

Reform tied to immigrant taxes

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It has been a prominent selling point of the Senate “Gang of Eight’s” pathway to citizenship for the estimated 11 million immigrants in the United States illegally: the unauthorized workers would have to pay “back taxes” in addition to other fees and penalties.

“Obviously, the people who came into this country illegally have to pay a penalty, but not forever,” Sen. John McCain, R-Ariz., said earlier this month on “CBS This Morning.” McCain, the bipartisan Senate group’s chief GOP negotiator, added, “They should pay back taxes, and they should pay a fine and they should make sure that they get in line behind everybody else.”

However, the extent to which the sweeping immigration-reform legislation introduced on April 17 would pursue past taxes owed by immigrants is not clear. Because many undocumented immigrants already do pay their income taxes, by working on the books using fake Social Security numbers and then filing tax returns using government-issued taxpayer identification numbers, and many others earn too little to owe any income taxes, immigration experts speculate that there probably is not as much money waiting to be tapped as some might expect. Determining how much in back taxes is owed by the large share of immigrants who have worked for cash off the books also could prove difficult if not impossible.

And if lawmakers really try, they could end up putting the businesses that hired the workers on the spot, too, and they don’t seem inclined to do that. In fact, the bill includes language that says employers who know they have undocumented employees who are applying for a new provisional legal status would not be considered in violation of laws against knowingly hiring illegal workers.

Critics of what they call “amnesty” for undocumented immigrants say politicians like to talk about extracting back taxes from immigrants because it appeals to Americans’ feelings that everyone should pay their fair share and that there should be consequences for entering or staying in the country illegally. But without a detailed enforcement strategy and additional resources for the Internal Revenue Service, they say the threat is largely toothless.

“It’s a spoonful of rhetoric to help the amnesty go down,” said Steven Camarota, director of research for the Center for Immigration Studies, a Washington, D.C.-based organization that supports more immigration enforcement and overall reductions in immigration.

Back-taxes requirement

In 2007, the *Boston Globe* reported that then-President George W. Bush’s administration persuaded the late Sen. Edward Kennedy, D-Mass., to yank a back-taxes requirement from that year’s immigration bill because it would have been too much of a bureaucratic headache to enforce.

An earlier incarnation of immigration reform, which failed in 2006, would have required immigrants seeking legalization to prove they had worked at least three out of the previous five years. They would have had to establish that they had no outstanding income-tax liabilities for that period or at least had entered into an agreement with the IRS to pay them.

The Immigration Reform and Control Act, a 1986 law that provided amnesty to nearly 3 million undocumented immigrants, did not include a back-taxes requirement.

The Senate's Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 is the most serious attempt to overhaul the immigration system in the six years since the 2007 legislation.

Negotiated by four Democrats and four Republicans — including McCain and Sen. Jeff Flake of Arizona — the 844-page bill links enhanced border security and enforcement measures to a path to citizenship for many of those already in the country illegally. It also would create new visa programs for future foreign workers.

The eight senators intend for the massive bill to pay for itself and hope to raise enough in fees, penalties, taxes and other revenue to offset an investment in border security that could wind up costing more than \$4.5 billion.

The Senate bill would force any immigrant applying for “registered provisional immigrant status” to first satisfy “any applicable federal tax liability.” Preliminary interpretations are that the decisions on what taxes are owed will be handled administratively by the IRS, as opposed to being explicitly spelled out in the legislation.

“Where the IRS can easily identify tax assessments that haven’t been met, then those taxes will need to be paid,” Flake told *The Arizona Republic*. “But more than likely, the penalty is going to be in fees and fines.”

A Democratic Senate aide involved in the drafting of the bill defended the provision as “very strong,” saying anyone seeking to access the legislation’s “registered provisional immigrant program” would be required to pay any “assessed” taxes.

Immigrants who came to the country illegally before Dec. 31, 2011, and want to become legal permanent residents would be required to pay \$500 for provisional legal status at the start of the process, another \$500 after their six-year renewal date, and \$1,000 at year 10. At each of the three points in the legalization process, they would be held responsible for their taxes, the aide said.

“There definitely is some deference to the IRS in terms of the IRS determining how best to produce proof,” the aide said Wednesday. “The IRS does have some capability to produce documents saying whether someone has complied with their tax obligation.”

Still, the tax dimension remains somewhat hazy, even to those who have tried to clarify it.

A Migration Policy Institute analysis of the bill indicates that the tax requirement would cover just the legalization period, an interpretation shared by others.

“What I’ve been told when I’ve asked is that mostly it will be people paying their taxes from the year that they apply,” said Frank Sharry, executive director of America’s Voice, a national organization that advocates for comprehensive immigration reform. “There is a little fuzziness about whether they will charge back taxes or not and how much effort they’ll make.”

Implications for employers

Louis DeSipio, a professor of political science and Chicano/Latino studies at the University of California-Irvine, said immigrant workers may provide information about their employment history to demonstrate that they were in the United States before the Dec. 31, 2011, cutoff date. That could help government officials determine whether appropriate Federal Insurance Contributions Act, or FICA, payroll taxes, which fund Social Security and Medicare, have been paid, he said.

“If it’s obvious in those employment records that they have not been paying taxes, I think in that case they would make some effort to collect those funds,” DeSipio said. “Nothing that I’ve read suggests that they are going to go back to the beginning of their migration, which in many cases is the late 1990s.”

There is another wrinkle: The government already has collected billions paid into the Social Security system by unauthorized workers using phony names and documents and who often are not able to benefit from their contributions. The earnings information, often linked to fictitious or erroneous Social Security numbers, is tracked by what is known as the Social Security Administration’s “suspense file.” Under certain circumstances, DeSipio said, long-term immigrant workers can try to correct their Social Security information and claim their benefits, though many don’t realize it and others never try — out of fear that doing so could possibly subject them to criminal penalties.

Pushing too aggressively to collect back taxes could raise questions about whether employers should also be held liable for not properly withholding taxes, and Congress may not want to pick that particular fight during debate over this bill, he added.

“What almost all of them owe is FICA, so it’s a question of whether FICA was withheld from their wages or not,” DeSipio said. “And if it wasn’t, then the employer has equal liability or, in fact, greater liability than the worker.”

DeSipio and Pete Sepp, executive vice president of the watchdog group National Taxpayers Union, suggested that some sort of average could be established and applied to workers in various sectors if lawmakers decide that they want to dig deeper into immigrants’ employment histories in pursuit of more back taxes. That would allow incomes to be estimated fairly quickly and tax bills to be generated accordingly without time-consuming and personnel-intensive audits on a case-by-case basis.

“Otherwise, there would be considerable difficulty in being able to enforce such a thing,” Sepp said.

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