

H2A workers are by definition non-immigrant, temporary foreign workers. As such they receive special treatment in regard to social security, Medicare and federal withholding requirements. The IRS clarified how they wanted such compensation reported by the employer effective for the 2011 year. This compensation should have been reported on form w-2 and form 943 annual agricultural wages report. On both of these forms the compensation should be reported as wages for income tax and state, perhaps local, but not social security or Medicare.

If the worker fails to provide a valid social security number the employer should withhold at 28% until a valid number is provided. This amount and associated withholding should be reported on a 1099 and form 945. If a valid social security number is provided the employer is NOT required to withhold federal income taxes on H2A compensation. Do not confuse the requirement to withhold income taxes with H2A compensation being taxable to the worker. H2A compensation is taxable to the worker and U.S. income tax returns need to be filed by the worker if the wage exceeds the amount of the personal exemption which is \$4,000 in 2015.

Kentucky does not have an income tax exemption for H2A compensation but some localities may exempt agricultural labor. H2A compensation may be subject to workers compensation but it is not subject to Kentucky Unemployment. For determining filing threshold requirements for Kentucky Unemployment the H2A worker compensation is included in the calculation.

It is the workers responsibility to file annual income tax returns for Federal and state. They generally file form 1040NR (nonresident) but they may meet the IRS substantial presence test and qualify as resident aliens. They also may be considered dual status aliens for part of the tax year. The determination of residency status needs to be assessed on an individual basis. The IRS site provided here explains more about residency questions.

<https://www.irs.gov/Individuals/International-Taxpayers/Determining-Alien-Tax-Status>

If the H2A worker is a resident of Mexico and has a spouse and or dependents in Mexico they may be able to claim personal exemptions for those dependents. W-7 applications for identification numbers will need to be filed to get an Individual Taxpayer Identification Number (ITIN) for anyone claimed as a dependent. The W-7 application process requires specific original supporting documents be submitted to the IRS. The ITIN numbers only need to be applied for once but it can be quite a process providing adequate documentation. The W-7 form and instructions are available on the www.irs.gov website in both English and Spanish. Keep in mind that dependents in Mexico may qualify as dependents but in most situations will not qualify for credits such as the earned income credit, child tax credit or dependent care credit.

<https://www.irs.gov/Individuals/International-Taxpayers/Nonresident-Alien---Figuring-Your-Tax>

<https://www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-ITIN>

All the above is oversimplifying the residency status and dependents. I cannot stress enough the need to evaluate the workers circumstances on an individual basis.

The H2A workers may get deficiency notices from the IRS as the address on their w-2s if they do not file tax returns. The IRS may eventually file a lien and employers may receive notices to garnish future wages. It is unclear if the IRS will share non-compliance with immigration in the effort to prevent issuance of Visa's or stopping workers at the border if they have outstanding taxes.