

## 2009 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Income Tax Withholding for Farm Workers [Federal]<sup>1</sup>

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### Purpose

A federal law requiring withholding of federal income taxes on the cash wages of farmworkers.

### Who Must Comply

Farm employers are required to withhold federal income taxes from any employee's wages (including family members) if the employee's income is subject to Social Security and Medicare taxes. One of the two following tests must be met:

1. A worker is paid \$150 or more per year.
2. The farm employer's total annual labor expenditures for the year are \$2,500 or more.

### Exemptions

Farm employers are exempt from withholding income taxes from workers paid less than \$150 in a calendar year or if the farm employer's annual payroll was less than \$2,500.

Hand harvest employees are exempt from income tax withholding if they meet all these criteria:

- Are paid by the piece on a job that is ordinarily paid on a piece rate basis.
- Commute daily to the farm from a permanent residence.

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- Were employed in agriculture fewer than thirteen weeks during preceding calendar year.

An individual worker may be exempt from income tax withholding if the worker has no tax liability from the previous year and expects no tax liability in the current year. A Form W-4 has to be submitted annually to claim an exemption from annual tax withholding.

Taxable wages includes salaries, commissions, bonuses, wages, fees, or any items of value. If a worker is paid fully or partially with commodities, the value of the commodities is treated as income subject to withholding and Social Security taxes. However, the value of meals and lodging furnished for the convenience of the employees is not taxable under most circumstances.

Non-resident alien (NRA) employees are subject to income tax withholding. These workers (NRAs) cannot claim an exemption from tax withholding and they must fill out Form W-4 as if they were single regardless of actual marital status. In the 2009 tax year, new withholding tables were in place to compute income tax withholding for NRA employees.

In contrast, H-2A workers are legal guest workers employed to perform agricultural service on a temporary basis. They are not required to pay any U.S. income taxes; thus no income tax withholding is necessary.

## Employer Responsibilities

Employers are required to:

- Verify employment eligibility of all new workers and those workers whose eligibility has expired. Only I-9 forms revised and dated *April 3, 2009* are acceptable for employment verification.
- Some of the revisions to the I-9 form include:
  - Non-acceptance of any documentation that has expired.
  - Elimination of Forms I-688, I-688A, and I-688B (Temporary Resident Card and Outdated Employment Authorization Cards) from List A of acceptable documents.

- Ensure that workers complete Form W-4, *Employee's Withholding Allowance Certificate*, at the time of employment. If the worker chooses to claim full exemption from withholding on Line 7 of the W-4, the employer may accept the claim of exempt status.
- Withhold income taxes on cash wages paid for agricultural labor. Copies of Form W-4 must be sent to the IRS when an employee either claims more than ten exemptions or claims exemption from withholding and wages exceeding \$200 per week.
- Send payments to the IRS through a local bank. The payments must be accompanied by Form 8109, the federal tax deposit coupon. The IRS automatically sends you a coupon book when you apply for an employer ID number. The amount of combined Social Security (FICA) and withheld income tax determines how often deposits must be made. The deposit schedule is identical to that for depositing FICA (Social Security) taxes.
- Give employees Form W-2, *Wages and Tax Statement*, by January 31st for preceding year.
- Send copy A of Form W-2 and Form W-3 (*Transmittal of Income and Tax Statements*) together with Form 943 (*Employer's Annual Tax Return for Agricultural Employers*) to the IRS by January 31st. This can be deferred if the tax was paid in full by February 10th.

Farm employers may rely on a farm labor contractor (FLC) for withholding income taxes and Society Security (FICA) taxes from worker wages. Farm employers, however, need to be fully aware of joint employment obligations. If an FLC fails to withheld and deposit the correct amount of taxes, the farm employer could be held liable for unpaid taxes and penalties.

Employers need to be aware that the U.S. Department of Labor's (DOL) Wage and Hour Division may enforce failure to deposit withheld FICA and income taxes in a timely manner as failure to pay wages when due, a violation of the Fair Labor Standards Act. This would add DOL fines and

penalties to the fines and penalties levied by the IRS for failure to withhold and deposit taxes in a timely manner.

### **Determining Employer of Farmworkers**

Many farmers hire or contract with crew leaders or labor contractors to manage their farmworkers. Whether the farmer or the crew leader/labor contractor is the employer of the farmworker (and has responsibility for submitting wage reports) depends on the circumstances. (See EDIS document FE406, *Migrant and Seasonal Agricultural Worker Protection Act (MSPA) [Federal]*, for the latest definition of joint employment.)

Independent labor contractors may handle all the wage-reporting responsibilities. However, if a written agreement states that the crew leader is the farmer's employee, the farmer obviously is responsible for all wage reporting and record keeping.

### **Written Agreement**

If the farmer and the crew leader agree that the farmer will handle Social Security and IRS tax withholding matters (and that the crew leader is the farmer's employee), they should prepare a *written agreement*. No special form is needed, but the agreement should be signed by both parties and include the following:

- Names and addresses of the farmer and the crew leader.
- Location of the farm, kind of crop and operation, and approximate dates of the work.
- Statement that the crew leader will furnish a crew to do the work.
- Statement that the crew leader and crew workers are employees of the farmer who will report their wages and pay Social Security and Medicare taxes that are due.
- Statement about charges made by the crew leader for services; wages to be paid to workers; and any transportation, housing, and insurance to be provided.

(See EDIS document FE415, *Social Security and Medicare [Federal]*.)

### **Employee Tax Obligations**

Whether a farmworker is required to file an income tax return with the IRS depends on his or her filing status and associated income threshold. These thresholds may change annually, so everyone should consult IRS Publication 1040 for the current tax year. For the tax year ending 2009, if a worker is single, under the age of 65, and earned less than \$9,350 of gross income, the worker would NOT have to file a tax return. The income threshold increases to \$18,700 if the worker is married and filing jointly. Other filing statuses exist for people older than 65, married filing separately, and head of household.

Even if a worker is not obligated to file a tax return, he or she should consider filing a return if he or she wants:

- A full refund of withheld taxes.
- Apply for earned income credits.
- To establish a record to facilitate future changes in immigration status.

A farm employee is required to file a declaration of estimated tax using Form 1040-ES if he or she expects to have a tax liability of \$500 or more from sources not subject to withholding. The tax may be paid in four equal installments.

### **Related Information**

- Circular A, Agricultural Employer's Tax Guide, Publication No. 51, Internal Revenue Service (revised annually)
- Circular E, Employer's Tax Guide, Publication 15, Internal Revenue Service (revised annually)
- Revenue Reconciliation Act of 1989, Subtitle F, Part IV, Section 7631 (a), (b), and (c)
- Labor Bulletin No. 470, Florida Fruit and Vegetable Association, Orlando, FL, December 5, 1989

- Social Security Handbook for Farmers. Social Security Administration (revised annually)

### **Responsible Agency**

U.S. Department of the Treasury

Internal Revenue Service

Washington, D.C.

<http://www.irs.gov>

For local offices, see the telephone directory for

- United States Government
- Internal Revenue Service

Toll-free telephone numbers for IRS:

- For information, 1(800) 829-1040
- To order tax forms, 1(800) 829-3676