

This brochure is intended to provide general information to agricultural employers about the income tax filing responsibilities of their H-2A workers.

- Although the clinic receives funding from the IRS, the clinic and its employees and volunteers are not affiliated with the IRS.
- A taxpayer's decision to use the LITC will not affect the taxpayer's rights before the IRS.
- Pursuant to United States Treasury Department Regulations set forth in Circular 230, except as otherwise provided by law, this brochure is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that the Internal Revenue Service may impose on a taxpayer.

Robert W. Wunderle, CPA
Clinic Director

Tax Counselors

June Canterbury*
Mariela Rasmussen (Español)
Diana Salazar (Español)
Margaret Ralphs** (Español)
Fran Golding**
Silvia Gonzalez**, CPA (Español)
Mary Price** (Español)

*Full Time Volunteer

**Part Time Volunteers

La Posada Tax Clinic

A Low Income Taxpayer Clinic

A service of

La Posada Incorporated
A Community Charity

P.O. Box 1962
Twin Falls, Idaho 83303
355 4th Avenue West
Twin Falls, Idaho 83301
(208) 735-1189
Fax (208) 735-7474
taxhelpid5@earthlink.net

**La Posada
has been serving
immigrant families
and migrant workers
since 1993**

H2-A Employers

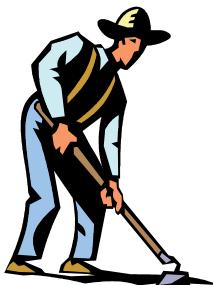
Do you understand how tax law is applied to your H-2A Workers?



**La Posada
Tax Clinic**

Twin Falls, Idaho

All who work in the U.S. for American employers are subject to federal income taxes.



The amount of income tax each worker must pay depends on many factors.

Is the worker a resident or non-resident alien?

The **substantial presence test** answers this question. All who are in the U.S. for 183 days or more are residents for income tax purposes. Some, who come for more than 122 days each year, may also be residents. See [IRS Pub 519](#) for a complete explanation of this test.

Resident aliens file Form 1040 and usually get to claim the standard deduction. Non-residents aliens (NRA) file Form 1040NR and don't get the benefit of the Standard Deduction.

A married worker with a spouse who lives outside the U.S. must file married filing separately. There is one exception. A married worker who qualifies as a resident alien may elect to file a joint return with an NRA spouse. The election gives a larger standard deduction, but also subjects the spouse's worldwide income, if any, to U.S. tax. Making this election usually means paying less tax.

Workers with dependents who live in Mexico, Canada or the United States, may claim exemption deductions for their dependents. The worker's spouse and dependents need a Tax Identification Number to claim exemptions. If not eligible for an SSN, they may apply to the IRS for an individual tax identification number (ITIN) when the tax return is filed.

An IRS Form W-7 must be attached to the tax return for each person who needs an ITIN. Supporting documents to prove the person's identity and foreign status are required. Only original document(s) or copies certified by the government agency that issued or holds the original document will be accepted. Form W-7 (01/2013) instructions identify the documents that the IRS will accept.

See [IRS Pub 1915](#) for more ITIN information.

*Contact State Tax Authorities
for State Tax Information*

IRS policy requires the workers to file the six most recent years, even if their wages were not reported on a W-2 or 1099-MISC. We have a duty to inform our clients of that obligation; the client decides whether or not to file.

The possibility of immigration reform may motivate some workers to file even if the employer did not issue a W-2 or 1099-MISC. A statement of wages on the employer's letterhead may be used as evidence of income for tax filing. If this is

done, be sure that non-taxable payments for transportation, etc. are not included.

Credits may reduce the tax owed by workers filing resident returns. The recovery rebate credit available to some in 2008 will reduce tax, but no refund will be given. The Making Work Pay (MWP) credit, available for 2009 and 2010, is refundable, but 2009 returns must be postmarked on/before April 15, 2013 to be refund eligible.



Other types of relief are also available for those who owe tax, penalties and interest for prior years. Late filing & payment penalties (up to 50% of the tax owed) may be forgiven on request when the tax is paid. Options for those who owe tax and cannot pay the full amount include installment agreements, non-collectible status, or an offer-in-compromise that settles tax liabilities for less than the full amount due.

Those preparing H-2A tax returns based on a 1099-MISC or employer's statement may e-mail the La Posada Tax Clinic for illustrations showing how to annotate the return, what documents to attach and/or other advice when representing H-2A workers before the IRS.