

## W-2s for Foreign Agricultural Workers\*

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### Introduction

The Internal Revenue Service (IRS) clarified reporting requirements for employers of foreign agricultural workers temporarily in the United States on H-2A visas with an announcement in September 2011. Employers of foreign agricultural workers on an H-2A visa are required to file Form W-2 Wage and Tax Statements on compensation of \$600 or more for these workers. Payments made to H-2A workers are exempt from Social Security and Medicare taxes. In addition, employers are not required to withhold federal income tax from the H2-A workers. State and local taxing authorities may require withholding on H2-A labor; farm employers should check on their specific withholding requirements.

### Preparing the H2-A Worker's W-2

The total compensation paid to an H-2A worker for the calendar year will be reflected in Box 1 (Wages, tips and other compensation) and Box 16 (State wages, tips, etc.) of the W-2. No amounts will be reported in Box 3 (Social Security wages) or Box 5 (Medicare wages). Again, check with local taxing authorities on specific local reporting requirements. Pertinent individual worker details, such as the correct name, address and identification number, Social Security Number (SSN, discussed below), are placed in the appropriate boxes of the W-2. It is recommended to use the foreign address of the worker which can be found on the I-9, Employment Eligibility Verification, which employers should have on file for all employees.

### Preparing IRS Form 943, Employer's Annual Federal Tax Return for Agricultural Employees

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On Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, the payments to H-2A employees will not be reported on line 2 (wages subject to Social Security tax) or line 4 (wages subject to Medicare tax).

## Requirement for Social Security Number or Backup Withholding

To file a Form W-2, the employer needs a social security number for the employee. Workers in the United States on an H2-A visa are eligible to receive a social security number from their local Social Security Administration Office. The H-2A worker will need to fill out an application (Form SS-5; also available in Spanish) and present their original passport and I-94, Arrival-Departure Documentation. The number assigned will stay with them for their lifetime; in other words, they will only need to file once.

If the employer does not get a social security number, then payments made to the worker will be subject to backup withholding at the rate of 28%. If this occurs, the compensation will be reported on a 1099-MISC rather than Form W-2.

Employers who do not issue Form W-2 **and** fail to do the backup withholding will be held liable for the amount that should have been withheld for wages paid to these foreign agricultural workers.

## Filing a U.S. Income Tax Return

Since the H-2A workers will be receiving a W-2 for wages earned in the United States, it is expected they may need to file a tax return. The first task of the preparer of these tax returns is to determine if the worker is considered to be a resident alien or non-resident alien. The substantial presence test is used to make this determination. A person is considered a resident alien for tax purposes if they have spent 31 days of the current year **and** 183 days for the past three years in the United States.

For example: If a worker comes on September 1<sup>st</sup> every year and leaves December 15<sup>th</sup>. The first requirement is met since the worker is in the United States for more than 31 days in the current year. For the second part of the test we would calculate the days present as  $106 * 1.00 + 106 * .33 + 106 * .167 = 158$  days. To clarify, .33 is the multiplier for the prior year and .167 is the multiplier for the year before that. In this example, the worker would be a non-resident alien.

A non-resident alien is subject to income tax only on income earned in the United States and will file a 1040NR or 1040NR-EZ. The filing statuses available are 'single non-resident alien' or 'married non-resident alien'. One personal exemption can be claimed for the taxpayer. In addition, Mexican residents can claim a personal exemption for a spouse and/or dependents if the spouse and/or dependents had no U.S. gross income and cannot be claimed by another taxpayer. Certain rules apply to residents of other countries; see *Publication 519, U.S. Tax Guide for Aliens* for more information.

A resident alien is subject to income tax not only on the income earned in the United States, but also the income earned in other countries. Resident aliens are taxed in the same manner as U.S. *Rural Tax Education* (RuralTax.org) · RTE/2012-40 2

citizens and will actually file the 1040 series of tax returns. The filing statuses available are the same as those for U.S. citizens and resident aliens can claim a personal exemption for their spouse and/or dependents.

Both resident and non-resident aliens could potentially claim their spouse and/or dependents from another country. To do this, the taxpayer will need to file a Form W-7 to obtain an individual taxpayer identification number (ITIN) for those members of the family that qualify. See Form W-7 and its instructions for more information on the documents required to be filed with the form.

## Summary

In any situation, farming operations that utilize the H-2A program to obtain workers must put additional thought into processing payroll information for the foreign-sourced employees. Each worker's tax situation will be different, just as it is for domestic taxpayers. In some cases, the workers might owe some federal or state income tax. It may be prudent for the employer to have the employee fill out a Form W-4 to allow for income tax withholding. With this new requirement regarding the administration of the H-2A program, it may be beneficial for farming operations employing H2-A workers to engage a tax preparer to assist these foreign agricultural workers in navigating the income tax obligations they may incur. Doing so could help ensure sufficient skilled labor in the future and minimize areas of risk for both the employer and the H2-A worker.

## IRS Publications

To view or download publication or forms, click on "Forms and Publications". Then click on "Publication number" under "Download forms and publications by:". Type the publication number in the find box to search for the publication. Publications may be viewed online or downloaded by double clicking on the publication.

## Additional Topics

This fact sheet was written as part of Rural Tax Education a national effort including Cooperative Extension programs at participating land-grant universities to provide income tax education materials to farmers, ranchers, and other agricultural producers. For a list of universities involved, other fact sheets and additional information related to agricultural income tax please see [RuralTax.org](http://RuralTax.org).

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