

Area of Focus #7 **The IRS Makes Needed Changes to the Individual Taxpayer Identification Number (ITIN) Program, But Barriers for ITIN Applicants Remain**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Individual Taxpayer Identification Numbers (ITINs) play a valuable role in tax administration by allowing taxpayers who are ineligible for Social Security numbers (SSNs) to file returns and pay taxes that are required under the law.² ITINs facilitate international business because foreign taxpayers report their ITINs to third parties and withholding agents to document foreign status and claim exemptions from withholding or reduced rates of withholding.³ In late 2015, Congress passed the Protecting Americans Against Tax Hikes (PATH) Act and for the first time codified elements of the ITIN program, including how an applicant may apply, what documents are required, when an ITIN expires, when an ITIN must be issued to claim certain refundable credits, and when the IRS may use math error authority.⁴ Following the passage of the PATH Act, the IRS implemented changes to the ITIN program, including:

- Notifying taxpayers and deactivating ITINs for either age of issuance or non-use;⁵
- Exercising its math error authority⁶ to disallow credits and exemptions for returns including a deactivated ITIN;⁷
- Disallowing the Child Tax Credit (CTC) and American Opportunity Tax Credit (AOTC) when the ITIN is not considered issued by the tax return due date;⁸

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified as IRC § 7803(a)(3)).

2 All United States (U.S.) citizens and persons considered U.S. residents under the IRC are required to file and pay U.S. taxes on their worldwide income and need a Taxpayer Identification Number (TIN) to do so. See, e.g., IRC § 61. Individuals considered nonresident aliens under the IRC are required to file and pay tax on income derived from sources within the United States. See IRC §§ 1, 2, 871, 7701(b).

3 Chapter 3 of the IRC generally requires withholding agents to collect the substantive tax liability of nonresident aliens imposed under IRC §§ 871(a), 881(a), and 4948 by withholding on certain payments of U.S. source fixed or determinable annual or periodical income. See IRC §§ 1441-1443. See also IRC §§ 1471-1474 (Chapter 4).

4 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV (2015) (hereinafter PATH Act).

5 Under the law, all Individual Taxpayer Identification Numbers (ITINs) issued after 2012 will remain in effect unless the ITIN holder does not file a tax return with the ITIN, or is not included on another's return as a dependent, for three consecutive taxable years. ITINs issued before 2013 will expire at the earlier of: after a period of three consecutive years of nonuse (as described in prior sentence), or on the "applicable date" scheduled between 2017 and 2020. PATH Act § 203(a) (codified at IRC § 6109(i)(3)).

6 The IRS is currently authorized to correct mathematical or clerical errors — arithmetic mistakes and the like — and assess any tax increase using summary assessment procedures that do not provide the taxpayer an opportunity to challenge the proposed deficiency in the United States Tax Court before the tax is assessed. See IRC §§ 6213(b)(1), (g)(2).

7 PATH Act § 203(e) (codified at IRC § 6213(g)(2)).

8 PATH Act §§ 205, 206 (codified at IRC §§ 24(e), 25A(i)(6)).

- Expanding the Certifying Acceptance Agent (CAA) program for applicants residing in the United States;⁹ and
- Providing ITIN services at Taxpayer Assistance Centers (TACs) on limited days and by appointment only.

Although the IRS has made commendable efforts to implement the ITIN provisions of the PATH Act, it falls short in terms of making it possible for all taxpayers to timely comply with their filing and payment obligations. The National Taxpayer Advocate remains concerned that the IRS has not included TAS in ITIN cross-functional teams nor has it sought TAS's advice regarding the development of new ITIN policies, which fail to protect key taxpayer rights, such as the *right to be informed*, the *right to challenge the IRS and be heard*, and the *right to a fair and just tax system*.¹⁰ ITIN applicants will continue to face barriers to filing and paying their taxes until the IRS further revises its ITIN policies and procedures.

The IRS Deactivated a Significant Number of ITINs for Age of Issuance or Non-Use at the Start of 2017

To implement section 203(a) of the PATH Act, the IRS announced in August 2016 that it would deactivate all ITINs not used on a tax return within the last three years and ITINs with the middle digits 78 and 79, which were issued between 1996 and 2000.¹¹ The IRS sent a notice informing taxpayers their ITINs would be deactivated to only those who had filed a tax return within the last three years, and started accepting renewal applications in October. During late December 2016 and early January 2017, the IRS deactivated approximately 12.4 million ITINs, including approximately 134,000 in error.¹² Although the IRS identified and corrected the programming error that caused the erroneous deactivations, any program to automatically deactivate ITINs may always carry the risk of future errors.

In 2016, the IRS stated that it expected approximately 750,000 ITIN holders to renew their ITINs in 2017 — all of the approximately 450,000 affected ITIN holders who had filed a tax return in the last three years and approximately 300,000 of the 11 million affected ITIN holders who had not filed returns recently.¹³ However, as of the week ending May 13, 2017, the IRS had received only about 196,000 renewal applications, and had renewed approximately 155,000 ITINs.¹⁴ There are multiple reasons taxpayers may have failed to renew their ITINs thus far, including:

- Lack of awareness of the requirement to renew;
- Lack of a tax filing requirement;
- Inability to submit required identification documents; and
- Concerns about the immigration consequences of sharing information with the IRS.

9 The PATH Act prohibits ITIN applicants residing abroad from using Certifying Acceptance Agent (CAAs). PATH Act § 203(a) (codified at IRC § 6109(i)(1)(B)). The PATH Act envisions an expansion of the CAA program, allowing state and local governments, federal agencies, and others authorized by the IRS to be CAAs. PATH Act § 203(c). As part of a required study, the IRS must evaluate ways to expand CAA availability and participation. PATH Act § 203(d).

10 See National Taxpayer Advocate Fiscal Year (FY) 2017 Objectives Report to Congress 148-49.

11 IRS Notice 2016-48, *Implementation of PATH Act ITIN Provisions*, IRB 2016-33 (Aug. 15, 2016); IRS response to TAS information request (Nov. 29, 2016).

12 IRS response to TAS information request (May 4, 2017).

13 IRS response to TAS information request (Nov. 29, 2016).

14 IRS, Submission Processing (SP) Program Management/Process Assurance (PMPA) Branch, *Filing Season Statistics Report*, Report for Week Ending May 13, 2017.

The IRS is planning to announce the next group of ITINs that will be deactivated based on the middle digits during summer 2017.

The IRS's Use of Math Error Authority for Expired ITINs Reflects a Sizable Number of Returns Filed With an Expired ITIN

The IRS created 14 new math error codes related to expired ITINs, which it has applied approximately 186,000 times from the start of the 2017 filing season through April 28, 2017.¹⁵ This substantial number suggests there are a significant number of taxpayers who were not aware of the requirement to renew their ITINs before or during the 2017 filing season. Of the 186,000 expired ITIN math error codes, approximately 40,000 (about 21 percent) were applied to taxpayers to whom the IRS had mailed Letter 5821, which advised them in advance to renew their ITINs.¹⁶ Letter 5821 may not have been effective due to taxpayers not receiving the letter or because the letter did not list the specific ITINs within the household that would be expiring.¹⁷

Better informing taxpayers about the ITIN deactivations prior to them taking place may have prevented some of these math errors, and in turn, reduced the burden on taxpayers by allowing them to apply to renew their ITINs prior to the filing season. As the IRS announces a new group of ITINs to be deactivated based on the middle digits during summer 2017, it should use the results of the 2017 filing season to revisit its procedures to notify taxpayers, identifying more effective ways to inform taxpayers of the deactivations and their ability to apply to renew their ITINs before the filing season.

The IRS Has Implemented Programming to Disallow the Child Tax Credit (CTC) When the ITIN Is Not Considered Issued by the Tax Return Due Date

The PATH Act requires a taxpayer's ITIN to be issued on or before the tax return due date for the taxable year in order to receive the CTC or AOTC.¹⁸ In January 2017, the IRS updated its Error Resolution System to reduce the allowable amount of the CTC or AOTC when a qualified person's ITIN assignment date was after the due date or approved extended due date for the return.¹⁹ On March 26, 2017, the IRS implemented programming changes to systematically generate the ITIN Assignment Date based on the IRS received date for the ITIN application and attached tax return.²⁰ These changes are beneficial to taxpayers because even if their ITIN applications are not fully processed and their ITINs not assigned until after the due date, they may still be able to receive the CTC or AOTC if their applications and returns were received by the due date. As of April 28, 2017, the IRS had denied the AOTC approximately 700 times and the CTC approximately 14,000 times due to an ITIN not issued by the tax return due date.²¹ These numbers are likely to increase now that the due date for tax year 2016 returns has passed.

15 IRS, *Math Error Report* (week ending Apr. 28, 2017). Because multiple math error codes may be applied to a single return, the 186,000 does not necessarily represent 186,000 returns. Internal Revenue Manual (IRM) 3.12.3-2, *Taxpayer Notice Codes* (Feb. 23, 2017) and IRM 3.22.3-9, *Taxpayer Notice Codes (TPNC)* (Jan. 1, 2017) contain descriptions for the math errors.

16 By comparison, taxpayers who received Letter 5821, *You must renew your Individual Taxpayer Identification Number (ITIN) to file your U.S. tax return* (approximately 450,000 taxpayers) comprised only about 4 percent of the 12.4 million taxpayers whose ITINs the IRS deactivated. IRS responses to TAS information requests (May 4, 2017), (Nov. 29, 2016).

17 Letter 5821 (Aug. 2016) states: "According to our records, the ITIN for you or someone listed on your tax return is set to expire on January 1, 2017."

18 PATH Act §§ 205, 206 (codified at IRC §§ 24(e), 25A(i)(6)).

19 IRS response to TAS information request (May 4, 2017).

20 *Id.*

21 IRS, *Math Error Report* (week ending Apr. 28, 2017).

IRS Policies Result in the Majority of ITIN Applicants Continuing to Mail Original Documents to the IRS

The IRS has made some positive changes to increase flexibility for ITIN applicants. Following the passage of the PATH Act, the IRS permitted CAAs to certify birth certificates and passports for dependent applicants.²² As of May 18, 2017, the IRS had received almost 14,000 dependent ITIN applications submitted by a CAA.²³ Expanding the ability of CAAs to certify all types of documents for dependents would help an even greater number of taxpayers.

Although the IRS has made commendable efforts to implement the Individual Taxpayer Identification Number provisions of the Protecting Americans Against Tax Hikes Act, it falls short in terms of making it possible for all taxpayers to timely comply with their filing and payment obligations.

The PATH Act removed the ability of CAAs to certify ITIN applications for applicants residing abroad, and the IRS implemented programming on January 3, 2017 to systematically reject ITIN applications received from foreign CAAs.²⁴ However, the IRS reversed its procedure on April 17, 2017 and again allowed foreign CAAs to certify ITIN documents.²⁵ Notwithstanding this change, the IRS could provide further options for certification. The PATH Act gives the IRS latitude to provide alternatives to accepting only original documents or copies certified by the issuing agency, but the IRS has failed to exercise this discretion and has not identified additional types of certified copies.²⁶

Similar to the CAA program, options for applying in person to an IRS employee have likewise undergone some expansion and some reduction in recent years. In late 2016, the IRS expanded the list of documents a TAC can certify for primary or secondary taxpayers to 11 documents, but continues to restrict TACs to only certifying three types of documents for dependents.²⁷ During late 2016, the IRS transitioned to an appointment only policy for TACs, and during much of the filing season there were only 186 TACs certifying ITIN documents.²⁸ These TACs scheduled ITIN appointments only on Tuesday and Thursdays, with a limited number offering ITIN appointments on Tuesdays, Wednesdays, and Thursdays.²⁹ Undocumented taxpayers may have been unable to use TACs at all, due to legal requirements for providing identification to enter federal buildings.³⁰

22 See Instructions for Form W-7 (Sept. 2016). Previously, CAAs were not allowed to certify identification documents for dependents.

23 IRS, Compliance Data Warehouse (CDW), Form W-7 database (May 18, 2017).

24 IRM 3.21.263.5.4.3, *ITIN Foreign CAA Procedures* (Feb. 8, 2017).

25 IRS, Servicewide Electronic Research Program (SERP) Alert 17A0128, *Rescinding Termination of International CAAs* (Apr. 17, 2017).

26 See IRC § 6109(i)(2)(B)).

27 IRS response to TAS information request (Nov. 29, 2016).

28 IRS, *Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review is Provided*, <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> (last updated May 5, 2017). This webpage was updated on April 18, 2017 to show 306 TACs offering ITIN services and again on May 5, 2017 to show 309. However, the prior webpage, accessed on March 20, 2017, listed only 186 TACs offering ITIN services. IRS, *Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review is Provided*, <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> (last updated Feb. 1, 2017).

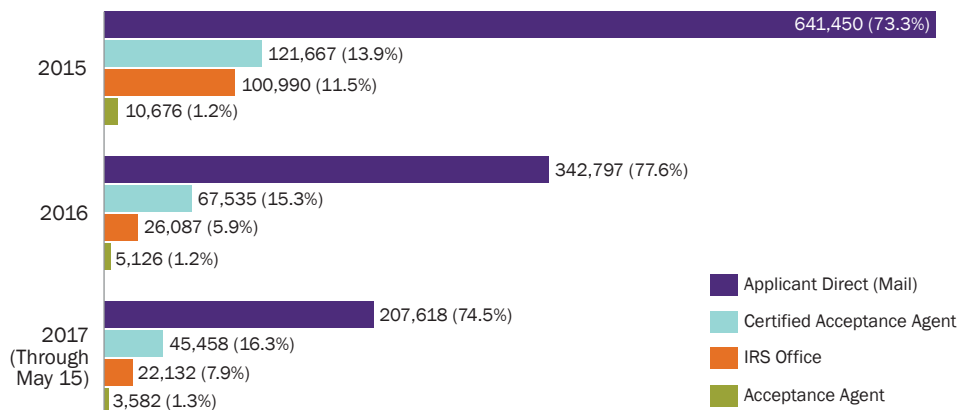
29 IRS, *Field Assistance Appointment Desk Guide 5* (Mar. 15, 2017). TAS has received reports in the past year that taxpayers who reside in Canada and Mexico near the U.S. border experienced further complications when attempting to schedule an appointment due to the toll-free line for making TAC appointments accepting only domestic calls. Systemic Advocacy Management System (SAMS) Issues 34713, 35184.

30 See REAL ID Act of 2005, Pub.L. 109–13, Division B, Title II, §§ 201-202, 119 Stat. 311–15, which sets standards for state-issued identification documents (IDs) that can be used to enter Federal facilities and establishes rules that states must follow in issuing the IDs.

As shown in the chart below, in recent years, only a small percentage of ITIN applicants were able to take advantage of TACs or CAAs to apply for ITINs, despite recent expansions to these programs.

FIGURE 3.7.1³¹

ITIN Applications by Submission Source During Calendar Years 2015-2017



Due to limited options for applying, the majority of taxpayers continue to mail in original documents and face a number of problems as a result. From January 1, 2017 through March 6, 2017, TAS opened nearly 170 cases from taxpayers suffering a hardship in connection with ITIN issues.³² The majority of these cases involved taxpayers who urgently needed their original documents back from the IRS. Examples of TAS cases include taxpayers who needed passports or other identification documents back in order to:

- Visit a dying family member;
- Travel for business;
- Travel because a family member passed away and the body could not be buried without the taxpayer;
- Verify identity for banking purposes, for example, to cash a child support payment;
- Apply for school;
- Travel for medical reasons, either for the taxpayer or to authorize surgery for a sick family member; and
- Obtain or use government services, including: appearing in court, obtaining a U.S. driver's license, getting married, applying for citizenship, requesting residency, and other immigration services.

³¹ IRS, CDW, Form W-7 Database (May 18, 2017).

³² Taxpayer Advocate Management Information System (TAMIS), Inventory Report (Mar. 7, 2017).

In the past we recommended the IRS return all original identification documents by expedited mail because depriving any taxpayer of these documents constitutes a hardship.³³ However, to date the IRS has not made this policy change.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Update its Tax Toolkit to provide further information about ITIN deactivations, renewals, and required dates of issuance;
- Monitor deactivations and renewals to ensure the IRS does not deactivate ITINs in error and assist taxpayers in correcting their accounts should erroneous deactivations occur;
- Review and provide recommendations for IRM sections and other internal guidance related to ITINs to promote taxpayer rights;
- Compile data regarding the volume of ITIN applications broken down by submission source and continue to advocate for the IRS to expand alternatives to mailing original documents for ITIN applicants, including options to use TACs, CAAs, and certain notary publics in foreign jurisdictions; and
- Assist taxpayers in locating and returning their original documents by expedited mail when they have an urgent need.

³³ See National Taxpayer Advocate 2015 Annual Report to Congress 204.