SERVING FOREIGN WORKERS

What You Don't Know Can Hurt Them

An Overview of H-2A Taxation

By Robert W. Wundele, CPA

"Beginning in 2011, compensation of $600 or more paid to foreign agricultural workers who entered the country on H-2A visas is reported on Box 1 of Form W-2, Wage and Tax Statement." This statement first appeared in September 2011 in an IRS website article entitled "Foreign Agricultural Workers."[1] In October 2011, the same statement was published in the instructions for Form 943 (Employer's Annual Federal Tax Return for Agricultural Employees), and in January 2012, it appeared in Pub 51*(2012), (Circular A), Agricultural Employer's Tax Guide*. In addition to the W-2 reporting, for the first time these publications permitted the voluntary withholding of federal income tax from an H-2A worker's wages if the worker requested it and the employer agreed. This change was a rude awakening for most employers and tax professionals serving in agricultural communities. H-2A workers are but a small segment of the tens of thousands of foreign workers in the United States—whether legally admitted with a work visa or undocumented. This article provides basic guidance for serving these clients, with specific tips for those called upon to prepare returns for H-2A visa workers.

Foreign agricultural workers have been admitted to and legally employed in the United States since the Bracero program first permitted Mexicans to work in U.S. agriculture during World War II.[2] For more than sixty years, most employers and the employment agencies which recruited them believed that these workers were exempt from all taxes. However, the IRS had a different perspective. IRC Sec. 6012 states that a return shall be made by every individual whose gross income for the taxable year equals or exceeds the exemption amount.[3] Thus, most H-2A workers have always had a filing requirement, and the IRS expected their employers to report those wages on a Form 1099-MISC (Miscellaneous Income). This reporting requirement was published in an article on the IRS

website, but nowhere else. Only a few employers knew about the "Foreign Agricultural Workers" article. For those few, the announcement that H-2A workers should receive W-2s for 2011 was an inconvenient change. They were prepared to issue their H-2A workers a Form 1099-MISC. However, for most employers, this new guidance was a radical change. In fact, some had workers who did not have Social Security numbers[4] and did not think it mattered.

Until the 2012 edition came out, Pub 51 informed employers that foreign agricultural workers were exempt from Social Security and Medicare tax, exempt from federal income tax withholding, and exempt from federal unemployment tax. Form 943 (Employer's Annual Federal Tax Return for Agricultural Employees) only reported wages earned by workers the employer had withheld FICA and federal income taxes from. This led many to conclude that information return (W-2, 1099-MISC, etc.) reporting did not apply to H-2A workers, and that the workers were income tax exempt. Even employers who were filing Forms 1099-MISC with the IRS believed that the workers did not have to file tax returns.

That belief, held in good faith by many, was mistaken. The fact is, almost all foreign agricultural workers have a filing requirement. As a consequence, thousands of these foreign workers are returning to the United States this year, having never filed a tax return, despite years of employment in the United States, often with the same employer. Some, whose employers filed information returns in prior years, are already the target of IRS compliance and/or collection actions, and are subject to late-filing and late-payment penalties.

Because the change from 1099s to W-2s came so late in the year, the IRS announced that it would not penalize any H-2A employer who reported 2011's wages on a 1099-MISC. Unfortunately, the Service has been silent with respect to penalties it might impose on employers who had never reported H-2A employee wages. Thus, news of the W-2 reporting requirement has created confusion, uncertainty, and very real concerns about potential filing penalties employers might face. Would employers face a 28 percent penalty for failing to implement backup withholding for workers who did not have SSNs in 2011 and could no longer get them?[5] Would employers face Sec. 6721 and Sec. 6722 penalties for failing to provide information returns to the IRS and their employees?

The fact is, almost all foreign agricultural workers have a filing requirement.

SERP Alert

The IRS has not and is not likely to answer these questions or provide a blanket amnesty. However, on September 5, 2012, SERP Alert 12A0537[6] was issued. It informs Service personnel that H-2A workers are exempt from U.S. Social Security and Medicare taxes and are not generally subject to self-employment tax; some employers and H-2A workers were unaware of the filing requirements for this type of employee compensation; and abatements may be appropriate under the First-Time Abatement or Reasonable Cause provisions for individual filers requesting penalty abatements for failure to file and failure to pay penalties. (See Figure 1.)

Although the alert appears to focus on individual workers filing late, it acknowledges that both employers and employees were not aware of their filing requirements. Thus, penalty abatements should be appropriate for both employers and employees. The alert's focus on individual filers requesting abatements is most likely a response to what the Service has experienced to date. The author is not aware of any employers who filed late information returns or have been penalized for doing so. However, many workers have been assessed penalties for late and unfiled returns.

Where to Report

Having been informed by employers and recruiters that their wages were tax exempt, almost all workers, including those who had received a 1099-MISC in 2010 and years earlier, are nonfilers. Before the IRS told employers to report H-2A earnings on a Form W-2, a few employers had begun reporting H-2A workers' wages on Form 1099-MISC. Whether they filed or not, these workers were in trouble. Those who did not file received a CP59 Notice asking for a tax return; those who did file, fared little better. Tax preparers did not know if these non-immigrants were to file resident or nonresident returns, and sometimes used the wrong form. If the tax preparer did not include Schedule SE with the return, an IRS Math Error Notice would assess it.

Few preparers knew what tax benefits H-2A workers were eligible to claim or how to respond when the IRS challenged their returns with math error notices or examinations. The IRS had not published any guidance telling

H-2A workers and tax professionals how to mark the returns for special processing. Thus, even those who knew that the H-2A workers' wages were FICA exempt, did not know how to claim the exemption. IRS submission processing personnel and tax examiners rarely allowed the exemption claim. Because income tax withholding was not allowed, many filers owed tax. Late-filing and late-payment penalty assessments were automatic. This state of affairs has not changed, but IRM 23.11.1.28.1 was updated January 1, 2013, to help IRS personnel understand how to process H-2A income reported on a 1099-MISC.[7]

Withholding

Voluntary withholding is now allowed to reduce the frequency with which H-2A workers are assessed late-filing and late-payment penalties. Many of these workers do not return to the United States until late in or after the filing season, and have limited opportunities to file timely returns. With adequate withholding, late-filing and payment penalties will be minimized or disappear completely.

Determining the correct withholding can be tricky. Unless the H-2A worker is a twelve-month employee, Pub 15's *((Circular E), Employer's Tax Guide)* withholding tables will result in far too much income tax withheld. The Deductinns and Adjustments Worksheet on Form W-4, page 2, can be used to correct this problem. As an adjustment on line 4, enter an amount that is the difference between the worker's estimated total wages for the duration of the H-2A contract and the amount that the H-2A wage rate would earn with a twelve-month contract. Continue to follow the instructions on the form. When determining how much to withhold, it is also appropriate to apply the nonresident alien adjustment for both nonresident and dual-status alien workers.[8]

The change to W-2 reporting greatly simplifies tax return preparation for H-2A workers going forward. When a worker with a properly prepared W-2 files a tax return, processing problems are unlikely and e-filing is possible. However, most H-2A workers still need to file returns for prior years when a 1099-MISC was issued. Even those with W-2s will still file paper returns with Forms W-7 attached requesting individual tax identification numbers (ITINs) for a spouse and/or dependents. Other workers may want to file tax returns for prior years even though their wages had not been reported to the IRS. In these situations, the returns will need additional notations and statements to reduce processing errors.

Preparing Returns

Most H-2A workers have worked in the United States for many years, returning to the same job year in and year out. As a general rule, these nonfilers need only go back six years, unless the taxpayer has been contacted by the IRS about a tax year more than six years back.[9] Circular 230 imposes a duty on practitioners to advise clients of their duty to file and the consequences of noncompliance.[10] The client, however, makes the final decision to file or not to file.

Before starting the return, the preparer needs to know if the taxpayer is a resident, nonresident, or dual-status alien[11] for income tax-filing purposes. Despite some unique tax code provisions governing these workers, determining their status as 1040 or 1040NR filers is the same as all other nonimmigrant and undocumented workers. All H-2A workers enter the United States as nonimmigrants, but their immigration status does not determine their U.S. residency for tax filing. For H-2A workers, U.S. residency is determined by applying the substantial presence test (SPT).[12] This test, established in Sec. 7701(b)(3), applies to all aliens who:

- Are not permanent lawful residents
- Are physically present in the United States

Figure 1. SERP Alert

DATE: 9/5/2012
NUMBER: 12A0537
SUBJECT: Compensation Paid to Foreign Agricultural Workers on H-2A Visas
AUDIENCE: AM/C/SP/TA
IRM: N/A
MASTERFILE(S): BMF/IMF/IRMF

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, and are not generally subject to self-employment tax. Also, beginning in 2011, employers should report H-2A compensation on Form W-2.

The IRS recently expanded the information on its webpage for the reporting and filing of individual and employer tax returns involving foreign agricultural workers temporarily admitted into the United States on H-2A visas.

Some employers and H-2A workers were unaware of the filing requirements for this type of employee compensation. As a result, some employers failed to provide employees with the proper IRP reporting document in the past. Others misclassified the income as self-employment on the Form 1099-MISC. H-2A workers are not generally subject to self-employment tax.

Individual filers may be requesting penalty abatements for failure to file and failure to pay penalties. For many of these filers, abatements may be appropriate by the application of the First-Time Abatement or Reasonable Cause provisions.

- Have a U.S. income tax filing requirement
- Are not exempt from the SPT by statute[13]

Determining Residency

Table 1 summarizes the key consequences of the residency determination.

As a general rule, residency is not a choice. By law all workers who are in the United States for 183 days or more during any given year are residents, as are H-2A workers who are physically present in the United States on at least:

A. Thirty-one days during the current year
B. 183 days during the three-year period that includes the current year and the two years immediately before that, counting:
   1. All the days present in the current year
   2. One third of the days a person was present in the first year before the current year
   3. One sixth of the days a person was present in the second year before the current year

Residency for a taxpayer who meets the SPT begins the first day the taxpayer was present in the United States during the calendar year. However, if the taxpayer was a resident in the year before, the residency begins on January 1. For SPT residents, residency ends on December 31 of the calendar year unless the taxpayer shows a closer connection to a foreign country. Thus, H-2A workers who return to the United States year in and year out for more than four months each year may be resident aliens under the SPT.[14]

Elections

Elections available for alien taxpayers often benefit H-2A workers. One such election is the first-year choice. It allows some alien workers who do not meet the SPT in their first year in the United States, but do meet the test in their second year, to claim resident-alien status in the year before the SPT is met.

Table 1. Key Consequences of the Residency Determination

STATUS	TAX FORM	STANDARD DEDUCTION	INCOME SUBJECT TO TAX
Nonresident Alien	1040NR	No	U.S. source only
Resident Alien	1040	Yes	All income, regardless of source
Dual-Status Alien	1040 with unsigned 1040NR attached[15]	No	U.S. source only while a nonresident alien; all income regardless of source while a resident alien

By making a first-year choice election, the worker files a dual-status alien return in the year immediately prior to the year the SPT is met and a full-year resident return in the current year.[16] The choice cannot be made until the SPT is actually met in the current year. Married workers who are resident aliens on December 31 may elect to file a joint return with a nonresident alien spouse. The election allows both to be treated as resident aliens for the entire year and gives the benefit of the married filing jointly (MFJ) standard deduction. It can be extremely beneficial when combined with the first-year choice election. When the MFJ election is made, the return must be sent to the nonresident alien spouse to sign both the election statement and the tax return itself.[17] Once made, the election is binding for future years and subjects both the taxpayer and the spouse to U.S. income tax on their worldwide income for the entire year.[18]

When preparing 2012 tax returns for H-2A workers, all should have received W-2s. These returns should be e-filed unless the worker is requesting ITINs for a spouse and/or dependents. In that case, a paper return is required. Paper returns are also required when the worker has a 1099-MISC or no income document at all. Paper returns can be problematic. To reduce the risk of processing errors, identify the filer as an H-2A visa worker by writing the following in the top margin of the return's first page: "H-2A visa worker, exempt from Social Security & Medicare Tax. See SERP Alert 12A0537."

The wage and income documentation workers have to support return preparation will vary. Because employers did not have clear or timely guidance on how to report H-2A workers' wages, some issued W-2s, some a 1099-MISC with income reported in box 3 (other income), some used box 7 (nonemployee income), and some did not file either a 1099 or a W-2. Each situation requires a different approach to return preparation.

If an H-2A worker has a W-2 for any year that shows FICA withholdings, proceed with caution. First, determine if the W-2 was issued by the employer the worker was contracted to for the year under the H-2A program. If so, step one is to ask the employer to refund the tax and issue a W-2C. The employer will be able to claim a credit to recoup any taxes remitted to the IRS. Some employers, or their payroll providers, may have mistakenly withheld these taxes. If the employer refuses or cannot be contacted, use Form 843 (Claim for Refund and Request for Abatement) to file a refund claim. You will have to include evidence of the taxpayer's correspondence to the employer and the reply, if any. However, if the W-2 was issued by an employer other than the employer who

brought the worker to the United States, the FICA withholding is correct. Only wages paid by the employer the worker is contracted to are exempt from FICA taxes.

Filing Prior-Year Returns

Some H-2A workers wishing to comply fully with the tax code will want to file tax returns, even for years their employers did not issue a W-2 or 1099-MISC. If the compensation received is above the filing threshold, filing is a legal requirement. In a perfect world, employers would generate a W-2 or 1099-MISC for all prior years needed. However, fear of penalties and uncertainty as to the propriety of doing so generally deters employers from taking this step. In the author's experience, however, most employers will provide the workers with some type of statement to document unreported prior years' wages.

H-2A workers have several motivations to file prior returns they lack an information return for. They may fear that failing to file may result in a visa denial in the future; they may want a record of filing in the event immigration reform in the future gives them an opportunity to apply for permanent residency; and, if eligible, they may be enticed by refundable credits. Due diligence requires the practitioner to have a reasonable basis for the amount of income reported. If the return generates a credit, the IRS may also request third-party corroboration of the income reported. In such cases, it is advisable to obtain a statement from the worker's employer to document the wages earned. The statement should be on letterhead or have some other clear identification of the payer, which includes the payer's name, address, and EIN. Some employers will simply print out a document showing payments made to the worker. This statement may include reimbursement of travel costs, which are not reportable as taxable wages, so some caution is needed when using raw data from employers. To avoid the self-employment issues inherent with Schedule C reporting, use the employer's statement to create a substitute W-2 (Form 4562). Be sure that the Social Security and Medicare wage boxes are blank. Attach a copy of the employer's statement to the form or return. Also include a statement which references SERP Alert 12A0537 and explains that the employer only recently became aware that the wages were subject to information return reporting.

If the worker received a 1099-MISC with self-employment income, report the income on a schedule C or C-EZ, but claim no expenses. Enter "H-2A Visa Employee" as the principal business and use business code "999999." Do not complete or attach Schedule SE (Self-Employment Tax) to the return. On Form 1040, Line 56, Self-Employment Tax, enter "N/A, see SERP Alert 12A0537."[19] Because H-2A workers receive wages, which are clearly "earned income," the author advises reporting 1099-MISC income on a Schedule C-EZ, whether it is shown in box 3 ("other") or box 7 ("nonemployee compensation"), whenever the taxpayer has a possible claim to a tax credit or benefit which requires earned income.[20]

Whether they are resident, nonresident, or dual-status aliens, H-2A workers may claim exemptions for a spouse and for dependents living in the United States, Canada, or Mexico. However, to claim the exemptions, workers will need to obtain ITINs for anyone listed on the return who does not already have one. ITIN application procedures generally require submitting a completed Form W-7 with supporting documents to prove the applicant's identity and foreign status. As a general rule, original documents or copies certified by the issuing agency are required. A current passport or two documents, such as a birth certificate and a photo ID issued by a state or national government, are required. Notarized photo copies of documents are no longer accepted. IRS publications, forms, and instructions are being revised to reflect new ITIN application procedures that were effective January 1, 2013. Check the IRS website for the most recent guidance.[21]

Some H-2A workers wishing to comply fully with the tax code will want to file tax returns, even for years their employers did not issue a W-2 or 1099-MISC.

Other Credits

Exercise due diligence before claiming other credits and deductions for alien taxpayers such as H-2A workers. Tax software packages

and inattention to detail can generate credits the taxpayer is not entitled to.[22] For example, although the Child Tax Credit (CTC) can be claimed on both resident and nonresident returns, an H-2A worker is rarely eligible for the credit because the taxpayer must have a qualifying child dependent who is a U.S. citizen, national, or resident alien.[23] Thus, to claim the CTC, the taxpayer's child, if not a U.S. citizen, must have a green card (be a permanent U.S. resident) or pass the SPT previously discussed.

H-2A workers may be eligible for the earned income credit (EIC), but it is not common. To claim the EIC, the taxpayer must be a full-year resident and must have lived in the United States for more than six months. Some full-year resident alien H-2A workers with incomes below the EIC thresholds for taxpayers without children may qualify if the filing status is single. If a joint return is filed, both the taxpayer and the spouse must have SSNs issued by the Social Security Administration that are not marked "Not Valid for Employment." Some tax software packages will generate EIC on joint returns, even when the spouse has an ITIN. That is a software programming error.[24]

When preparing 2008, 2009, and 2010 Form 1040 returns for resident alien H-2A workers, keep the Recovery Rebate and Making Work Pay (MWP) Credits in mind. Resident alien H-2A workers with valid SSNs and a 2008 filing status of single or married filing separately (MFS) will be eligible for the Recovery Rebate Credit (RRC). Resident alien H-2A workers should also claim the MWP Credit for tax years 2009 and 2010. The IRS frequently uses math error authority to deny these claims in whole or in part, but protests have always gotten them restored. With the RRC, the problem arises with MFS returns where the spouse has an ITIN. In these cases, the Service mistakenly denies the credit because the spouse does not have a valid SSN. However, the requirement that both spouses need valid SSNs to claim the RRC applies only to joint returns.[25]

When preparing 2008, 2009, and 2010 Form 1040 returns for resident alien H-2A workers, keep the Recovery Rebate and Making Work Pay (MWP) Credits in mind.

Making Work Pay Credit Claims

MWP Credit claims are also routinely denied in whole or in part. Sometimes the credit is denied because the spouse does not have a valid SSN. In this case, we simply protest that only the taxpayer or spouse needs a valid SSN, and we provide a copy of Sec. 36A with the appropriate paragraph [(d)(1)(b)(ii)] highlighted. If a Math Error Notice removes the MWP Credit without giving an explicit reason, one may reasonably assume that it happened because the return appears to report self-employment income without assessing self-employment tax.[26]

To protest this type of denial, send a letter with supporting evidence to show that the H-2A taxpayer was not self-employed. The supporting evidence consists of a Department of Labor webpage (www.foreignlaborcert.doleta.gov/h_2a_details.cfm) explaining that there must be an employer–employee relationship before an H-2A visa is issued. Also include a more recent copy of the article that now tells employers to report H-2A wages on Form W-2.

The MWP Credit may be partially denied for 2009 because, according to the IRS letter, the taxpayer failed to reduce the claim by the $250 received from SSA, Railroad Retirement Board (RRB), or the Veterans Administration (VA). This reduction is restored by correspondence pointing out that the worker was not eligible for those payments, did not receive any of them, and asking that either the credit be restored or evidence provided to substantiate the Service's implied claim that the taxpayer received $250 from SSA, RRB, or the VA.

Conclusion

This article has provided an overview of the major issues affecting tax return preparation for the 55,000–65,000 foreign agricultural workers who are scattered throughout

the country.[27] With more than 140 million individual tax returns filed each year, that's a very small number. However, a large majority of these workers will be filing for the first time this year, and most will need to file prior-year returns. In general, they are very low income taxpayers who are not eligible for large refundable credits and have had no taxes withheld. They need the expert tax help that enrolled agents can provide, but most will be hard pressed to fully pay for your services, especially if post-filing representation is needed.

About the Author:

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To learn more about this topic, go to the NAEA webboard.

ENDNOTES

The article has been revised three times since September 1, 2011. The revision of August 2, 2012, extended this statement as follows: "and NOT on Form 1099-MISC, Miscellaneous Income, as required in previous years."

[1] In 1964, the Bracero program was replaced by the H2 program, which allowed employers to hire foreign workers for both agricultural and nonagricultural jobs in locations with a shortage of domestic workers. The Immigration Reform and Control Act of 1986 (IRCA) refined the H2 program, dividing H-2 workers into two categories, temporary agricultural workers and temporary nonagricultural workers, designated as H-2A and H-2B workers, respectively. See www.uscis.gov/h-2 and www.dol.gov/compliance/guide/taw.htm for current information about the H-2A program.

[2] The law increases that amount for resident (1040) returns based on filing status and age, lowers the threshold for the self-employed, and makes other exceptions, but there is no exception made for foreign agricultural workers.

[3] Employers hiring foreign workers have a duty to advise these workers that they are required to apply for an SSN and card. See www.socialsecurity.gov/employer/hiring.htm, "Employer Responsibilities When Hiring Foreign Workers."

[4] The SSA will not accept an SSN application from a temporary foreign worker who is leaving the United States within two weeks or is no longer in the United States. Even if accepted, the application may be denied if not processed until the worker has less than two weeks left on his visa.

[5] SERP stands for Servicewide Electronic Research Program. SERP Alerts notify users of system problems, changes, and information (e.g., disaster assistance information) that does not require an IRM procedure/instruction change. (See IRM 1.11.8 for a full description.)

[6] Box 3 - Other Income (prizes and awards, punitive damages, payments to an H-2A agricultural worker, etc.) Note: Wages paid to foreign agricultural workers on H-2A visas were reported in box 3 rather than on Form W-2 (Wage and Tax Statement) for tax years prior to 2011 (some employers had a delayed transition until tax year 2012). This compensation is considered wages and must be reported on Form W-2 if a TIN is provided. If a TIN is not provided, amounts must be reported on Form 1099-MISC (Miscellaneous Income) in box 3. The payments are not subject to self-employment tax but are subject to backup withholding when reported on Form 1099-MISC.

[7] Nonresident and dual-status aliens are not eligible for the standard deduction. The additional withholding compensates for that lost deduction which is built into the withholding tables. See Notice 1392 (Supplemental Form Q-4 Instructions for Nonresident Aliens.)

[8] This is true even if the employer has never reported their wages on a 1099-MISC or a W-2.

[9] Circular 230 Sec. 10.21.

[10] The IRS uses the term "alien" in reference to all taxpayers who are not U.S. citizens or U.S. nationals. Individuals who have renounced their U.S. citizenship (expatriates) or who have dual citizenship are subject to special rules which are not addressed in this article.

[11] See www.irs.gov/Individuals/International-Taxpayers' Substantial Presence Test.

[12] Individuals with A, G, F-1, M, or Q visas are generally exempt from the test. However, time limits are placed on F, J, M, and Q visa holders. See Pub 519.

[13] A worker present in the United States for 123 days in each of three consecutive years will meet the substantial presence test in the third year, and under the first-year choice option, the worker may be able to elect to be a resident alien when filing a tax return for the second year. Several other criteria must be met. See Pub 519 and IRC Sec. 7701(b)(3) for details.

[14] When filing a dual-status return, "DUAL STATUS" must be written at the top of the signed tax form, and the words "DUAL STATUS STATEMENT" should be written at the top of the unsigned tax form which is attached. A dual status taxpayer who is a resident alien at the start of the year, but a nonresident alien on December 31, will file form 1040NR with an unsigned Form 1040 attached. This would be an extremely rare situation for an H-2A worker. Unless a substantial presence test resident can show a closer connection to a foreign country after leaving the United States, resident alien status continues after departure until the end of the year. See Pub 519 for details.

[15] The information provided in this article is intended to give the reader an overview of H-2A worker taxation and return preparation. It cannot be comprehensive. Thus, tax professionals should study Pub 519 carefully before serving H-2A and other alien-taxpayer clients.

[16] The nonresident alien spouse may give the H-2A worker a Form 2848 (Power of Attorney) authorizing the worker to sign the tax return for his or her spouse. This authorization requires explicit wording in Part I, line 5. See page 4 of the instructions.

[17] Any self-employment income earned by the taxpayer or the NRA spouse, which is not attributable to H-2A wages, is also subject to U.S. self-employment tax. See Pub 519 for a more comprehensive treatment of this election.

[18] Line 56 on the 2012 Form 1040NR.

[19] This guidance is based on an email the author received from the IRS Stakeholder Liaison Office relaying guidance from Submission Processing. The email, dated July 6, 2011, advises that Forms 1040 and 1040NR and the Schedule SE instructions will be found under the heading "U.S. Citizens or Resident Aliens Living Outside the United States" and are referenced again under the subheading "Nonresident Alien." Those sections rarely apply to H-2A worker returns, and the email warns that the returns may be reviewed after it is processed and that the taxpayer may be subject to an audit. The guidance this article provides has been modified. IRS guidance uses the word "exempt" for line 56; we changed that to N/A because H-2A workers are not self-employed, and we include reference to the SERP Alert.

[20] www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-(ITIN)

[21] See Pub 519, chapter 5 for a comprehensive discussion of deductions available to resident, nonresident, and dual-status aliens.

[22] Noncitizens who are not residents of the United States are not qualifying children for the Child Tax Credit/Additional Child Tax Credit. See Pub 501 or IRC Sec. 24(c)(2) and Sec. 152(b)(3)(A).

[23] Pub 596 and IRC Sec. 24 clearly state that on a joint return, both the taxpayer and the spouse must have an SSN issued by SSA that does not have a "NOT VALID FOR EMPLOYMENT" restriction.

[24] IRC Sec. 6428, 2008 Recovery Rebates for Individuals.

[25] A note to line 2b in the instructions for Schedule M states, "Do not include on this line any statutory employee income or any other amounts exempt from self-employment tax."

[26] Tax treaty benefits may be available to some H-2A workers who are residents of certain countries, who are in the United States for a limited number of days, and who meet certain other conditions. Most nonresident alien H-2A workers reside in Mexico. H-2A wages are governed by Article 15 which exempts a Mexican resident's U.S. wages from taxation if and only if the worker is in the United States for less than 183 days in a twelve-month period, the employer is not a resident of the United States, and the wages are not paid by an entity which has a permanent establishment or fixed base within the United States. H-2A workers who are employed by U.S. residents or employers with a permanent establishment in the United States don't qualify. See Pub 901, *U.S. Tax Treaties*, for tax exemptions provided by treaties with other countries. The terms of the treaties with each country differ.