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ANALYSIS OF SESSIONS AMENDMENT TO DENY THE EITC TO MANY LEGAL PERMANENT RESIDENTS (AMENDMENT # 1235)

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Senator Sessions has filed an amendment to the Senate immigration bill that would deny the Earned Income Tax Credit to hundreds of thousands of taxpayers already working in the country *legally*. Under the amendment, legal permanent residents — often called “green card” holders — would be ineligible for the EITC for the first five years they hold legal permanent resident status.¹

The amendment also would deny the EITC to certain other categories of *legal* immigrants — regardless of how long they have resided in the United States — including some immigrants who are victims of human trafficking.

In these respects, Senator Sessions’ amendment goes well beyond another severe amendment he has introduced this year.² That amendment (amendment no. 1234) — which is similar to an amendment Senator Sessions introduced during last year’s immigration debate and which was defeated last year by a bipartisan vote of 60 to 37 — would deny the EITC to guest workers and workers who convert to legal status under the provisions of the Senate bill.³

Under both of the two Sessions amendments, millions of legal immigrants would be required to pay income and payroll taxes in the same manner as other workers, but would be denied the use of a tax credit that is intended to offset the heavy tax burdens that low-income working families would otherwise face. In a sharp departure from the longstanding federal tax principle of applying the same rules to everyone who works in the United States lawfully, these workers would effectively be taxed at much higher rates than other workers with the same family situations and incomes.

¹ More technically, the amendment would deny the EITC to “qualified immigrants” who have not been “qualified immigrants” for five years, with the exception of certain categories of humanitarian immigrants, such as refugees and asylees. Most “qualified immigrants” are legal permanent residents.

² For further discussion of this other Sessions amendment, see Aviva Aron-Dine, “Analysis of Sessions Amendment to Deny the EITC to People Working Here Legally As a Result of the Senate Immigration Bill (Amendment # 1234),” Center on Budget and Policy Priorities, revised June 6, 2007, <http://www.cbpp.org/6-5-07imm.htm>.

³ Under the new Sessions amendment (amendment no. 1235), immigrants who convert to legal status under the immigration bill would be ineligible for the EITC during the eight years *before* they are permitted to convert to legal status and then for an *additional* five years.

The EITC Is an Integral Part of the Tax System

Under current law, many legal immigrants cannot receive certain benefits such as Temporary Assistance for Needy Families (TANF), Medicaid, and food stamps for the first five years they are in the country. These restrictions were put into place in the 1996 welfare law, though some of the harshest restrictions have been moderated since 1996. The Sessions amendment would extend this “five year bar” into the tax code for the first time and apply it to the EITC.

Even the original 1994 “contract with America” — which featured harsher cuts in assistance to legal immigrants than those ultimately enacted in 1996 — did not restrict legal immigrants’ access to the EITC. One reason the Contract with America and the 1996 welfare law may not have denied legal immigrants the EITC is that it is available only to *working families that have legal authorization to work* and that are required to pay payroll and income taxes. Another is that the EITC — like the personal exemption, standard deduction, dependent exemptions, and other basic income tax provisions — is central to the overall structure of the tax code and to ensuring a fair distribution of the tax burden. Without the EITC, legal immigrant workers would effectively be taxed at significantly higher rates than other workers with the same family situations and incomes, and many would be taxed into — or deeper into — poverty.

Without the EITC, Low-Income Workers With Children Would Face Significant Federal Tax Burdens

Since its inception, a main purpose of the EITC has been to offset the taxes paid by low-wage workers, especially regressive payroll taxes. The Treasury Department has estimated that a *large majority* of the EITC (including the refundable component of the EITC) simply offsets the income, payroll, and excise taxes paid by tax filers who receive the EITC.

Without the EITC, low-income workers with children would owe substantial federal taxes.

- With the help of the EITC, working families with children do not owe federal taxes until their incomes exceed the poverty line. Working parents whose earnings leave their families in poverty receive income-tax refunds that offset payroll taxes withheld from their wages. In addition, the EITC helps to “make work pay” by supplementing working parents’ earnings and thereby lifting millions of children out of poverty each year.

Under the Sessions amendment, working families with children whose incomes leave them at or below the poverty line would instead face significant federal tax bills. Instead of helping working families with children *escape poverty*, the tax code would push working families with children that are headed by legal immigrants *into or deeper into poverty*.

- Moreover, some families that receive the EITC owe federal income taxes before the EITC is applied, in addition to payroll taxes. Without the help of the EITC, these low-income working families would face combined income and payroll tax burdens that are very high, given their low wages. For example, a single parent with one child and an income of \$30,000 would owe \$3,038 in income and payroll taxes this year. A married couple with one child and an income of \$32,000 would owe \$2,448 in income and payroll taxes.

As these figures indicate, denying the EITC to legalizing workers would have substantial adverse effects on children. Denying the EITC to legal immigrants would mean that a large number of children — many of them U.S. citizens — would be thrust into (or deeper into) poverty. Many of these children live in families that experience hunger or other hardships. (An Urban Institute study found that 56 percent of young, low-income children of immigrant parents live in families that experience hunger or other food-related problems.)

Bar Would Affect Millions of Workers Who Enter the Country Legally

The Sessions amendment would deny the EITC to:

- **Immigrants who entered the country legally and are working here legally.** The Sessions amendment would deny the EITC to current legal permanent residents — as well as certain other groups, such as immigrants who have been granted work authorization based on having been victims of domestic violence — who have been in this country less than five years. Some of these workers have received the EITC in prior years and would find themselves abruptly denied this crucial tax benefit and subject to high tax bills.
- **Immigrants who will enter the country legally in future years.** The Sessions amendment would deny the EITC to immigrants who apply for and receive legal permanent resident status before entering the United States in the future. After abiding by all of the rules of the immigration system, these workers would have to pay taxes at higher rates than other working Americans.
- **Other groups of immigrants, including some victims of human trafficking, who reside and work legally in the United States but who are not legal permanent residents (and do not fit into other categories of so-called “qualified” immigrants).** Some immigrants lawfully residing and working in the United States have special immigration statuses that are categorized as “not qualified.” Immigrant workers in these categories would be barred from the EITC *regardless* of how long they have been in the country (unless they are able to convert to legal permanent resident status, in which case they would have to wait an additional five years to be eligible for the EITC).

The Amendment Would Burden Other Taxpayers and the IRS

Implementing the Sessions amendment would necessitate the creation of a cumbersome new system requiring the IRS to identify the immigrant status of millions of tax filers on a case-by-case basis (in order to deny the EITC to those the amendment renders ineligible for it). The IRS would have to determine precisely which category of immigrants EITC filers fall into, as well as when they were granted that immigration status. This would create serious difficulties.

- **The process would almost certainly be highly error-prone.** The rules would be complicated, and many individuals would make mistakes in filling out the forms. The IRS would then be charged with reviewing complicated immigration statuses (many immigrants enter the United States with one status and see their status change over time) and with

determining precisely when the immigrant became a “qualified immigrant” and whether he or she fits one of the categories that is not subject to the five-year bar. (Theoretically, there is a national database that assistance programs such as SSI and food stamps now use that the IRS also could use to check the stated immigration status of the EITC applicants. But the system is so notorious for providing misinformation that, when the Social Security Administration or state human service agencies use this database, they are required to provide immigrants an opportunity to present paper documents showing that the information in the database is outdated or otherwise incorrect. The IRS — which processes some 130 million individual income tax returns annually — is not equipped to operate a similar process.)

- **In programs such as food stamps, case workers determine immigrant eligibility, typically through face-to-face interviews.** Even so, the determinations are difficult to make: the immigrant eligibility section of most state agencies policy manuals for caseworkers goes on for many pages, and the process has been shown to be error prone because the rules are difficult for both families and caseworkers to understand. The IRS would be asked to make determinations of immigrant eligibility without the help of interviews or caseworkers with direct knowledge of each applicant.
- **The IRS simply is not equipped to review each EITC application to determine eligibility *prior* to processing the tax forms and providing refund payments.** Given the volume of tax returns processed during a short period of time, the IRS processes most returns based on the information provided by the tax-filer and then, at a later date, cross matches information provided by taxpayers with other information, such as the earnings reported by employers. Thus, the IRS would be forced to review the immigration-related information provided by the tax-filer *after* the EITC had been awarded based on the information provided, and then to try to collect payments that were made in error.
- **Attempting to comply with the Sessions amendment would likely divert IRS resources from enforcement of other tax laws with larger fiscal implications and thus would likely hinder IRS efforts to reduce the tax gap.**
- **Finally, implementing the amendment would likely require *all* EITC filers to document their immigration or citizenship status, creating additional complexity and hassle for more than 20 million EITC filers, the overwhelming bulk of whom are U.S. citizens.** Thus, this provision could create new tax-filing burdens for many citizen tax filers who are not the intended focus of the amendment or the Senate immigration bill.