

General Information on Federal Withholding of Taxes

Question: What federal tax withholdings are applicable to H-2A workers?

Questions regarding the taxation and Federal withholding of amounts from H-2A workers fall under the jurisdiction of the Internal Revenue Service (IRS). As posted on the IRS website, 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. In addition, the IRS site indicates that compensation paid to H-2A 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 is therefore not subject to mandatory withholding. In certain situations, the IRS may require the employer to do a Backup Withholding if the H-2A worker does not have a Social Security Number or Individual Taxpayer Identification Number and the aggregate annual payments made to the worker are \$600 or more. For more information on Federal withholdings for H-2A workers, see the IRS website at <http://www.irs.gov/businesses/small/international/article/0,,id=96422,00.html>.

An H-2A worker may request voluntary Federal income tax withholding. Such a request is best evidenced by a written statement by the worker authorizing the withholding, such as a signed Form W-4. Note: Only Federal income tax is to be withheld. Withholdings for Social Security or Medicare are not to be made, and the employer may be held responsible for reimbursement of improperly withheld amounts (see below).

Since State income tax law will vary, the employer should consult with the appropriate State tax authorities to determine whether the wages of H-2A workers are subject to state income taxes.

It is important to remember that the H-2A regulations at 20 CFR 655.122(m) and 655.122(p) require the H-2A employer to pay wages when due and to ensure that all wage payments to H-2A workers are received free and clear of any improper deductions. Wages either improperly withheld or withheld based on a voluntary agreement but not remitted to the appropriate agency may be considered improper deductions.

If Federal income tax or U.S. Social Security and Medicare taxes have been improperly withheld from H-2A workers and remitted, the Wage and Hour Division will take into consideration employer reimbursement or assistance provided to the workers to recapture such amounts in determining violations and potential penalties. The employer can evidence reimbursement to H-2A workers and the employer may seek a refund of over reported amounts using Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund* (see <http://www.irs.gov/pub/irs-pdf/f941x.pdf>). An alternate method exists in which the employer provides documented assistance to H-2A workers in completing Form 843, *Claim for Refund and Request for Abatement* (see www.irs.gov/pub/irs-pdf/f843.pdf); however, the IRS indicates that workers will need to provide copies of their W-2, H-2A visa, I-94 (indicating date of arrival/departure), and a statement indicating that the withheld taxes need to be returned (either

from the employer or employee, who would indicate that this was requested of the employer but not provided).

Additionally, the National Taxpayer Advocate and Low Income Taxpayer Clinics are potential sources of targeted assistance to the worker regarding proper tax withholding, as indicated per <http://www.irs.gov/advocate/index.html?portlet=110>.