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From: [REDACTED]

Sent: Thursday, August 29, 2013 10:54:22 AM

To: [REDACTED]

Cc:

Bcc:

Subject: H-2 Question

Greetings everyone,

Section 3121(b)(18) only refers to H-2 (actually, 101(a)(15)(H)(ii)) and does not make any distinction between H-2A and H-2B visas. As written, this would encompass both H-2A and H-2B visa holders. We apply the statute as written unless and until Congress amends it to clarify that the FICA exemption extends only to H-2A or H-2B. As section 3121(b)(18) plainly reads, the exemption applies to the H-2 visa, which would include both As and Bs. In addition, both H-2A and H-2B visas are geared toward temporary workers, with the distinction being between agricultural workers and non-agricultural workers. Section 3121(b)(18) clearly speaks only of temporary H-2 workers, without any distinction between the nature of the work. I don't see any need to clarify this issue in a regulation because section 3121(b)(18) is clear on its face and applies to both H-2A and H-2B visa holders. However, we could clarify in the IRM, if this is a recurring issue and would be helpful to the field.