



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Kent Conrad  
United States Senator  
Federal Building, Room 228  
220 East Rosser Avenue  
Bismarck, North Dakota 58501

Attention:

Dear Senator Conrad:

I am responding to your letter dated March 19, 2010. You asked about the tax treatment of payments made to temporary foreign workers who assist in farming operations in the United States. According to your letter, a North Dakota Agricultural producer hires workers with H-2A visas to assist in livestock and grain farming operations.

Foreign agricultural workers temporarily admitted into the United States on H-2A visas are always exempt from United States social security and medicare taxes, whether they are resident aliens or nonresident aliens [section 3121(b)(1) of the Internal Revenue Code (the Code)]. In addition, payments made to H-2A alien agricultural workers are not subject to income tax withholding [section 3401(a)(2) of the Code]. However, the employer must report payments made to H-2A alien agricultural workers on Form 1099-MISC, both in the case of resident aliens and nonresident alien payees, if the amount paid during the calendar year equals or exceeds \$600 [sections 6041(a) and 6041A(a) of the Code; Revenue Ruling 56-679, 1956-2 C.B. 1056].

Tax treaties with Canada, Mexico, and other countries may affect the taxation of payments made to foreign agricultural workers temporarily present in the United States under H-2A visas. In general, the treaty articles on "independent personal service" or "dependent personal services" would be the operable articles.

You also asked whether H-2A agricultural workers must file federal and state income tax returns. Unfortunately, we are unable to address the income tax return filing requirements of the various states, as these matters are outside of our jurisdiction. However, for federal income tax purposes, nonresident aliens whose total annual wages are less than the personal exemption amount (currently \$3650), and who have no other U.S. source income, are not required to report their wages on a federal income tax

return. Nonresident aliens whose total annual wages are more than the personal exemption amount must report their wages on a federal income tax return, even though part or all their wages may be exempt under an income tax treaty. Finally, resident aliens must file federal income tax returns if their total worldwide income equals or exceeds the filing requirement amounts published annually in the Instructions for Form 1040, U.S. Individual Income Tax Return.

I hope this information is helpful. If you need further information, please call me at \_\_\_\_\_, or \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Nancy J. Marks  
Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)