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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

RUSSELL SULLIVAN, STAFF DIRECTOR
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September 9, 2011

The Honorable Timothy F. Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

Last week the Treasury Department's Inspector General for Tax Administration ("TIGTA") released a report on the administration of the Additional Child Tax Credit ("ACTC") dated July 7, 2011, entitled "Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 Billion in Refundable Credits." The report states that the purpose of the review was "to determine whether potentially fraudulent tax returns filed with ITINs were being properly and consistently worked. Because of the significant volume of these returns claiming the ACTC, [the report] focused on those returns." As members of the United States Senate Committee on Finance, we are tasked with overseeing the operation of the Internal Revenue Service ("IRS") to ensure the integrity of the nation's tax administration, as well as protecting American taxpayers. Several aspects of the TIGTA report raise serious concerns about which we are requesting further information and that require the immediate attention of the Department of the Treasury and the IRS.

The TIGTA report states that "[a]lthough the law prohibits aliens residing without authorization in the United States from receiving most Federal public benefits, an increasing number of these individuals are filing tax returns claiming the Additional Child Tax Credit (ACTC), a refundable tax credit intended for working families." The TIGTA report found that in processing year 2010, \$4.2 billion of ACTCs were paid to filers with individual taxpayer identification numbers ("ITINs"). The report states that "ITINs are issued regardless of immigration status, because both resident and nonresident aliens may have a U.S. filing or reporting requirement under the Internal Revenue Code." However, in order to be authorized to work in the United States, an individual must have a valid social security number. Working without such a number is against the law. As a result, many ITINs are used by individuals who are not authorized to work in the United States, but who are in fact working in the United States. At the same time, many other ITINs are used by resident and nonresident aliens who are not working in the United States, but who have a United States filing or reporting requirement under the Internal Revenue Code. The TIGTA report notes that "the payment of Federal funds through this tax

Internal Revenue Code. The TIGTA report notes that “the payment of Federal funds through this tax benefit appears to provide an additional incentive for aliens to enter, reside, and work in the United States without authorization, which contradicts Federal law and policy to remove such incentives.” The report acknowledges that “[e]rroneous and fraudulent claims are not unique to the ACTC, nor are they unique to ITIN filers.”

The report makes several recommendations to verify eligibility for the ACTC. The IRS disagreed with two of the six recommendations. One of the recommendations that IRS stated that it will follow is TIGTA’s recommendation that the IRS consult with Treasury to determine whether it had the legal authority to deny payment of the ACTC to those not authorized to work in the United States.

To help address the concerns raised by the report, we hereby request the following information:

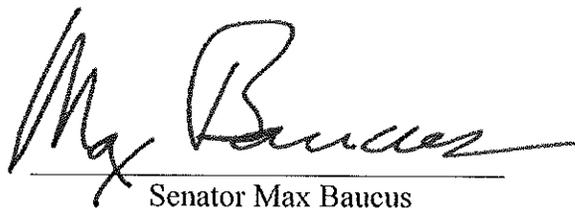
- 1) As noted, the report recommended that the IRS work with Treasury to seek clarification of whether or not the ACTC may be paid to those who are not authorized to work in the United States, under current law. While the IRS agreed with this recommendation, we are requesting a prompt response from the Treasury and IRS with a detailed legal analysis of this issue because taxpayers’ hard-earned dollars are at stake.
- 2) The report also recommended that the IRS require individuals filing tax returns with ITINs and claiming the ACTC to provide specific, verifiable documentation to support that the child claimed meets the eligibility requirements for the credit, including residency. The IRS disagreed with the recommendation, arguing that the IRS does not have the legal authority during return processing to verify and disallow the CTC and/or ACTC based on the residency of the child. The TIGTA Office of Audit disagreed with the IRS argument in opposition to this TIGTA recommendation. We request that the Treasury and IRS provide a detailed legal analysis for the position taken.
- 3) The TIGTA report further recommended that the IRS “should ensure CTC and ACTC claims on ITIN returns with questionable wages and withholding are verified in the Accounts Management Taxpayer Assurance Program’s (“AMTAP”) function or referred to the Examination function for verification. The IRS disagreed with this recommendation and argued that it does not have this authority. The TIGTA Office of Audit asserts that the IRS does have this authority. We request the Treasury and IRS provide a detailed analysis of whether the IRS has the authority to expand the scope of AMTAP’s function to identify potentially erroneous or fraudulent claims and refer them to the Examination function before refunds are issued.
- 4) Finally, one definitional issue we request that you clarify is what constitutes an ITIN return as defined in the IRS Return Transaction File. The TIGTA report, and its estimates of ACTCs paid to individuals who are not authorized to work in the United States, is based on an examination of “ITIN Filers.” The report references the IRS Return Transaction File in defining ITIN filers. We are seeking a precise definition for this term. For instance, if one person listed on an IRS Form 1040 has an ITIN while another member of the household listed on the return has a valid SSN, is that sufficient to classify the return as an ITIN return?

We appreciate your expeditious consideration of this request. Given our growing debt and record deficits, taxpayers are already overburdened. I would appreciate your responses to these questions before September 21, 2011. Should you have any questions regarding this letter, please contact Jim Lyons or Lily Batchelder of the Senate Finance Committee staff at 202-224-4515.

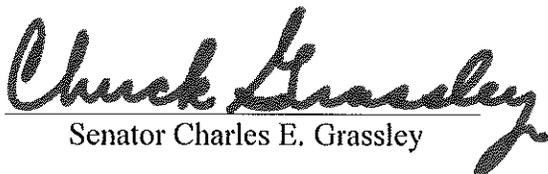
Sincerely,



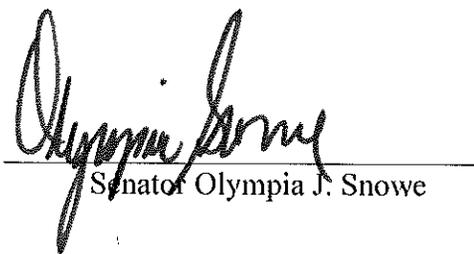
Senator Orrin G. Hatch
Ranking Member



Senator Max Baucus
Chairman



Senator Charles E. Grassley



Senator Olympia J. Snowe



Senator Jon Kyl



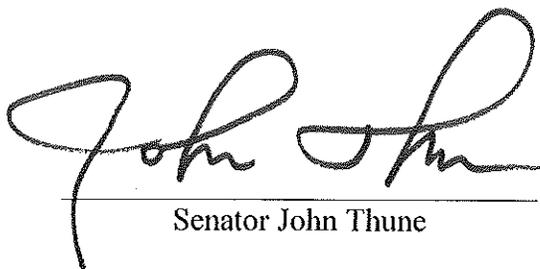
Senator Michael B. Enzi



Senator John Cornyn



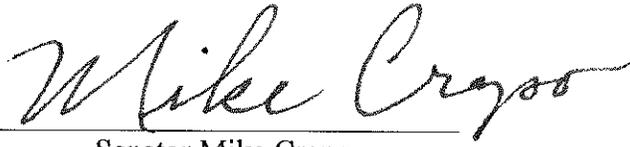
Senator Tom Coburn



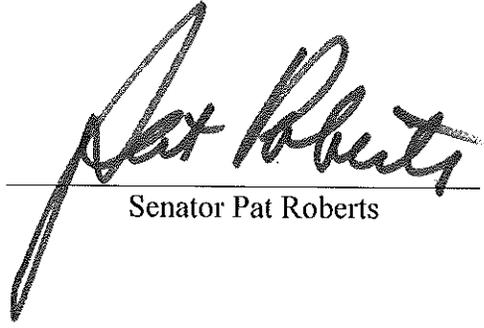
Senator John Thune



Senator Richard Burr

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Senator Mike Crapo

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Senator Pat Roberts