

## **COVID-19 medical condition travel exception to substantial presence test**

In a Revenue Procedure, the IRS recently provided guidance to certain nonresident aliens on how to claim a medical condition travel exception to the substantial presence test. This is the test under which nonresident aliens are taxed as U.S. residents.

Generally, the procedure applies to eligible individuals who, but for emergency travel disruptions related to the novel coronavirus (COVID-19) pandemic, wouldn't have been in the United States long enough during 2020 to be considered resident aliens under the substantial presence test or to be ineligible for treaty benefits on services income.

### **Eligible individuals**

An eligible individual is anyone who:

1. Wasn't a U.S. resident at the close of the 2019 tax year,
2. Isn't a lawful permanent resident at any point in 2020,
3. Is present in the United States on each of the days of the individual's COVID-19 "Emergency Period," and
4. Doesn't become a U.S. resident in 2020 because of days of presence in the United States outside of the individual's COVID-19 Emergency Period.

The COVID-19 Emergency Period is a single period of up to 60 consecutive calendar days selected by the individual starting on or after February 1, 2020, and on or before April 1, 2020, during which he or she was physically present in the United States on each day.

### **Application of the exception**

An eligible individual, who intended to leave the United States during his or her COVID-19 Emergency Period but was unable to do so because of COVID-19-related travel disruptions, may exclude his or her COVID-19 Emergency Period for purposes of applying the substantial presence test.

The COVID-19 crisis will be considered a medical condition that prevented the eligible individual from leaving the United States on each day during the person's COVID-19 Emergency Period and won't be treated as a pre-existing medical condition.

Also, for purposes of determining an individual's eligibility for treaty benefits for income from employment or the performance of other dependent personal services within the United States, any days of presence during a COVID-19 Emergency Period during which someone couldn't leave the United States because of COVID-19-related travel disruptions won't be counted. (Dependent personal services are those performed as an employee in the United States by a nonresident alien.)

An eligible individual will be presumed to have intended to leave the United States on any day during his or her COVID-19 Emergency Period, unless he or she has applied or otherwise taken steps to become a lawful permanent resident of the United States.

Similarly, an eligible individual claiming benefits under an applicable U.S. income tax treaty for income from employment or other dependent personal services performed in the United States will be presumed to have been unable to leave the country on any day during his or her COVID-19 Emergency Period.

## **Claim procedures**

Eligible individuals who must file a 2020 Form 1040-NR, "U.S. Nonresident Alien Income Tax Return," must claim the COVID-19 medical condition travel exception by attaching Form 8843 to a timely filed (with extensions) Form 1040-NR.

Eligible individuals who aren't required to file a 2020 Form 1040-NR aren't required to file Form 8843 to claim the COVID-19 medical condition travel exception. However, they should retain relevant records to support their reliance on Revenue Procedure 2020-20 and be prepared to produce those records and complete Form 8843 if requested to do so by the IRS.

## **Other exceptions**

An eligible individual may claim the COVID-19 medical condition travel exception in addition to, or instead of, claiming other exceptions from the substantial presence test for which the individual is eligible.

An eligible individual who claims the COVID-19 medical condition travel exception may also claim the medical condition exception, including for medical conditions or medical problems related to COVID-19. This applies to any period during 2020 for which he or she satisfies the requirements. Anyone claiming the medical condition exception for any period outside of his or her COVID-19 Emergency Period should file Form 8843 consistent with the applicable regulations and form instructions.

Finally, the procedure provides specific instructions for claiming an exemption from tax withholding on income from dependent personal services under a U.S. income tax treaty.

## **Incredibly disruptive**

The COVID-19 pandemic has been incredibly disruptive. If you believe the medical condition travel exception may apply to you or someone you know, contact your CPA for assistance. •