

Immigration and Taxes

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February, 2019

The vast majority of immigrants, both documented and undocumented, pay taxes. It is estimated that 11 million undocumented immigrants in the United States are paying annually an estimated amount of \$11.64 billion in state and local taxes. (2016 Institute of Taxation and Economic Policy Report). There is such a strong link between the ability to attain legal status in the United States and the duty to pay taxes, that even when undocumented immigrants lack social security numbers, they legally obtain Individual Taxpayer Identification Numbers (ITIN), which can only be used to pay taxes. Through the years I have had hundreds of clients come to my office with plastic bags and shoe boxes filled to the brim with years, even decades of tax returns and W-2s carefully saved and put away as proof of their fulfillment of a basic American duty. Many immigrants rely on tax preparers with dubious credentials and varying degrees of competence to have their taxes prepared and filed, and we are beginning to encounter some troublesome scenarios that could have dire and costly immigration consequences for any taxpayer who later applies for an immigration benefit for himself or for a loved one. This means that an improperly prepared and filed tax return can negatively affect both, U.S. citizens and non-citizens.

As a caveat, none of the attorneys at Catholic Charities are tax attorneys and we do not pretend to know or give tax-related advice to clients, but some of the mistakes or misguided tax-reducing strategies that we have seen on tax returns can be obvious. The main issue that comes up time and time again, is the issue of listing dependents. When we see a tax return that has several relatives like nieces and nephews listed as dependents, it raises a red flag. We recently met with a gentleman who came to our office after being denied citizenship (he was a legal permanent resident who was applying to become a U.S. citizen). The reason for the denial was the fact that he had claimed children that he considered his nieces as dependents on his tax return. The Department of Homeland Security (DHS) evaluated this information as an intentional misrepresentation and denied his application due to lack of good moral character. This gentleman is from a region of the world where you can have nieces and nephews that are not related to you by blood, but by virtue of a close friendship with the children's parents. He did not know that he was not legally allowed to list those children as dependents despite providing financial support to them. The person who prepared his taxes led him to believe that he could do that, so he could have a larger tax refund. Although he immediately filed amended tax returns and paid the IRS the back taxes for those returns, that misrepresentation rendered him ineligible to reapply for citizenship for five additional years.

Another consequence of having many dependents, of having low income, or of not working full time is an increased difficulty or inability to sponsor loved ones for permanent residence. Every category of family-based immigration requires that the petitioner (a U.S. citizen or permanent resident) file an affidavit of support (Form I-864) and show that he/she is making 125% of the poverty level. The more dependents a person has, the higher the income he/she has to earn in

order to qualify to sponsor a relative for permanent residence. I recently received a call from a U.S. citizen married to a woman from the Philippines. He receives social security disability and she is in Manila, pregnant with their first child. He has been unable to start the immigration process that would allow his wife to obtain legal permanent residence and live in the United States. He has been unable to do this because, having low income and lacking gainful employment, he would need a qualified co-sponsor that would be willing to sign an affidavit of support with him and he has been unable to find one. He remains separated from his wife and, eventually his child too, until he is able to find a joint sponsor.

In the next several months, most of us, regardless of our immigration status, will be filing our taxes. It is important to emphasize that if you need assistance in filing your taxes, to use a reputable, competent tax preparer. Trusting dubious tax preparers with preparing tax returns, coupled with the new public charge policies imposed by this administration (that we addressed in an earlier article) make the reunification of families even more difficult, and the legal immigration path more onerous.