

110TH CONGRESS
1ST SESSION

H. R. 849

To amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States and to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2007

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and Labor and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States and to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Stop the Misuse of
3 ITINs Act of 2007”.

4 **SEC. 2. NOTIFICATION OF EMPLOYMENT STATUS OF INDI-**
5 **VIDUALS NOT AUTHORIZED TO WORK IN THE**
6 **UNITED STATES.**

7 (a) IN GENERAL.—Subsection (i) of section 6103 of
8 the Internal Revenue Code of 1986 (relating to confiden-
9 tiality and disclosure of returns and return information)
10 is amended by adding at the end the following new para-
11 graph:

12 “(9) DISCLOSURE TO SECRETARY OF HOME-
13 LAND SECURITY OF EMPLOYMENT INFORMATION OF
14 EMPLOYEES NOT AUTHORIZED TO BE EMPLOYED IN
15 UNITED STATES.—

16 “(A) IN GENERAL.—If—

17 “(i) the Secretary receives a return
18 from any person or entity (hereafter in this
19 paragraph referred to as the ‘employer’)
20 showing wages (as defined in section
21 3121(a)) paid to any employee, and

22 “(ii) the TIN of such employee, as
23 shown on such return, indicates that such
24 employee is not authorized to be employed
25 in the United States,

1 the Secretary shall provide electronically to the
2 Secretary of Homeland Security the following
3 information as shown on such return: the name,
4 address, and TIN of such employee and the
5 name, address, and employer identification
6 number of the employer.

7 “(B) NOTICE TO EMPLOYER AND EM-
8 PLOYEE.—Whenever the Secretary sends a no-
9 tice under subparagraph (A) with respect to
10 any employer and employee, the Secretary also
11 shall notify the employer and the employee in
12 writing that such employee is not authorized to
13 be employed in the United States and that the
14 employee’s employment with the employer
15 should be terminated not later than the 30th
16 day after the date of the notice. Such notice
17 shall also describe—

18 “(i) the employer’s obligations under
19 this paragraph,

20 “(ii) the employee’s right under this
21 paragraph to contest the determination
22 that the employee is not authorized to be
23 employed in the United States, and

24 “(iii) the procedure under this para-
25 graph for contesting such determination.

1 “(C) EMPLOYEE’S RIGHT TO CONTEST.—

2 “(i) NOTICE TO EMPLOYEE.—If any
3 employer receives such a notice from the
4 Secretary with respect to an employee, the
5 employer shall, within 3 business days
6 after the date the employer received such
7 notice, provide a copy of such notice to the
8 employee.

9 “(ii) RIGHT TO CONTEST.—An em-
10 ployee may contest the accuracy of such
11 notice during the 30-day period beginning
12 on the date that the employer provided the
13 notice under clause (i) to the employee.

14 “(iii) CONTEST PROCEDURE.—If, dur-
15 ing such 30-day period, the employee pro-
16 vides the employer with information sub-
17 stantiating such employee’s claimed au-
18 thorization to be employed in the United
19 States, the employer shall, in such form
20 and manner as the Secretary shall pre-
21 scribe, provide to the Secretary—

22 “(I) the employee’s name, ad-
23 dress, and taxpayer identification
24 number,

1 “(II) the employer’s name, ad-
2 dress, telephone number, and em-
3 ployer identification number, and

4 “(III) the information provided
5 by the employee to the employer sub-
6 stantiating such employee’s authoriza-
7 tion to be employed in the United
8 States.

9 “(D) VERIFICATION FROM DEPARTMENT
10 OF HOMELAND SECURITY.—

11 “(i) TRANSMITTAL OF INQUIRY.—
12 Within 3 business days after receiving the
13 information described in subparagraph
14 (C)(iii), the Secretary shall provide such
15 information electronically to the Secretary
16 of Homeland Security.

17 “(ii) RESPONSE.—Within 7 business
18 days after receiving such information, the
19 Secretary of Homeland Security shall elec-
20 tronically notify the Secretary, and shall
21 notify the employer and employee in writ-
22 ing, as to whether the employee is author-
23 ized to be employed in the United States.

1 “(E) SUSPENSION OF OBLIGATION TO TER-
2 MINATE EMPLOYMENT UNTIL RESPONSE RE-
3 CEIVED.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii), if the employee meets
6 the requirement of subparagraph (C)(iii),
7 the employer’s obligation to terminate the
8 employment of such employee shall be sus-
9 pended until the employer receives the no-
10 tice described in subparagraph (D)(ii).

11 “(ii) TIMELY RESPONSE NOT RE-
12 CEIVED.—If the employer does not receive
13 such notice before the 30th day after the
14 close such 30-day period, the employer
15 shall so notify the Secretary.

16 “(F) REBUTTABLE PRESUMPTION OF VIO-
17 LATION OF THE IMMIGRATION AND NATION-
18 ALITY ACT.—

19 “(i) IN GENERAL.—A rebuttable pre-
20 sumption is created that the employer has
21 violated section 274A(a)(1)(A) of the Im-
22 migration and Nationality Act if—

23 “(I) the employer employs an in-
24 dividual with respect to whom a notice
25 is received under subparagraph (B)

1 after the 30 days described in such
2 subparagraph,

3 “(II) the employer fails to notify
4 the Secretary as required by subpara-
5 graph (E)(ii) and employs such indi-
6 vidual, or

7 “(III) the employer refers the in-
8 dividual for employment after receiv-
9 ing a notice under subparagraph (B)
10 with respect to such individual.

11 “(ii) EXCEPTIONS.—

12 “(I) SUSPENSION PERIOD.—
13 Clause (i)(I) shall not apply during
14 the suspension period described in
15 subparagraph (E)(i)

16 “(II) NOTICE FROM SECRETARY
17 OF HOMELAND SECURITY.—Clause (i)
18 shall cease to apply with respect to an
19 individual after the date that the em-
20 ployer is notified by the Secretary of
21 Homeland Security that such indi-
22 vidual is authorized to be employed in
23 the United States.

24 “(G) REFUNDS DENIED.—No refund of
25 any tax imposed by this title shall be made to

1 any individual for any taxable year during any
2 portion of which such individual is employed in
3 the United States without being authorized to
4 be so employed.

5 “(H) SPECIAL RULES.—

6 “(i) PROTECTION FROM LIABILITY.—

7 No employer shall be civilly or criminally
8 liable under any law for any action taken
9 in good faith reliance on information pro-
10 vided by the Secretary or the Secretary of
11 Homeland Security with respect to any in-
12 dividual’s eligibility to be employed in the
13 United States.

14 “(ii) TIMELY MAILING TREATED AS
15 TIMELY NOTICE.—Rules similar to the
16 rules of section 7502 shall apply for pur-
17 poses of this section.

18 “(iii) LAST KNOWN ADDRESS OF EM-
19 PLOYEE.—Any notice required to be pro-
20 vided to an employee under this section
21 shall be sufficient if mailed to the employee
22 at the last known address of the em-
23 ployee.”.

24 (b) CONFORMING AMENDMENT.—Paragraph (4) of
25 section 6103(p) of such Code is amended by striking “(5)

1 or (7)” each place it appears and inserting “(5), (7), or
2 (9)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to returns received more than 180
5 days after the date of the enactment of this Act.

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