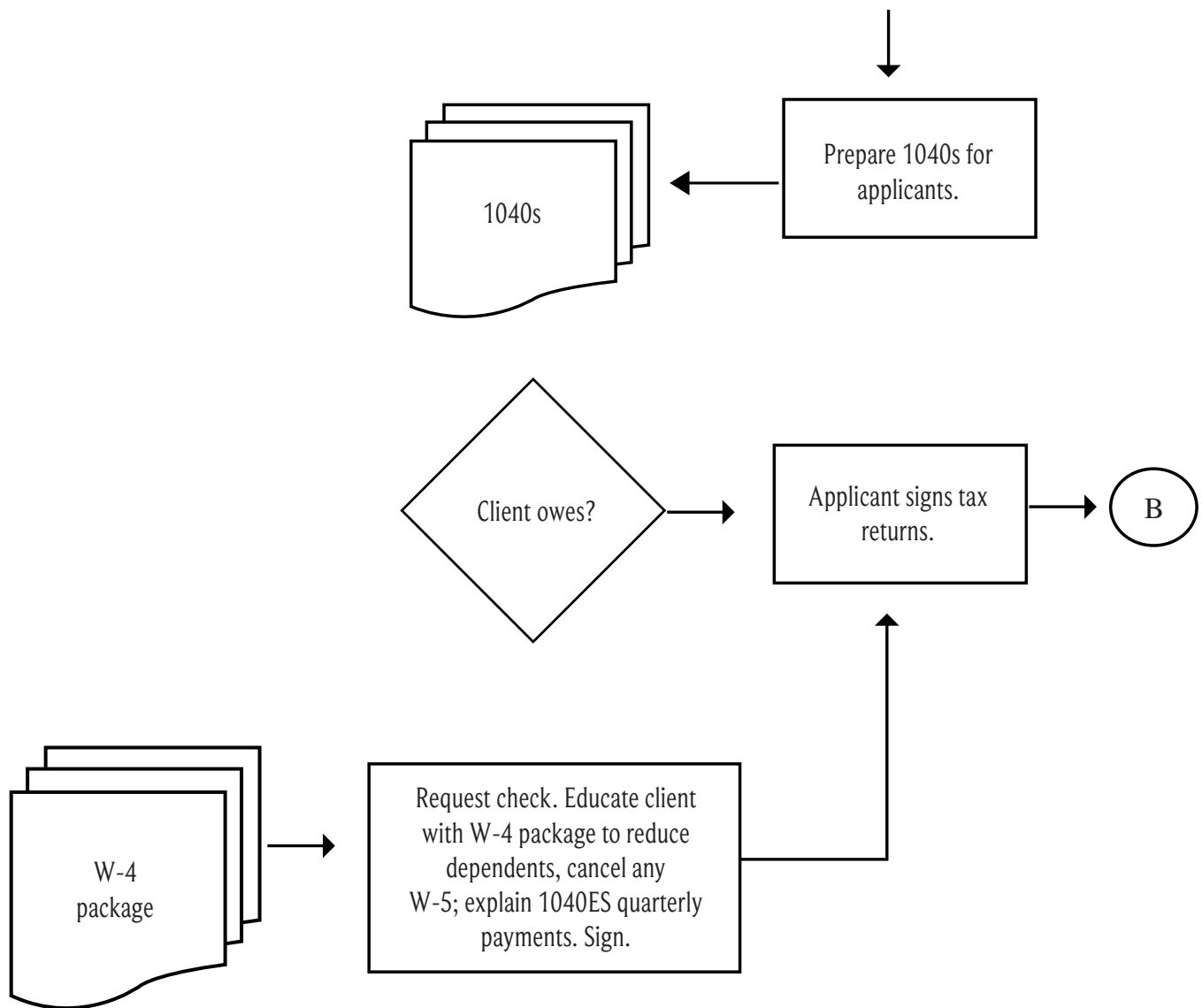
X. PRACTICE TIPS, PROCESS FLOWCHART AND W-7 FORM

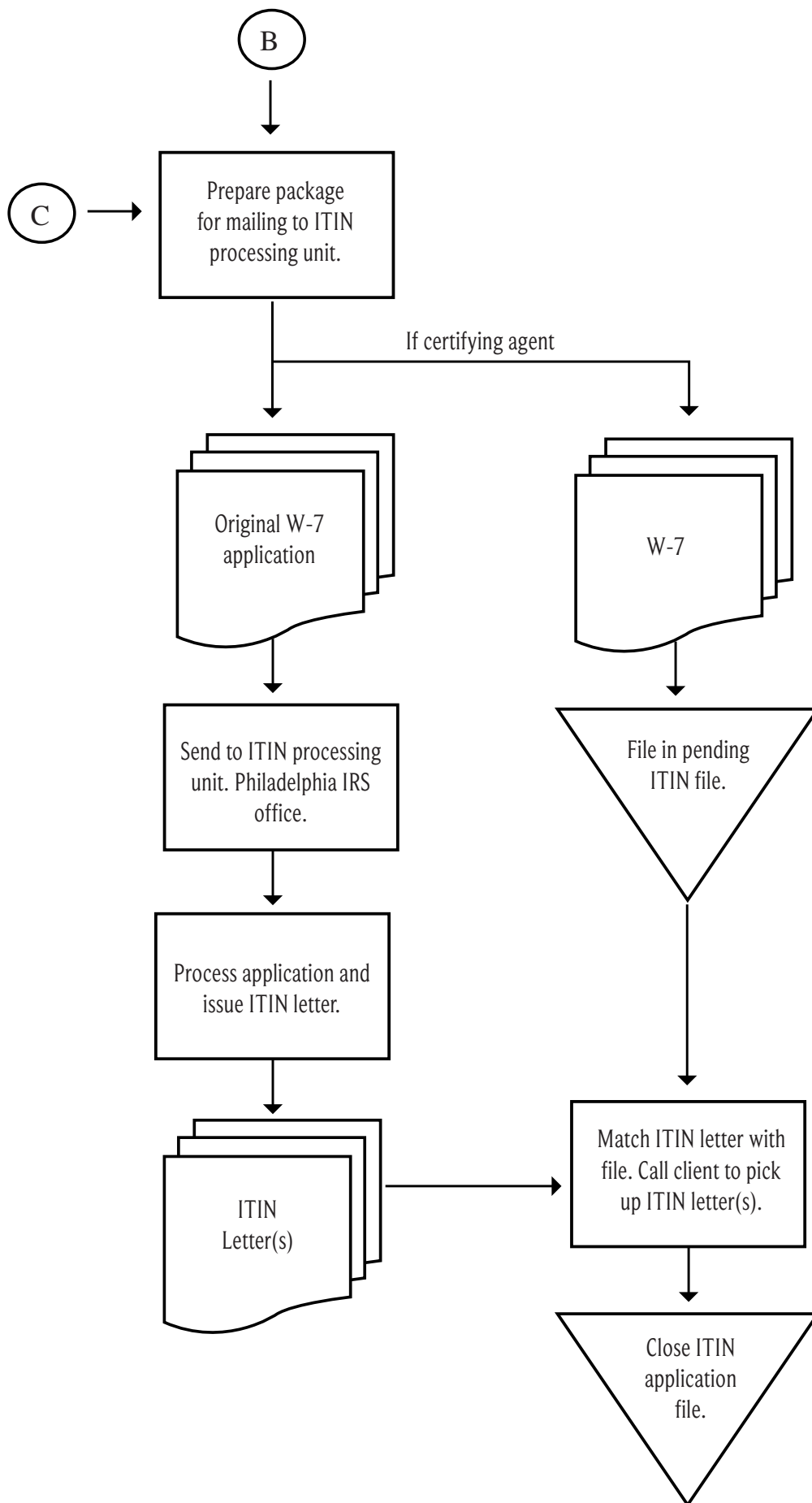
Based on concerns from the field and lessons learned from experience, the following practice tips are provided for the benefit of organizations working with ITIN clients:

When assisting prospective ITIN applicants, practitioners should keep the following options and ideas in mind:

- Consider organizing a “law day” for your clinic or community organization. Invite an attorney experienced in the areas of representation before the IRS and, specifically, with criminal prosecutions instituted by the Department of Justice. The attorney can highlight the differences between the burden of proof in criminal (IRS and non IRS) and civil cases.*
- Subscribe to a community group email listserv where issues and updates are posted. Additionally, contacts made through the listserv can organize a quarterly roundtable discussion touching upon government enforcement initiatives specifically affecting immigrant worker communities. More information on the ITIN working group is available at www.tax-coalition.org. To sign up for the LITC listserv, send an email to jborison@yahoo.com.*
- Train CPAs, accountants and unenrolled tax preparers in client representation matters. Include information on the confidentiality privilege that exists between clients and CPAs in noncriminal tax matters. Make sure CPA non-attorneys know that the common law attorney client privilege is generally extended to them but that IT IS BROKEN as soon as a tax matter becomes a criminal matter.*
- In terms of confidentiality, make sure tax preparers working with clients know that tax returns themselves are not confidential. They are, by design, prepared to be disclosed to a revenue department official. Therefore, whether prepared by an attorney or a CPA, tax returns are not confidential.*
- The use of ITINs, as seen above, involves a new area in criminal prosecution. A criminal tax investigation normally involves violations of the Internal Revenue Code. However, a criminal prosecution for the use of an ITIN is substantially similar in that a statement will be solicited from an ITIN user. If a statement is sought, retain the services of an attorney immediately.*
- The 5th Amendment of the U.S. Constitution allows the subject of a criminal prosecution to remain silent. Advise clients accordingly. If possible, keep an attorney on retainer for your organization: (1) to preserve the confidentiality privilege in criminal tax matters in general and (2) to call on in the event of a criminal prosecution.*
- Finally, advise all clients of the risks and benefits associated with the use of an ITIN prior to the submission of an application on a client’s behalf. Section XIII provides a sample disclaimer used by the Center for Economic Progress’ Midwest Tax Clinic.*







IRS form W-7

Form W-7
(Rev. December 17, 2003)
Department of the Treasury
Internal Revenue Service

Application for IRS Individual Taxpayer Identification Number

► See instructions.

OMB No. 1545-1483

► For use by individuals who are not U.S. citizens or permanent residents.

An IRS individual taxpayer identification number (ITIN) is for Federal tax purposes only.

Before you begin:

- Do not submit this form if you have, or are eligible to obtain, a U.S. social security number (SSN).
- Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.

FOR IRS USE ONLY

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

- a ☐ Nonresident alien required to obtain ITIN to claim tax treaty benefit
- b ☐ Nonresident alien filing a U.S. tax return and not eligible for an SSN
- c ☐ U.S. resident alien (based on days present in the United States) filing a U.S. tax return and not eligible for an SSN
- d ☐ Dependent of U.S. citizen/resident alien } Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ►
- e ☐ Spouse of U.S. citizen/resident alien }
- f ☐ Nonresident alien student, professor, or researcher filing a U.S. tax return and not eligible for an SSN
- g ☐ Dependent/spouse of a nonresident alien visa holder
- h ☐ Other (see instructions) ►

Additional information for a and f: Enter treaty country ► and treaty article number ►

Name (see instructions) Name at birth if different ►	1a First name	Middle name	Last name
	1b First name	Middle name	Last name

Applicant's foreign address (see instructions)	2 Street address, apartment number, or rural route number. Do not use a P.O. box number.
	City or town, state or province, and country. Include ZIP code or postal code where appropriate.

Mailing address (if different from above)	3 Street address, apartment number, or rural route number. If you have a P.O. box, see page 4.
	City or town, state or province, and country. Include ZIP code or postal code where appropriate.

Birth information	4 Date of birth (month, day, year)	Country of birth	City and state or province (optional)	5 <input type="checkbox"/> Male <input type="checkbox"/> Female

Other information	6a Country(ies) of citizenship	6b Foreign tax I.D. number (if any)	6c Type of U.S. visa (if any), number, and expiration date
	6d Identification document(s) submitted (see instructions) <input type="checkbox"/> Passport <input type="checkbox"/> Driver's license/State I.D. <input type="checkbox"/> USCIS documentation <input type="checkbox"/> Other		
	Issued by: No.: Exp. date: / / Entry date in U.S. / /		
	6e Have you previously received a U.S. temporary Taxpayer Identification Number (TIN) or Employer Identification Number (EIN)? <input type="checkbox"/> No/Do not know. Skip line 6f. <input type="checkbox"/> Yes. Complete line 6f. If you need more space, list on a sheet and attach to this form (see instructions).		
	6f Enter: TIN or EIN ► and Name under which it was issued ►		
Sign Here	6g Name of college/university or/company (see instructions) City and State Length of stay		

Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number.

Signature of applicant (if delegate, see instructions)	Date (month, day, year)	Phone number
	/ /	()
Name of delegate, if applicable (type or print)	Delegate's relationship to applicant	<input type="checkbox"/> Parent <input type="checkbox"/> Court-appointed guardian
		<input type="checkbox"/> Power of Attorney
Signature	Date (month, day, year)	Phone ()
	/ /	Fax ()
Name and title (type or print)	Name of company	EIN

For Paperwork Reduction Act Notice, see page 4.

Cat. No. 10229L

Form W-7 (Rev. 12-17-2003)

XI. CONCLUSION

Helping immigrants to apply for an ITIN can be a complicated issue. Taxpayers must be educated about the permissible and non-permissible uses of the ITIN. Tax preparation programs and other community agencies need to be aware of the opportunities and risks involved as well. Agencies themselves may risk exposure when assisting undocumented immigrants. Full disclosure and proper advice should be given to applicants regarding their exposure in applying for and using an ITIN. But the warning should be proportionate to the threat. The number of cases involving immigration problems stemming from use of ITINs is small and the cases have been well publicized.

Obtaining an ITIN will help bring taxpayers into compliance with tax laws and can produce significant income tax refunds from the Additional Child Tax Credit and withheld taxes. Filing a return also produces a paper trail of earnings and taxes paid. This is important because immigrants who want to apply for permanent residency and eventual citizenship must show “good moral character.” There are additional benefits such as educating and preventing taxpayers from receiving advance Earned Income Credit when they’re not eligible. Agencies need to carefully weigh pros and cons, and should proceed with caution in developing their service plan before attempting to help taxpayers.

XII. APPENDIX A: MEDIA INTEREST IN NEW TAXPAYERS

In the past few years, particularly around April 15th, newspapers across the country provide glimpses into the lives of immigrant taxpayers. Below are excerpts from articles across the U.S. profiling the new U.S. taxpayer.

JEANETTE

Jeanette has filed tax returns since she and her husband arrived in New York in 2001. Her husband Juan, formerly a middle-class professional in their native Peru, does not. Janette's income varies between \$300 and \$600 a month. She paid a few hundred dollars in taxes last year, not made any easier by the fact that their daughter has asthma and requires expensive prescriptions. "My contribution is small, but I want the government to know." Jeanette files because a good record matters to her, especially if she can eventually qualify for Social Security benefits. Her husband Juan remains suspicious due to his tenuous position within the U.S. "You live here without security." He worries that federal immigration officials may order him to leave at any time, but also admits "not filing and them coming after me, that worries me."⁵⁰

ERNESTO

Ernesto files taxes not just to report earnings from his \$9-an-hour job as a house painter but also to hopefully speed his path to becoming a legal resident of the United States. He submits his tax return with an ITIN, an increasingly popular number issued by the IRS to people who can't get Social Security numbers. Ernesto, who lives in San Francisco, states, "By paying taxes, the government will be able to see that immigrants are contributing to the economy. That record will hopefully help me in the future, as proof that I've been complying and filing" taxes.⁵¹

ALICIA

Alicia is not an American citizen, but she may as well be this tax season. Leaving her Wheeling home at dawn last Saturday, clutching a plastic pouch containing three years of W-2 forms from McDonalds, she was the first in line outside the Holy Cross-Immaculate Heart of Mary parochial hall in Chicago's Back of the Yards neighborhood, when doors opened at 9:30 a.m. [For a Center for Economic Progress-sponsored ITIN day. During most Saturdays this past tax season ITIN applications were processed in the Back of the Yard neighborhood by the Center's Midwest Tax Clinic staff and volunteers.] An increasing number of undocumented immigrants like Alicia believe filing income tax returns will prove they could be good citizens in the event amnesty is offered to those living in this country illegally—and that day of proof might be near. Alicia is informed by Clinic staff that she will owe taxes for tax year 2003. It is explained that she claimed too many dependents. This is due to the fact that although Alicia sends money to her family in Mexico, they do not qualify as tax deductions. Still, Alicia said she would get the money together and pay because "that's what citizens do."⁵²

⁵⁰ Daisy Hernandez, *Tax Day Puts Illegal Immigrants in a Special Bind*, The New York Times, April 15, 2003.

⁵¹ Deborah Kong, AP, *Using Tax ID Numbers*, San Francisco, The Examiner, April 14, 2003.

⁵² Patrick Rucker, *Immigrants Face Taxing Times: Some think filing returns may help them qualify for amnesty in future*, Chicago Tribune, April 14, 2004.

XIII. APPENDIX B: RESOURCES

- The National Community Tax Coalition is comprised of some 300 affiliate organizations. The Coalition is guided by a thirty-member steering committee and convenes four working groups, including one on immigrant taxpayer issues. The ITIN working group (as it is known), hosts a practitioner listserv, convenes conference calls on policy and practice issues and leads workshops at conferences hosted by the Coalition. For more information go to www.tax-coalition.org or contact Salvador Gonzalez, co-chair of the ITIN Working Group, at sgonzalez@centerforprogress.org.
- Low Income Taxpayer Clinics (LITCs) are available to assist taxpayers who face problems with the IRS. To sign up for the tax clinic listserv, send an email to jborison@yahoo.com.
- The National Consumer Law Center is a non-profit legal resource center working to ensure marketplace justice for low-income consumers. One of NCLC's areas of expertise is consumer issues affecting immigrants, including advocacy on ITIN issues, remittances, and ensuring access to consumer financial services. See www.nclc.org for more information.
- The National Immigration Law Center (NILC) plays a leadership role at the national level on the ITIN issue and has helped co-convene the ITIN working group. NILC is the only national legal advocacy organization whose sole mission is to protect and promote the rights and opportunities of low-income immigrants and their family members. NILC conducts policy analysis and advocacy on federal proposals affecting low-income immigrants' rights with respect to their work, paying taxes and the use of ITINs, as well as related issues such as consular IDs, drivers' licenses, and social security number mismatches. NILC also provides training and technical assistance particularly regarding growing concerns about the safety of an undocumented worker applying for an ITIN in the current political climate. See www.nilc.org for more information.
- The Tennessee Taxpayer Project is a program housed within one of the most active legal aid programs in the country, the Legal Aid Society of Middle Tennessee and Cumberlands. As an advocate of low-income taxpayer issues, Mary Michelle Gillum serves as coordinator and staff attorney. Ms. Gillum is co-chair of the American Bar Association's English as a Second Language Taxpayer Subcommittee. In June 2004, Ms. Gillum published a comment to the Department of Treasury listing the barriers in obtaining an Individual Taxpayer Identification Number. Ms. Gillum has written various fact sheets and a brochure on the Individual Taxpayer Identification Number. For more information, contact mgillum@lglaid.org.

XIV. APPENDIX C: DISCLAIMER



ATENCIÓN

**Aviso para personas que estén aplicando para un ITIN o llenando planillas
DE IMPUESTOS que incluyan un ITIN**

Cuando usted somete una aplicación para el ITIN o llene sus planillas de impuestos que incluyan ITINs, usted le esta dando su información privada al IRS. Generalmente, el IRS tiene regulaciones que prohíben compartir esta información con otras agencias federales incluyendo agencias de Inmigración. Sin embargo hay un riesgo que el IRS comparta su información con otras agencias del gobierno.

Todos los trabajadores-- incluyendo aquellos sin seguro social valido—tienen la obligación de obedecer las leyes de impuestos y deben de llenar sus planillas de impuestos para declarar lo que han ganado. Llenar las planillas de impuestos le puede ayudar a recibir un reembolso y también puede ayudarle con sus procesos de Inmigración.

Recuerde que nunca debe de dar su número de ITIN a su compañía de trabajo. El ITIN es solamente para llenar sus planillas de impuestos y para abrir o mantener una cuenta de banco.

ATTENTION

NOTICE TO THE ITIN APPLICANTS AND PERSONS FILING TAX RETURNS WITH AN ITIN

When you file an ITIN application or complete a tax return with an ITIN, you are giving the IRS your personal information. The IRS has rules that generally prevent it from sharing this information with other federal agencies, including immigration agencies. However, there is a risk that the IRS could share this information with other government agencies.

All workers—including immigrants without their own Social Security Numbers—have an obligation to obey tax laws and should file a tax return. Filing a tax return may help you get a tax refund, and may be useful in some immigration proceedings.

Remember: Never give your employer your ITIN. The ITIN is for tax filing purposes only or for opening and maintaining a bank account.

Label

(See instructions on page 16.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign
(See page 16.)

L
A
B
E
L

H
E
R
E

Filing Status

Check only one box.

Exemptions

If more than four dependents, see page 18.

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

Do not attach Form 1040-EZ.



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