

# Foreign Agricultural Workers & U.S. Tax Law



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## PRESENTER

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## A LITTLE HISTORY

- Foreign workers have come to work in agriculture since the Bracero Program (1942) was set up in 1942 by Executive Order
- Bracero Program enacted into law in 1956
  - Peak year was 1956, 445,197 Braceros entered U.S.
  - The number of illegal's who entered the U.S. during the tenure of the Bracero program was equal to or surpassed the number of braceros.
- Workers have been exempt from FICA (Social Security and Medicare tax) by statute and from Federal income tax withholding (FITW) by Treasury Regulations, derived from Statute.
- Workers have never been exempt from income taxes, BUT IRS Publications obscured this fact.

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Most temporary foreign workers are subject to the same tax laws as other workers in the U.S. H-2A workers are unique, however, in that even though they are common law employees, their compensation for agricultural labor is not subject to any type of withholding. That is, an employer does not need to withhold income tax (unless as part of a voluntary agreement, which Stuart will discuss later), Social Security tax, Medicare tax, or Federal Unemployment tax. This is because their compensation is not considered wages within the meaning of section 3121 (dealing with FICA withholding) or section 3401 (dealing with income tax withholding), although it is wages in the general sense of the word, i.e. compensation to an employee from his employer for service performed.

Code Section 3104 defines wages in terms of remuneration for employment. It then exempts from the definition of employment,

## IRS Guidance for H-2A Workers

- Prior to September 2011, IRS told employers
  - They could not withhold federal income tax
  - They could not report wages on a W-2
  - They should report “wages” on Form 1099-MISC
    - May show up as *nonemployee compensation* or *other income*
    - Guidance specified *other income* reporting starting in 2009
- Guidance to employers was not in IRS Pubs
- Many employers did not report H2A wages
- Pubs now require wage reporting on a W-2 and allow workers to volunteer for FITW

Circa 2007, obscure IRS web page directed employers to report H-2A wages on Form 1099-MISC

2009, web page modified to inform employers that workers had filing requirement and should make estimated tax payments

**September 2011**, revised web page

Report H-2A wages on Form W-2

FITW permitted if worker requests it and employer agrees

Instructions for Form 943 included H-2A wage reporting

2012 Pub 51 (Circular A) added guidance for W-2 reporting.

## Affordable Care Act

- All persons with legal presence in the U.S., including H-2A worker must have health insurance or pay a penalty tax.
- Applicable Large Employers (ALE) must provide insurance for their employees
  - On average, 50 full time employees or full time equivalents, unless state law differs (e.g., California).
  - Full time is defined as 30 hours a week.
  - H-2A workers are generally included in this count.

HO-1 ACA Exemptions & Who Grants Them

**Coverage is considered unaffordable** - The minimum amount you would have paid for employer-sponsored coverage or a bronze level health plan (depending on your circumstances) is more than a certain percentage (8.05 percent for 2015) of your actual household income for the year as computed on your tax return. Also see **coverage considered unaffordable based on projected income** listed below, which provides a prospective exemption granted by the Marketplace if the minimum amount you would have paid for coverage is more than a certain percentage of your projected household income for the year.

### Hardships include these situations

You [were homeless](#)

You were evicted or [were facing eviction or foreclosure](#)

You [received a shut-off notice from a utility company](#)

You [experienced domestic violence](#)

You [experienced the death of a family member](#)

You [experienced a fire, flood, or other natural or human-caused disaster](#) that caused substantial damage to your property

You [filed for bankruptcy](#)

You had [medical expenses you couldn't pay](#) that resulted in substantial debt

You experienced [unexpected increases in necessary expenses due to caring for an ill, disabled, or aging family member](#)

You [expect to claim a child as a tax dependent who's been denied coverage for Medicaid and CHIP](#) for 2016, and another person is required by court order to give medical support to the child. In this case you don't have to pay the penalty for the child.

As a [result of an eligibility appeals decision](#), you're eligible for enrollment in a qualified health plan (QHP) through the Marketplace, lower costs on your monthly premiums, or cost-sharing reductions for a time period when you weren't enrolled in a QHP through the Marketplace in 2016

You were [determined ineligible for Medicaid because your state didn't expand eligibility for Medicaid in 2015](#) under the Affordable Care Act

[Your individual insurance plan was cancelled after June 30, 2013](#) and you believe other Marketplace plans are unaffordable

If you experienced another hardship obtaining health insurance, [use this form to apply for an exemption with the Marketplace \(PDF\)](#)

## ACA Exemptions

- Household or gross income is under the filing threshold;
- Short Coverage Gap: less than three consecutive months;
- Nonresident aliens, including
  - a dual-status alien in the first year of U.S. residency;
  - a nonresident alien or dual-status alien who elects to file a joint return with a U.S. spouse;
  - Those who file Form 1040-NR or Form 1040-NR-EZ;
- Coverage is considered unaffordable;
- Hardships.

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## Employers' Perspective

- H-2A employers are subjected to burdensome regulation and inspections by the Department of Labor.
- For decades, they weren't concerned with the income tax regulations governing the employment of temporary foreign workers.
  - Most believed that the workers were exempt from all federal and stated taxes
  - Some, not knowing what to believe, reported wages on a W-2 or 1099-MISC
  - Most didn't report the wages at all.

## TAX LAW & H2A WORKERS

### Did You Know ...

- Employers may be exempt from withholding of federal taxes, but not exempt from reporting of wages paid to foreign agricultural employees on H-2A visas.
- H-2A workers must have a U. S. Social Security Number (SSN).



### Do I need a Social Security number before I start working?



We do not require you to have a Social Security number before you start work. However, the Internal Revenue Service requires employers to report wages using a Social Security number. While you wait for your Social Security number, your employer can use a letter from us stating that you applied for a number.

## SSA Guidance on SSNs

- Employer Responsibilities When Hiring Foreign Workers (<http://www.socialsecurity.gov/employer/hiring.htm>)
- Advise workers to apply for a Social Security number.
- The ten day rule
  - Wait ten days after worker enters the U.S. to apply for an SSN.
  - Delay needed to ensure that SSA can verify documents with DHS
- The fourteen day rule
  - SSA will not accept an application if worker has less than 14 days of authorized U.S. presence remaining on the visa.
  - SSA may reject application if, when application is processed, worker has less than 14 days of authorized U.S. presence remaining on the visa.

## Be Careful With Names

### SOCIAL SECURITY ADMINISTRATION Application for a Social Security Card

Form Approved  
OMB No. 0960-0056

<b>1</b>	<b>NAME</b> TO BE SHOWN ON CARD		First	Full Middle Name	Last
	FULL NAME AT BIRTH IF OTHER THAN ABOVE		First	Full Middle Name	Last
	OTHER NAMES USED				
<b>2</b>	Social Security number previously assigned to the person listed in item 1				
<b>3</b>	<b>PLACE OF BIRTH</b> (Do Not Abbreviate) City		State or Foreign Country		Office Use Only
					FCI
<b>4</b>	<b>DATE OF BIRTH</b> MM/DD/YYYY				
<b>5</b>	<b>CITIZENSHIP</b> (Check One)		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Legal Alien Allowed To Work <input type="checkbox"/> Legal Alien Not Allowed To Work (See Instructions On Page 3) <input type="checkbox"/> Other (See Instructions On Page 3)		
<b>6</b>	<b>ETHNICITY</b> Are You Hispanic or Latino? (Your Response is Voluntary) <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>7 RACE</b> Select One or More (Your Response is Voluntary)		
		<input type="checkbox"/> Native Hawaiian <input type="checkbox"/> American Indian <input type="checkbox"/> Other Pacific Islander <input type="checkbox"/> Alaska Native <input type="checkbox"/> Black/African American <input type="checkbox"/> White <input type="checkbox"/> Asian			
<b>8</b>	<b>SEX</b>		<input type="checkbox"/> Male <input type="checkbox"/> Female		

## Information Return Reporting

- Payments of compensation to H-2A & H-2B workers must be reported on Form W-2
- If the worker has applied, but doesn't have a Social Security number when wage reports (Forms W-2) are due
  - Paper filers, enter "Applied For" in Box a.
  - Electronic Filers, enter all zeros in the SSN field.
  - Submit Form W-2c when you receive the worker's SSN
- If worker has not yet applied, see **26 CFR 31.6011(b)-2 - Employees' account numbers**. Internet search easily finds this reference on Cornell University's Law School Web site.

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Payments to H-2A workers are not "wages" within the meaning of section 3121 or section 3401. Therefore, these payments are not reportable under section 6051, the section that traditionally calls for Form W-2 reporting. Nevertheless, these payments should be reported in Box 2 of the Form W-2 as other compensation. Because these payments are not wages for FICA or income tax withholding purposes, Boxes 3 and 5 should remain blank. Although there is no traditional income tax withholding, Box 2 may be filled if the employee elects voluntary income tax withholding, which will be discussed a little later in the presentation.

(iv) *Employee who is unable to furnish number or receipt.* If an employee is unable to comply with the requirement of paragraph (b)(1)(i), (ii), or (iii) of this section, the employee shall furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and the employee's sex, including a statement as to whether the employee has previously filed an application on Form SS-5 and, if so, the date and place of such filing. The information required by this subdivision shall be furnished on Form SS-5, if a copy of Form SS-5 is available. The furnishing of such a Form SS-5 or other statement by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS-5 and file it with a district office of the Social Security Administration as required by paragraph (a) of this section. The foregoing provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private

home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. However, such employee shall advise the employer of his full name and present address.

For provisions relating to the duties of an employer when furnished the information required by paragraph (b)(1) (i), (ii), (iii), or (iv) of this section, see paragraph (c) of this section.

*Employee who has not applied for account number.* If the employee has not been assigned an account number and has not made application therefor with a district office of the Social Security Administration, the employer shall inform the employee of his duties under this section.

*Employee who has receipt for application.* If the employee shows the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office. The receipt shall be retained by the employee.

If the employee advises the employer of his full name and present address in accordance with those provisions of paragraph (b)(1)(iv) of this section which are applicable in the case of employees engaged exclusively in the performance of domestic service in a private home of the employer not on a farm operated for profit, or agricultural labor, the employer shall enter such name and address in his records.

## Failure to File Penalties

- Any person who fails file an information return on or before the prescribed due date is subject to a penalty. For returns due after 12/31/16, the penalties increase to
  - \$50 per return if filed within 30 days of due date
  - \$100 per return if filed on/before August 31
  - \$250 per return if filed after August 1
  - \$500 per return if due to intentional disregard.
- Similar penalties for failure to provide a timely payee statement

## When and Where?

- For the 2016 and future years, W-2s must be mailed/given to the taxpayer and submitted to SSA NLT January 31.
- Technically, the taxpayer's W-2 should be sent to the taxpayer's permanent home address.
  - Practically, it is often better to use an address where the taxpayer will actually receive correspondence.
  - Have never heard of a penalty being assessed against an employer for not having the worker's "correct" address on a W-2

## Receiving Mail Is A Problem

- IRS and State agencies will send mail to the address on the most recent tax return or W-2
  - If this is a U.S. address,
    - Ensure that the mail is forwarded, or
    - Worker has authorized someone trusted to open mail and call with important information.
  - If this is a foreign address,
    - Does worker's employer and tax preparer have a valid mailing address on the W-2 and tax return?
    - Is mail delivery to that address reliable?
    - Will tax authorities make unwarranted assumptions about the tax return because of the taxpayer's main home address?
- If practical, consider filing a change of address with IRS and State Tax agency when leaving the U.S. and upon return.

## Other Issues

- Wages paid to a nonresident alien (NRA) workers are not subject to 30% withholding of FIT under IRC 1441.
- Wages paid to a NRA worker are **not** subject to reporting on Forms 1042/1042-S—use Form W-2.
  - Forms 1042/1042-S are used to report the wages earned by alien taxpayers legally in the U.S. who, by statute, are exempt from the substantial presence test.
- Wages paid to a resident alien worker are subject to backup withholding if the worker fails to provide an SSN or ITIN.
  - Report backup withholding on Form 1099, not Form W-2.
  - Employers who fail to do Backup Withholding when required will be held liable for the amount of the Backup Withholding tax

## The Challenges

- Tax professionals who know the law are rare.
- Incompetent, ignorant and fraudulent tax preparers are prevalent.
- Tax law is exceedingly complex.
- Insurance exchange employees generally do not understand the guest worker program.
- **No government agency provides outreach to H-2A workers about their tax obligations.**

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Bullet 1: What kind of tax returns should they file? 1040 or 1040NR?

Can they claim spouses and dependents?

What other special rules apply?

Bullet 2: Very few tax preparers know anything about the taxation of guest workers.

Confuse immigration status with tax residency and prepare wrong types of returns.

Don't know how tax law applies to guest workers.

Don't know how to deal with spouses and dependents who don't have SSNs.

Obtaining tax ID numbers (ITINs) from the IRS for spouses and dependents is difficult.

Insurance exchange employees generally do not understand what a guest worker is.

## H-2A Workers' Tax Compliance

- Not the employer's responsibility
- The government expects all U.S. workers with a filing requirement to file and pay taxes!
- **But—No government agency provides outreach to H-2A workers about their tax obligations.**
  - When visas are issued, they are told that they are exempt from Social Security and Medicare taxes.
  - Are told nothing about U.S. income taxes

## Tax Law for Guest Workers

*Is very complicated  
Few Preparers Know it  
Workers don't know it  
Few IRS Employees Know it*

## Foreign Workers

- Knowledge of tax ranges from limited or no knowledge of U.S. tax law to being badly misinformed
  - When visas are issued, they are told that they are exempt from Social Security and Medicare taxes.
  - Are told nothing about U.S. income taxes
- Many believe they are exempt from all U.S. taxes
  - Many know others who worked in the U.S. for generations and never filed tax returns
  - For generations, they have not received W-2s or 1099s
- Some believe they are entitled to refundable credits such as CTC/ACTC

## H-2A Workers' Compliance History

- Some will have never filed
  - Have never been contacted by IRS or State tax authorities
  - Have ignored IRS correspondence
  - May not have received IRS correspondence asking for returns
  - May have Substitute returns and be in Collections
  - Coming into filing compliance will generate late filing & payment penalties
- IRS and State Collection Issues may arise.
  - Penalty abatements will help, but are hard to get.
  - Federal alternatives to full payment include not collectible status, installment agreements and offers-in-compromise.

## Knowledgeable Preparers are RARE

- File as guest workers single with no dependents, even if married with eligible dependents, simply because spouses & dependents are not in the U.S. and/or don't have tax ID numbers.
- File as non-residents with no standard deduction allowed, when correct filing would be as a resident with the standard deduction
- Not knowing if/when H-2A may be eligible to claim the Earned Income Tax Credit (without children)
- They don't know the residency tests for guest workers

## Dishonest Preparers are Prevalent

- File resident returns for nonresident workers
- Encourage workers to claim anybody's children for exemptions
- Claim the Child Tax Credit for children living outside the U.S. who are not U.S. citizens
- This is a pandemic problem for all foreign born taxpayers
- Use the Preparer Complaint Form 14157 and/or 14157-A to report dishonest preparers
- Seek Assistance From the Taxpayer Advocate Service

## Issues For Those Who Filed

- Victimized by inadequately trained or unscrupulous tax preparers
  - Used wrong tax form (1040 vs 1040NR)
  - Filed tax returns with false claims –CTC/ACTC for NRA children
  - Fail to claim all available benefits
- Did not get expected refunds, don't know why and don't know how to find help
- Never received letters sent them by the IRS and state.
- Don't understand or reply to letters from the IRS or State agencies.
- No one can amend a return to elect a joint return filing status more than three years after the return's original filing date.



## Why Should Workers File and Pay?

- To comply with federal and state tax laws
- Employers must report their wages—eventually the IRS will enforce the law.
- Failure to File and not withholding or making estimated payments will add costly penalties to the tax due.
- When immigration reform is enacted
  - Agricultural workers will be at the head of the line, **but**
  - They will need to have filed tax returns for five years

## What The Law Requires

- **IRC § 6012** requires a tax return of every individual having gross income which equals or exceeds the exemption amount plus other statutory deductions & exemptions based on filing status.
  - Non-resident and dual status workers must file if wages exceed the exemption amount
  - Resident workers may claim the standard deduction and exemption(s) that raise their filing threshold
- Obtain health insurance if not covered by an employer policy.

## What H-2A Workers Should Consider

- If asked about tax compliance when being interviewed for a future visa, will they be able to answer truthfully with credibility?
- Although the law is complex, they have options and benefits which reduce and sometimes eliminate tax liabilities.
- Many who file, will not have to pay!
- When immigration reform is enacted
  - Agricultural workers will be at the head of the line, **but**
  - They will need to have filed tax returns for five years

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Resident workers may claim statutory deductions and exemptions that raise their filing threshold

Obtain health insurance if not covered by an employer policy.

# Tax Law Complexities

*What Farm Worker  
Advocates need to  
know!!*



## Tax Law Residency Definitions

- **Resident Alien**
  - Permanent resident/green card holder
  - **Substantial Presence Test** aliens
    - Nonimmigrant visas (Asylees, Refugees, Guest Workers, et.al.)
    - Aliens in the U.S. illegally (without authorization to be in the U.S.)
- **Nonresident Alien**
  - All aliens living outside the United States
  - Aliens in the U.S. who do not have **Substantial Presence**
  - Aliens who are exempt from the **Substantial Presence** rule by law or treaty
- **Dual Status Alien**—someone who is a nonresident alien part of the tax year and a resident alien the rest of the year.

HO-4 Determining Alien Tax Status

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### Lawful Presence in the United States

Immigrant (Permanent Resident/Green Card)

Asylee, Refugee, Temporary Protected Status

Non-immigrant—H-2A or any other visa

### Nonresident Aliens

Generally, live outside the United States

May be in the U.S. for short periods for employment, visits, etc.

May be temporarily present in the United States, but are “exempt individuals” and thus retain NRA status.

You will not be an exempt individual as a teacher or trainee in 2010 if you were exempt as a teacher, trainee, or student for any part of 2 of the 6 preceding calendar years.

However, you will be an exempt individual if all of the following conditions are met. You were exempt as a teacher, trainee, or student for any part of 3 (or fewer) of the

6 preceding calendar years,

A foreign employer paid all of your compensation during 2010, and

A foreign employer paid all of your compensation during each of the preceding 6 years you were present in the United States as a teacher or trainee.

A foreign employer includes an office or place of business of an American entity in a foreign country or a U.S. possession.

If you qualify to exclude days of presence as a teacher or trainee, you must file a fully completed Form 8843 with the IRS. See [Form 8843](#), later.

#### Exempt Individuals

Foreign government related individuals, including international organizations (by Executive Order) "A" or "G" visa

Teachers or trainees under a "J" or "Q" visa

Students under a "F", "J", "M" or "Q" visa

Professional athletes competing in charitable events

Immediate family members of those above

Others based on facts and circumstances (see Pub 519)

## Substantial Presence In the U.S.

- Requires physical presence in the United States
  - All 50 states, D.C. and U.S. territorial waters
  - **Not** U.S. possessions, territories or airspace
- For 183 days during a three year period
  - At least 31 days in the tax year, **and**
  - 183 formula days counting the current tax year, and two years preceding the current tax year.
- Any time in the U.S. during any day is a day of presence
- Some days don't count— for example, commuting days, when in a hospital, more—see Pub 519 for details

HO-5 Substantial Presence Test



## Residency Matters

- Nonresidents file Form 1040NR
  - Must file as single or married filing separate
  - There is no standard deduction. Limited itemized deductions are allowed.
- Residents file Form 1040 and are treated like all other U.S. citizens and lawful immigrants.
  - All filing statuses are possible.
  - Eligible to claim standard deduction.
  - May elect to file jointly with nonresident spouse.
  - Taxed on world-wide income for entire year
- Dual Status residents
  - Form 1040 if resident at year-end, else Form 1040NR
  - No standard deduction

## Benefits Available to H-2A Workers

- Nonresident H-2A workers may be able claim exemptions for a spouse and for other dependents
  - Spouse and dependents, and must live in U.S. , Mexico or Canada
  - Spouse/dependents cannot have income exceeding the exemption amount
  - Spouse and other dependents must have a tax identification number (SSN or ITIN)
- Resident H-2A workers may
  - Have the same benefits available to U.S. citizens
  - File a joint return with an nonresident spouse

## Maximizing Tax Benefits

- First Year Choice
  - Gives the benefits of filing as a U.S. resident one year sooner
  - Makes Standard Deduction Available Sooner
- Election to file a joint return with nonresident spouse
  - Provides the MFJ standard deduction
  - Provides an exemption for a spouse regardless of country of residence.
  - Subjects any spousal income to U.S. taxes

## FILING STATUS

### Resident Alien Taxpayer

- Single
- Married Filing Joint
  - Tax ID # not required
- Married Filing Separately
- Head of Household
- Widow(er) with Qualifying Child

### Non-resident Alien Taxpayer

- Single
- ~~Married Filing Joint~~
- Married Filing Separately
- ~~Head of Household~~
- ~~Widow(er) with Qualifying Child~~

## DEDUCTIONS

### Resident Alien Taxpayer

- May claim the standard deduction for the filing status used
- May take all itemized deductions available to U.S. Citizens

### Nonresident Alien Taxpayer

- Not eligible for the standard deduction
- This is also true for Dual Status Aliens
- Itemized Deductions are limited
  - State & Local Taxes Paid
  - Contributions to U.S. charities
  - Uninsured Casualty losses
  - Gambling losses up to amount of gambling winnings

# EXEMPTIONS

## Resident Aliens

- May claim exemption for a spouse
  - No matter where spouse lives
  - On an MFS return, only if spouse has no Gross Income
- May claim exemptions for dependents
  - Who are U.S. citizens, or
  - Others who reside in the U.S., Canada or Mexico.

## Nonresident Aliens

- May claim spouse's exemption
  - Only if spouse resides in the U.S., Canada, Mexico or South Korea, **and**
  - Spouse has no Gross Income
- Mexican and Canadian nonresident aliens may claim exemptions for dependents
  - Who are U.S. citizens, or
  - Others who reside in the U.S., Canada or Mexico.

## Tests for A Dependent

- Relationship—generally a close relative: child, parent, grandparent, grandchild, sister, brother, aunt, uncle, niece or nephew or live in taxpayer's household the entire year.
- Support test—generally taxpayer must provide more than  $\frac{1}{2}$  of the financial support for each dependent
- Gross Income Test: A dependent cannot have income equal to or greater than the exemption amount (\$4,050 for 2016)
  - Exception for children under age 19 or
  - Full time students under age 24.
- Residency Test: Must be U.S. citizen or live in U.S., Canada or Mexico.
- Dependent, if married, cannot file a joint return except to claim a refund, and cannot claim own exemption on that return.

## H-2A Worker Tax Responsibilities

*What they need  
to know!!*



### File on Time or File an Extension

- If taxpayer not in the U.S. before April 15, he has an automatic two month extension.
  - A statement claiming the extended filing deadline must be attached to the return to avoid late filing or payment penalties.
  - If e-filed, statement will be ignored, penalty assessed anyway.
  - Have someone file extension before April 15.
    - IRS Form 4868
    - Many States require a separate extension request.
    - Saves late filing penalties, not late payment penalties.
- Adequate withholding or Estimated Payments will prevent late payment penalties.

## To Withhold or Not to Withhold

- FITW is voluntary, but pay as you go is not!
  - Worker must ask.
  - Employer must agree (Does not have to agree)
  - If worker does not withhold, estimated quarterly payments may be required
- Should worker withhold Federal and State Income Tax
  - In first two years of employment, IRS fraud programs work against guest workers who ask for withholding
  - Recommend estimated payments
- WHY???? – Next Slide Please

## IRS Safeguards Against Refund Fraud Impact Innocent H-2A Workers

- Taxpayer Protection Program (TPP) & Integrity & Verification Operation (IVO) hurt
  - First time filers claiming refunds
  - No tax due filers claiming refunds
- The IRS is looking for fraudulent refund claims.
- The screening filters it uses to detect fraud are preventing the Service from issuing legitimate refunds to H-2A filers.
- Refunds may take up to six months, and some may be “frozen” and never sent unless the taxpayer complains and provides proof
  - that the W-2 wages were really his, and
  - that he is a bona fide taxpayer.

## To Withhold or Not to Withhold

- IRS records
  - Tax return information in its Individual Master File (IMF)
  - Information return information in an Information Return Master File (IRMF)
  - It does not establish these accounts until it receives tax return information from a taxpayer
- An Estimated Payment (Form 1040-ES or 1040NR-ES) forces the IRS to establish an account for the worker in its IMF. The payment is posted to the taxpayer's account.
  - A W-2 submitted by an employer has nowhere to post before a tax return is filed.
  - When the tax return is filed, the IRS will not be able to match the W-2 withholding on the tax return to the employer submitted W-2

Exemptions, Deductions, Credits

*QUESTIONS???*



# Tax Hazards Hurting H-2A Workers

Incompetent and Dishonest Preparers

IRS Fraud Prevention Programs

Challenge of Obtaining ITINs

## Tax Compliance Challenges

- Obtaining Tax Identification Numbers (ITINs)
  - IRS is very nit picky & detail oriented, leading to rejected applications
  - Requirement to send original documents to the IRS—e.g., passports, voter ID cards, etc.
- Not having a year round mailing address to receive and react to IRS correspondence
- U.S. legal and cultural expectations do not match taxpayer's experience in home country
- Unreliable & time consuming ways of corresponding between work place and home.

## Applying for an ITIN

*Form W-7 or W-7(SP)*

## ITIN Application Overview

- Form W-7 is available in Spanish
- Documentation is required to substantiate
  - Alien (foreign citizen) status
  - True identity of applicant
- Taxpayer, spouse, each dependent
  - Requires individual application
  - Parent/guardian signs for a minor under 14
  - All others sign their own or give a PoA to a designated representative who must be a relative, attorney, CPA or enrolled agent.
- Submit the W-7s with a 1040 or 1040X
- Follow up requires a power of attorney (Form 2848) or Information Disclosure Form (Form 8821), unless you are a Certifying Acceptance Agent

## Acceptable Documents

- Passport
- Two or more of the following
  - National ID Card
  - Civil Birth Certificate
  - U.S. State ID Card
  - Visa
  - Foreign Voter Registration Card
  - U.S. Citizenship and Immigration Services (USCIS) photo identification
  - Medical records (dependents only)
  - School records (dependents only)
  - U.S. driver's license
  - Foreign driver's license
  - Military ID card
  - Foreign military ID card
- One of the above must have applicant's photograph unless applicant is less than 14 years old or less than 18 **and** a student

## Birth Certificates

- Must be one of the documents submitted unless a passport is used.
- Must be original (first issued) or a certified copy issued by a government bureau of vital statistics
- IRS looks for specific security features
- Not all original birth certificates have those features or IRS examiners may not recognize them
- Birth Certificates for children are subjected to enhanced examination

## Medical Records

- May only be used for children aged 5 and younger as of the date the Form W-7 is signed & mailed
- Consists only of a shot/immunization record which documents
  - The patient's name, date of birth, and complete address
  - Chronological dates of medical history and care
  - The name, address and phone number of the doctor, hospital or clinic where treatment was last administered
- If this information is not printed on the medical record, it must be provided in a signed and dated letter on official letterhead from the government authority, physician, hospital or clinic that accompanies the medical record.
- If the W-7 shows a date of entry into the U.S., the record must be from a U.S. facility.

## School Records

- Accepted only for dependent applicants under the age of 18.
- Defined as an official report card or transcript signed by a school or ministry official.
- Record must contain
  - Student's name
  - Course work with grades
  - School name and address
  - Course work and grades are not required for children under age 6 in kindergarten or pre-school.
- If the W-7 shows a date of entry into the U.S., the record must be from a U.S. facility.

## Contact Information

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*That's all folks*

*Thank you*