

113TH CONGRESS
1ST SESSION

H. R. 1292

To amend the Internal Revenue Code of 1986 to clarify that wages paid to unauthorized aliens may not be deducted from gross income, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2013

Mr. KING of Iowa (for himself, Mr. FRANKS of Arizona, Mr. JONES, Mr. DUNCAN of South Carolina, Mr. BROOKS of Alabama, Mr. BURGESS, and Mr. BARLETTA) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary and Education and the Workforce, 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 clarify that wages paid to unauthorized aliens may not be deducted from gross income, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as—

5 (1) the “New IDEA Act”; or

6 (2) the “New Illegal Deduction Elimination
7 Act”.

1 **SEC. 2. CLARIFICATION THAT WAGES PAID TO UNAUTHOR-**
2 **IZED ALIENS MAY NOT BE DEDUCTED FROM**
3 **GROSS INCOME.**

4 (a) IN GENERAL.—Subsection (c) of section 162 of
5 the Internal Revenue Code of 1986 (relating to illegal
6 bribes, kickbacks, and other payments) is amended by
7 adding at the end the following new paragraph:

8 “(4) WAGES PAID TO OR ON BEHALF OF UNAU-
9 THORIZED ALIENS.—

10 “(A) IN GENERAL.—No deduction shall be
11 allowed under subsection (a) for any wage paid
12 to or on behalf of an unauthorized alien, as de-
13 fined under section 274A(h)(3) of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1324a(h)(3)).

16 “(B) WAGES.—For the purposes of this
17 paragraph, the term ‘wages’ means all remu-
18 nation for employment, including the cash
19 value of all remuneration (including benefits)
20 paid in any medium other than cash.

21 “(C) SAFE HARBOR.—If a person or other
22 entity is participating in the E-Verify Program
23 described in section 403(a) of the Illegal Immi-
24 gration Reform and Immigrant Responsibility
25 Act of 1996 (8 U.S.C. 1324a note) and obtains
26 confirmation of identity and employment eligi-

bility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an employee, subparagraph (A) shall not apply with respect to wages paid to such employee.

“(D) BURDEN OF PROOF.—In the case of any examination of a return in connection with a deduction under this section by reason of this paragraph, the Secretary shall bear the burden of proving that wages were paid to or on behalf of an unauthorized alien.

“(E) LIMITATION ON TAXPAYER AUDIT.—The Secretary may not commence an audit or other investigation of a taxpayer solely on the basis of a deduction taken under this section by reason of this paragraph.”.

(b) SIX-YEAR LIMITATION ON ASSESSMENT AND COLLECTION.—Subsection (c) of section 6501 of the Internal Revenue Code of 1986 (relating to exceptions) is amended by adding at the end the following new paragraph:

“(12) DEDUCTION CLAIMED FOR WAGES PAID TO UNAUTHORIZED ALIENS.—In the case of a return of tax on which a deduction is shown in violation of section 162(c)(4), any tax under chapter 1 may be

1 assessed, or a proceeding in court for the collection
2 of such tax may be begun without assessment, at
3 any time within 6 years after the return was filed.”.

4 (c) USE OF DOCUMENTATION FOR ENFORCEMENT
5 PURPOSES.—Section 274A of the Immigration and Na-
6 tionality Act (8 U.S.C. 1324a) is amended—

7 (1) in subparagraph (b)(5), by inserting “, sec-
8 tion 162(c)(4) of the Internal Revenue Code of
9 1986,” after “enforcement of this Act”;

10 (2) in subparagraph (d)(2)(F), by inserting “,
11 section 162(c)(4) of the Internal Revenue Code of
12 1986,” after “enforcement of this Act”; and

13 (3) in subparagraph (d)(2)(G), by inserting
14 “section 162(c)(4) of the Internal Revenue Code of
15 1986 or” after “or enforcement of”.

16 (d) AVAILABILITY OF INFORMATION.—

17 (1) IN GENERAL.—The Commissioner of Social
18 Security, the Secretary of the Department of Home-
19 land Security, and the Secretary of the Treasury,
20 shall jointly establish a program to share informa-
21 tion among such agencies that may or could lead to
22 the identification of unauthorized aliens (as defined
23 under section 274A(h)(3) of the Immigration and
24 Nationality Act), including any no-match letter, any
25 information in the earnings suspense file, and any

1 information in the investigation and enforcement of
2 section 162(c)(4) of the Internal Revenue Code of
3 1986.

4 (2) DISCLOSURE BY SECRETARY OF THE
5 TREASURY.—

6 (A) IN GENERAL.—Subsection (i) of sec-
7 tion 6103 of the Internal Revenue Code of 1986
8 is amended by adding at the end the following
9 new paragraph:

10 “(9) PAYMENT OF WAGES TO UNAUTHORIZED
11 ALIENS.—Upon request from the Commissioner of
12 the Social Security Administration or the Secretary
13 of the Department of Homeland Security, the Sec-
14 retary shall disclose to officers and employees of
15 such Administration or Department—

16 “(A) taxpayer identity information of em-
17 ployers who paid wages with respect to which a
18 deduction was not allowed by reason of section
19 162(c)(4), and

20 “(B) taxpayer identity information of indi-
21 viduals to whom such wages were paid,
22 for purposes of carrying out any enforcement activi-
23 ties of such Administration or Department with re-
24 spect to such employers or individuals.”.

1 (B) RECORDKEEPING.—Paragraph (4) of
 2 section 6103(p) of such Code is amended—

3 (i) by striking “(5), or (7)” in the
 4 matter preceding subparagraph (A) and in-
 5 serting “(5), (7), or (9)”, and

6 (ii) by striking “(5) or (7)” in sub-
 7 paragraph (F)(ii) and inserting “(5), (7),
 8 or (9)”.

9 (e) EFFECTIVE DATE.—

10 (1) Except as provided in paragraph (2), this
 11 Act and the amendments made by this Act shall
 12 take effect on the date of the enactment of this Act.

13 (2) The amendments made by subsections (a)
 14 and (b) shall apply to taxable years beginning after
 15 December 31, 2013.

16 **SEC. 3. MODIFICATION OF E-VERIFY PROGRAM.**

17 (a) MAKING PERMANENT.—Subsection (b) of section
 18 401 of the Illegal Immigration Reform and Immigrant Re-
 19 sponsibility Act of 1996 (8 U.S.C. 1324a note) is amended
 20 by striking the last sentence.

21 (b) APPLICATION TO CURRENT EMPLOYEES.—

22 (1) VOLUNTARY ELECTION.—The first sentence
 23 of section 402(a) of such Act is amended to read as
 24 follows: “Any person or other entity that conducts
 25 any hiring (or recruitment or referral) in a State or

1 employs any individuals in a State may elect to par-
2 ticipate in the E-Verify Program.”.

3 (2) BENEFIT OF REBUTTABLE PRESUMP-
4 TION.—Paragraph (1) of section 402(b) of such Act
5 is amended by adding at the end the following: “If
6 a person or other entity is participating in the E-
7 Verify Program and obtains confirmation of identity
8 and employment eligibility in compliance with the
9 terms and conditions of the program with respect to
10 individuals employed by the person or entity, the
11 person or entity has established a rebuttable pre-
12 sumption that the person or entity has not violated
13 section 274A(a)(2) with respect to such individ-
14 uals.”.

15 (3) SCOPE OF ELECTION.—Subparagraph (A)
16 of section 402(c)(2) of such Act is amended to read
17 as follows:

18 “(A) IN GENERAL.—Any electing person or
19 other entity may provide that the election under
20 subsection (a) shall apply (during the period in
21 which the election is in effect)—

22 “(i) to all its hiring (and all recruit-
23 ment or referral);

1 “(ii) to all its hiring (and all recruit-
 2 ment or referral and all individuals em-
 3 ployed by the person or entity);

4 “(iii) to all its hiring (and all recruit-
 5 ment or referral) in one or more States or
 6 one or more places of hiring (or recruit-
 7 ment or referral, as the case may be); or

8 “(iv) to all its hiring (and all recruit-
 9 ment or referral and all individuals em-
 10 ployed by the person or entity) in one or
 11 more States or one or more place of hiring
 12 (or recruitment or referral or employment,
 13 as the case may be).”.

14 (4) PROCEDURES FOR PARTICIPANTS IN E-
 15 VERIFY PROGRAM.—Subsection (a) of section 403 of
 16 such Act is amended—

17 (A) in the matter preceding paragraph (1),
 18 by inserting “or continued employment in the
 19 United States” after “United States”; and

20 (B) in paragraph (3)—

21 (i) in subparagraph (A), by striking
 22 all that follows “(as specified by the Sec-
 23 retary of Homeland Security)” and insert-
 24 ing “after the date of the hiring, or re-
 25 cruitment or referral, in the case of inquir-

ies made pursuant to a hiring, recruitment or referral (and not of previously hired individuals).”; and

(ii) in subparagraph (B), by striking “such 3 working days” and inserting “the specified period”.

(c) APPLICATION TO JOB APPLICANTS.—Section 402(c)(2) of such Act is amended by adding at the end the following:

“(C) JOB OFFER MAY BE MADE CONDITIONAL ON FINAL CONFIRMATION BY E-VERIFY.—A person or other entity that elects to participate in the E-Verify Program may offer a prospective employee an employment position conditioned on final verification of the identity and employment eligibility of the employee using the employment eligibility confirmation system established under section 404.”.

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