



Foreign Agricultural Workers on H-2A Visas

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Exemption from Withholding of U.S. Federal Income Tax and U.S. FICA Taxes

Foreign agricultural workers temporarily admitted into the United States on H-2A visas are exempt from U.S. Social Security and Medicare taxes on compensation paid to them for services performed in connection with the H-2A visa. This is true whether they are resident aliens or nonresident aliens. In addition, compensation paid to H-2A agricultural workers for services performed in connection with the H-2A visa is not considered to be "wages" for purposes of federal income tax withholding, and thus is not subject to mandatory withholding of U.S. federal income tax unless Backup Withholding applies (See below).

Information Reporting

Beginning in calendar year 2011, an employer must report compensation of \$600 or more paid to an H-2A agricultural worker on Form W-2, Wage and Tax Statement, and NOT on Form 1099-MISC, Miscellaneous Income, as required in previous years. The employer will report the compensation in box 1 (Wages, tips and other compensation) of Form W-2. No amount should be reported in box 3 (Social Security wages) or box 5 (Medicare wages) of Form W-2. No amount should be reported on line 2 (wages subject to Social Security tax) or line 4 (wages subject to Medicare tax) on Form 943, Employer's Annual Federal Tax Return for Agricultural Employees. On Form W-2: Do NOT check box 13 ("Statutory Employee") as H-2A agricultural workers are not "Statutory Employees" as defined by the Internal Revenue Code.

An employer who has already reported compensation paid to H-2A agricultural workers on Form 1099-MISC for 2011 is NOT required to submit voided Forms 1099-MISC for this compensation and is NOT required to report this compensation on Form W-2 for 2011.

Voluntary Federal Income Tax Withholding

Employers are not required to withhold U.S. federal income tax from compensation paid to an H-2A agricultural worker (unless Backup Withholding applies; see below); however, it is quite possible that the H-2A agricultural worker will owe U.S. federal income tax when he or she files a U.S. individual income tax return for the year. Employers can withhold federal income tax only if both the H-2A agricultural worker and the employer agree to withhold. The H-2A agricultural worker must provide a completed Form W-4, Employee's Withholding Allowance Certificate, to the employer for U.S. federal income tax to be withheld from this compensation. There is no need for the H-2A agricultural worker to submit a Form W-4 if there is no agreement to withhold U.S. federal income tax from the compensation. If the employer withholds income tax, the employer will report the tax withheld in box 2 (Federal income tax withheld) on Form W-2 and on line 6 (Federal income tax withheld) on Form 943. Please see Publication 51 (Circular A), Agricultural Employer's Tax Guide, for the withholding tables and deposit requirements. In the case of voluntary withholding of federal income tax on an H-2A agricultural worker, the employer is required to do one of the following:

- If paying an H-2A agricultural worker who is a nonresident alien, follow the special withholding rules for nonresident aliens published in Chapter 9 of Publication 15 (Circular E) Employer's Tax Guide or in Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens.
- If paying an H-2A agricultural worker who is a resident alien, follow the same withholding rules which would apply to a U.S. citizen employee in the same situation (refer to Publication 15).

Estimated Payments in Anticipation of a Federal Income Tax Liability

An H-2A agricultural worker who chooses not to participate in voluntary withholding of U.S. federal income tax, but who nevertheless anticipates owing U.S. federal income tax, may be required to make estimated payments to the Internal Revenue Service on Form 1040-ES (if a resident alien), or on Form 1040-ES (NR) (if a nonresident alien). Please refer to the instructions for those forms for more information on the requirement to make estimated tax payments. An H-2A agricultural worker who is not required to make federal estimated tax payments may wish to make such payments anyway in order to avoid a large balance of tax due when filing a U.S. federal individual income tax return.

Backup Withholding

Generally, an H-2A agricultural worker is eligible to obtain a Social Security Number (SSN) from the U.S. Social Security Administration (SSA). An H-2A agricultural worker who is unable to apply for a U.S. SSN may apply for an Individual Taxpayer Identification Number (ITIN) from the IRS on Form W-7. For IRS information reporting purposes, the H-2A agricultural worker should provide his or her SSN or ITIN to the agricultural employer. If the H-2A agricultural worker fails to furnish his or her SSN or ITIN to the employer, and the aggregate annual payments made to the H-2A agricultural worker are \$600 or more, the employer must begin backup withholding on the payment(s) at the rate of 28% and continue withholding until the H-2A agricultural worker furnishes his or her SSN or ITIN. The employer will report the compensation subject to backup withholding and the tax withheld on Form 1099-MISC and Form 945, Annual Return of Withheld Federal Income Tax, instead of on Form W-2 and Form 943. See the Instructions for Form 1099-MISC and the Instructions for Form 945. An employer who fails to do backup withholding when required will be held liable for the amount of the backup withholding tax which it should have withheld from the H-2A agricultural workers' compensation.

No Withholding Under Section 1441

The usual 30% withholding requirement under section 1441 of the Internal Revenue Code with respect to U.S. source personal service income paid to a nonresident alien does not apply in the case of compensation paid to a nonresident alien H-2A agricultural worker. Similarly, the Form 1042-S reporting requirement on wages paid to a nonresident alien H-2A agricultural worker is waived because the payments are required to be reported on Form W-2 (or Form 1099-MISC in the event of backup withholding).

No Liability for U.S. Self-Employment Tax

Generally, compensation paid to H-2A agricultural workers is not subject to U.S. self-employment tax. There are different rules for workers who are residents of the United States and for those who are nonresident aliens. If, in any individual case, the compensation paid to an H-2A agricultural worker who is a resident of the United States is construed to be non-employee compensation which constitutes self-employment income and is therefore subject to U.S. self-employment tax under U.S. law, such worker may still be exempt from U.S. self-employment tax under the terms of an applicable bilateral Social Security agreement to which the United States is a party (Totalization Agreement). If a Totalization Agreement determines that the H-2A agricultural worker is covered under the social security system of a foreign country, then such worker is not subject to U.S. self-employment tax. The worker must obtain a certificate of coverage from the foreign country to establish an exemption from U.S. self-employment tax. If a particular worker who is a nonresident alien receives self-employment income, the worker would be exempt from U.S. self-employment tax unless he or she is required to pay such tax under a Totalization Agreement. Please refer to [International Agreements](#) for more information.

Income Tax Treaties

Income tax treaties may affect the taxation of H-2A agricultural workers in the United States. If an H-2A agricultural worker is a resident of a country with which the United States has an income tax treaty in force, the worker may be eligible for an exemption from U.S. federal income tax on his or her compensation under the treaty article that deals with income from services (e.g., Dependent Personal Services or Income from Employment). Please see Publication 901, Tax Treaties, for a description of the applicable treaty rules.

Because an H-2A agricultural worker's compensation is not subject to withholding, the worker would not need to submit a Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, to his or her employer prior to payment. Rather, an eligible worker would claim a treaty exemption on his or her income tax return after the end of the tax year.

If an H-2A agricultural worker spends sufficient time in the United States, he or she may become a U.S. resident under the substantial presence test, but may also be a resident of his or her home country under that country's tax laws. U.S. income tax treaties contain tiebreaker rules that apply in situations where an individual would otherwise be treated as resident of both the United States and the other country. H-2A agricultural workers who are treated as residents of the other country under a tiebreaker rule will be treated as nonresident aliens in figuring their U.S. income tax liability if they file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b). Alternatively, they may elect, on a year-by-year basis, to be treated as U.S. residents. H-2A agricultural workers who are treated as residents of the United States under a tiebreaker rule will be treated as U.S. residents and will generally not be eligible to claim a reduction or exemption from U.S. income tax under a treaty. Please see Publication 519, U.S. Tax Guide for Aliens, for an explanation of the alien residency rules for tax purposes.

U.S. Federal Income Tax Return Filing Requirements

Even though the compensation paid to H-2A agricultural workers is not usually subject to withholding of U.S. federal income tax, such compensation may be subject to reporting after the end of the tax year on a U.S. federal individual income tax return, and may be subject to U.S. federal income tax according to the following rules.

Nonresident aliens do not owe any U.S. federal income tax, and are not required to file [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), or [Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents](#), if the following conditions are met:

- The worker's total annual compensation is less than the personal exemption amount (refer to [Publication 501, Exemptions, Standard Deduction, and Filing Information](#)), and
- The worker has no other U.S. trade or business income, and
- The worker has no other need to file a return (e.g., no need to satisfy tax liability on other U.S. source income).

However, if an H-2A agricultural worker is a U.S. resident under the substantial presence test but chooses to be treated as a resident of a foreign country under a treaty tiebreaker rule, such individual must file Form 1040NR or Form 1040NR-EZ with Form 8833.

Nonresident aliens are required to file Form 1040NR or Form 1040NR-EZ, even though part or all of their income may be exempt under an income tax treaty if any of the following conditions apply:

- The worker's total annual compensation is equal to or exceeds the personal exemption amount, or
- The worker has other U.S. trade or business income, or
- The worker has another need to file an income tax return, such as to satisfy tax liability on other U.S. source income.

It is possible that these nonresident aliens could owe U.S. federal income tax.

Resident aliens are required to file [Form 1040, U.S. Individual Income Tax Return](#), or [Form 1040A, U.S. Individual Income Tax Return](#), or [Form 1040-EZ, Income Tax Return for Single and Joint Filers With No Dependents](#), if their total annual worldwide income equals or exceeds the filing requirement amounts published annually in the Instructions for Form 1040. It is possible that these resident aliens could owe U.S. federal income tax.

Liability for State and Local Income Taxes

In addition to any U.S. federal income taxes which might apply to the compensation of H-2A agricultural workers, it is possible that such wages might be subject to state and local income taxes imposed by states, cities, counties, townships, or other localities in the United States. Please check with the applicable state and local tax authorities.

References/Related Topics

- [Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers \(H-2A Visas\)](#)
- [Tax Treaties](#)
- [The Substantial Presence Test](#)
- [Totalization Agreements](#)
- [Publication 15 \(Circular E\) Employer's Tax Guide](#)
- [IRS Publication 51 Circular A, Agricultural Employer's Tax Guide](#)
- [IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities](#)
- [IRS Publication 519, U.S. Tax Guide for Aliens](#)
- [IRS Publication 901, Tax Treaties](#)
- [Publication 5144, Federal Income Tax and FICA Withholding for Foreign Agricultural Workers with an H-2A Visa \(PDF\)](#)
- [Publication 5144 \(SP\), El Impuesto Federal sobre los Ingresos y la Retención del Impuesto de la Ley de Contribución al Seguro Social \(FICA, por sus siglas en inglés\) para Trabajadores Agrícolas Extranjeros con un Visado H-2A \(PDF\)](#)

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