



H-2A WORKERS: INCOME TAX WITHHOLDING IN THE U.S.

H-2A Workers May Owe Income Taxes

H-2A workers who earn income in the U.S. may owe federal and state income taxes. The amount of taxes an H-2A worker may owe depends on several factors including:

- Whether the worker is a resident for tax purposes (which is different from citizenship status – see below for more information); and
- Total relevant income (nonresidents should report income only earned in the U.S., while residents should include worldwide income) during the calendar year that the income in the U.S. was earned.

While H-2A workers are exempt from certain types of taxes, such as Social Security and Medicare taxes, and H-2A workers are exempt from automatic tax withholding (further described below), many H-2A workers may still owe taxes and may benefit from paying taxes in a timely manner.

How Do H-2A Workers Know If They Are a Resident for Tax Purposes?

The IRS defines a resident (for tax purposes only) as a person who is “substantially present” in the U.S. A person meets the substantial presence test if:

- The person was in the U.S. for a total of 183 days or more during the current year; Or:

* If the person was not here for at least 183 days in the current year, they may still qualify as a resident if:

- (1) They were present in the U.S. for 31 full days in the current calendar year; and
- (2) They were present in the U.S. for 183 days or more during a period that includes the current year and the prior 2 calendar years. To calculate whether you qualify as a resident under this rule, add the total of:
 - All the days you were in the U.S. in the current year plus 1/3 of the days that you were in the U.S. the prior year plus 1/6 of the days that you were in the U.S. 2 years before the current year.
 - If the total number of days equals or exceeds 183 days, you are likely a resident for tax purposes for that year. If the total number of days is less than 183, you are likely a nonresident for tax purposes.

To help you calculate whether you meet the substantial presence test, you can also use the US Tax Residency calculator (English only): <https://www.irstaxapp.com/about/us-tax-residency-calculator/>

What Is Income Tax Withholding?

Income tax withholding is when an employer deducts part of a worker’s pay to hold for income tax. This money is sent directly by the employer to the U.S. government’s Internal Revenue Service (“IRS”). These deductions are estimates of taxes owed, and the IRS may later refund some of these payments or seek additional money if these estimates are not accurate.

- **You are responsible for ensuring that all owed income tax is paid. If you choose not to have taxes withheld from your pay or your employer refuses to withhold taxes, you may be required to report your income on your tax return and may have to pay taxes at the end of the year.**

Employers of H-2A workers are exempt from automatic federal income tax withholding, so no taxes are deducted or sent by an employer to the IRS unless you and your employer agree to have it withheld. To have taxes withheld, an H-2A worker should provide their employer a completed IRS Form W-4. If you want to pay taxes to avoid a large tax bill, but your employer refuses to withhold taxes, you can file an IRS Form 1040-ES.

What Forms Do H-2A Workers Need to File?

If you are a resident for tax purposes:

- Should file form 1040.

If you are a nonresident for tax purposes:

- Should file form 1040NR.

Why Should I Report and Pay Income Taxes?

- Avoid the IRS taking future wages to pay unpaid tax debts.
- Avoid the IRS imposing additional fines and interest for late or unpaid taxes.
- Some immigration applications and actions may consider past tax payments and deficiencies.
- If an H-2A worker agrees to have tax withholdings withheld from their pay, the worker will likely have a smaller income tax bill at the end of the year or potentially be eligible to receive a refund.

Filing Taxes with a Social Security Number

- Since H-2A workers are eligible for Social Security numbers, they must file their tax returns with a social security number, rather than an ITIN.
- To obtain a Social Security number, an H-2A worker should complete SSA Form SS-5, available online in English and in Spanish at <https://www.ssa.gov/forms/> and take it to a nearby Social Security Administration (“SSA”) Office with a current passport and H-2A visa. If the SSA accepts the application, they will mail a Social Security card to the worker’s local address within a few weeks. If they deny the application, the worker can ask for the denial in writing and contact the Farmworker and Immigrant Worker Hotline (info below) or other legal service for advice.
- Keep your Social Security card and number private. Only share it directly with your employer and otherwise do not share it unless necessary and only with trusted contacts.

H-2A Workers May be Eligible for Free or Low-cost Tax Preparation & Advice

- **To file taxes:** The IRS’s Volunteer Income Tax Assistance (“VITA”) program offers free tax return preparation to people who make \$58,000 or less as well as for people who speak limited English. VITA sites are located at community centers, libraries, schools, shopping malls, among other locations. You can use the online VITA locator tool or call (800) 906-9887 to find a VITA site near you. In some areas, you can dial 2-1-1 and find a VITA site near you. If you go to a VITA site, make sure you bring your Social Security number, the W-2 form provided by your employer in January or February of the following year, and your passport. Tax returns are due in April of the year following the year you worked.
- **If you missed a deadline or are concerned about past tax debts:** There are also centers that provide individual tax and legal advice. Such centers can provide assistance or remedies even after the regular income tax filing deadline has passed. One such center is the Michigan State University Low-Income Taxpayer Clinic. If you are dealing with tax debt or other difficulties paying your taxes, they can potentially provide legal and tax services to H-2A workers in English, Spanish, and other languages. They can be reached at (517)-432-6880 or taxclinic@law.msu.edu.

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