

112TH CONGRESS  
1ST SESSION

# H. R. 3720

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.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2011

Mr. KING of Iowa (for himself, Mr. GOHMERT, Mr. FRANKS of Arizona, Mr. ROHRABACHER, Mr. BURGESS, Mrs. MYRICK, Mr. GINGREY of Georgia, Mr. FLEMING, Mr. BROOKS, Mr. BILBRAY, Mrs. BLACKBURN, Mr. ROYCE, Mr. BURTON of Indiana, Mr. GRAVES of Georgia, Mr. BARLETTA, Mr. POSEY, Mr. BARTLETT, Mr. ROE of Tennessee, Mr. DESJARLAIS, Mr. NEUGEBAUER, Mr. MARINO, Mr. SENSENBRENNER, Mr. POE of Texas, and Mr. CHAFFETZ) 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

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## 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—

1 (1) the “New IDEA Act”; or

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

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

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

11 “(4) WAGES PAID TO OR ON BEHALF OF UNAU-

12 THORIZED ALIENS.—  
13 “(A) IN GENERAL.—No deduction shall be  
14 allowed under subsection (a) for any wage paid  
15 to or on behalf of an unauthorized alien, as de-  
16 fined under section 274A(h)(3) of the Immigra-  
17 tion and Nationality Act (8 U.S.C.  
18 1324a(h)(3)).

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

24 “(C) SAFE HARBOR.—If a person or other  
25 entity is participating in the E-Verify Program

1 described in section 403(a) of the Illegal Immi-  
2 gration Reform and Immigrant Responsibility  
3 Act of 1996 (8 U.S.C. 1324a note) and obtains  
4 confirmation of identity and employment eligi-  
5 bility in compliance with the terms and condi-  
6 tions of the program with respect to the hiring  
7 (or recruitment or referral) of an employee,  
8 subparagraph (A) shall not apply with respect  
9 to wages paid to such employee.

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

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

21 (b) SIX-YEAR LIMITATION ON ASSESSMENT AND  
22 COLLECTION.—Subsection (c) of section 6501 of the In-  
23 ternal Revenue Code of 1986 (relating to exceptions) is  
24 amended by adding at the end the following new para-  
25 graph:

1           “(12) DEDUCTION CLAIMED FOR WAGES PAID  
2           TO UNAUTHORIZED ALIENS.—In the case of a return  
3           of tax on which a deduction is shown in violation of  
4           section 162(c)(4), any tax under chapter 1 may be  
5           assessed, or a proceeding in court for the collection  
6           of such tax may be begun without assessment, at  
7           any time within 6 years after the return was filed.”.

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

11           (1) in subparagraph (b)(5), by inserting “, sec-  
12          tion 162(c)(4) of the Internal Revenue Code of  
13          1986,” after “enforcement of this Act”;

14           (2) in subparagraph (d)(2)(F), by inserting “,  
15          section 162(c)(4) of the Internal Revenue Code of  
16          1986,” after “enforcement of this Act”; and

17           (3) in subparagraph (d)(2)(G), by inserting  
18          “section 162(c)(4) of the Internal Revenue Code of  
19          1986 or” after “or enforcement of”.

20          (d) AVAILABILITY OF INFORMATION.—

21           (1) IN GENERAL.—The Commissioner of Social  
22          Security, the Secretary of the Department of Home-  
23          land Security, and the Secretary of the Treasury,  
24          shall jointly establish a program to share informa-  
25          tion among such agencies that may or could lead to

1 the identification of unauthorized aliens (as defined  
2 under section 274A(h)(3) of the Immigration and  
3 Nationality Act), including any no-match letter, any  
4 information in the earnings suspense file, and any  
5 information in the investigation and enforcement of  
6 section 162(c)(4) of the Internal Revenue Code of  
7 1986.

8 (2) DISCLOSURE BY SECRETARY OF THE  
9 TREASURY.—

10 (A) IN GENERAL.—Subsection (i) of sec-  
11 tion 6103 of the Internal Revenue Code of 1986  
12 is amended by adding at the end the following  
13 new paragraph:

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

20 “(A) taxpayer identity information of em-  
21 ployers who paid wages with respect to which a  
22 deduction was not allowed by reason of section  
23 162(c)(4), and

24 “(B) taxpayer identity information of indi-  
25 viduals to whom such wages were paid,

1 for purposes of carrying out any enforcement activi-  
2 ties of such Administration or Department with re-  
3 spect to such employers or individuals.”.

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

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

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

12 (e) EFFECTIVE DATE.—

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

16 (2) The amendments made by subsections (a)  
17 and (b) shall apply to taxable years beginning after  
18 December 31, 2011.

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

20 (a) MAKING PERMANENT.—Subsection (b) of section  
21 401 of the Illegal Immigration Reform and Immigrant Re-  
22 sponsibility Act of 1996 (8 U.S.C. 1324a note) is amended  
23 by striking the last sentence.

24 (b) APPLICATION TO CURRENT EMPLOYEES.—

1           (1) VOLUNTARY ELECTION.—The first sentence  
2 of section 402(a) of such Act is amended to read as  
3 follows: “Any person or other entity that conducts  
4 any hiring (or recruitment or referral) in a State or  
5 employs any individuals in a State may elect to par-  
6 ticipate in the E-Verify Program.”.

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

19           (3) SCOPE OF ELECTION.—Subparagraph (A)  
20 of section 402(e)(2) of such Act is amended to read  
21 as follows:

22                   “(A) IN GENERAL.—Any electing person or  
23 other entity may provide that the election under  
24 subsection (a) shall apply (during the period in  
25 which the election is in effect)—

1 “(i) to all its hiring (and all recruit-  
2 ment or referral);

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

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

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

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

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

22 (B) in paragraph (3)—

23 (i) in subparagraph (A), by striking  
24 all that follows “(as specified by the Sec-  
25 retary of Homeland Security)” and insert-



1           ing “after the date of the hiring, or re-  
2           cruitment or referral, in the case of inquir-  
3           ies made pursuant to a hiring, recruitment  
4           or referral (and not of previously hired in-  
5           dividuals).”; and

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

9           (c) APPLICATION TO JOB APPLICANTS.—Section  
10 402(c)(2) of such Act is amended by adding at the end  
11 the following:

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

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