

FAQs on claiming medical condition or travel exceptions to the substantial presence test

The IRS recently issued frequently asked questions (FAQs) for nonresident aliens who wish to avail themselves of the Medical Condition Exception or the Medical Condition Travel Exception to the substantial presence test. This is the test under which nonresident aliens are taxed as U.S. residents.

Claiming exceptions to the substantial presence test has become an increasingly important issue during the COVID-19 pandemic. Here are five pertinent FAQs:

Question No. 1: Must an alien individual who intended to leave the United States but is (or was) unable to leave on his or her planned departure date because of a medical condition or medical problem in calendar year 2020 obtain a physician's statement as required by Part V of Form 8843?

Answer: Any alien individual who's eligible and fulfills the requirements to claim the Medical Condition Exception may file Form 8843 without a physician's statement to cover a single period of up to 30 consecutive calendar days in calendar year 2020. (This is known as the "30-Day Medical Condition.") This FAQ doesn't modify the eligibility requirements to claim the Medical Condition Exception. It only modifies the procedures for claiming the exception on Part V of Form 8843 and only with respect to a single period of up to 30 consecutive calendar days of presence in the United States in calendar year 2020.

The exemption from the Form 8843 requirement to obtain a physician's statement for a 30-Day Medical Condition can be claimed in addition to the relief provided in IRS Revenue Procedure 2020-20. The instructions to Form 8843 for 2020 will reflect the 30-Day Medical Condition contemplated by this FAQ.

Question No. 2: What types of documentary evidence should alien individuals retain to support their eligibility for the 30-Day Medical Condition?

Answer: In lieu of presenting a physician's statement, alien individuals claiming the 30-Day Medical Condition should retain documentary evidence that substantiates their medical condition, their inability to leave because of the medical condition and the period of the medical condition. Examples include:

- Evidence of consultations with a health care provider (for instance, a text message or email from the provider),
- Receipts related to health care purchases,
- Evidence of canceled or changed travel reservations, and
- Official medical records or written health care correspondence that the individual received (such as automated responses instructing an individual to self-isolate).

These documents shouldn't be submitted with Form 8843, but alien individuals claiming the 30-Day Medical Condition should be prepared to produce these records upon IRS request.

Question No. 3: How should alien individuals who only claim the 30-Day Medical Condition complete Part V of Form 8843 (the section of the form applicable to individuals claiming the Medical Condition Exception)?

Answer: For an alien individual claiming a 30-Day Medical Condition without claiming relief under Revenue Procedure 2020-20, or any other excluded days pursuant to the Medical Condition Exception, he or she should write "30-Day Medical Condition" on Line 17a in Part V of Form 8843 and describe in detail the 30-Day Medical Condition that prevented him or her from leaving the United States.

When determining the information to include on Line 17a, an alien individual should provide, along with the corresponding documentary evidence discussed in FAQ No. 2 (as applicable), relevant information that clearly demonstrates qualification for the Medical Condition Exception if the Form

8843 is later reviewed by the IRS. Lines 17b and 17c should be completed consistently with the form's instructions. Line 18 of the form should be left blank. As described in FAQ No. 2, third-party documentary evidence of an alien individual's medical condition shouldn't be submitted with the form but should be retained by him or her in case the IRS requests it.

Question No. 4: How should alien individuals who claim multiple Medical Condition Exceptions complete Part V of Form 8843?

Answer: An alien individual may be able to claim multiple Medical Condition Exceptions and should file a single Form 8843 enumerating all applicable Medical Condition Exceptions on Line 17a. He or she should attach a separate statement with respect to each Medical Condition Exception being claimed along with the relevant corresponding information as outlined in Revenue Procedure 2020-20, in FAQ No. 3 or in the existing instructions (as applicable). For example, Line 17a could read: "Condition 1: COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION; Condition 2: 30-DAY MEDICAL CONDITION."

Lines 17b and 17c of Part V should be left blank, but the relevant information for each applicable exception, as described in Revenue Procedure 2020-20 and in FAQ No. 3, along with the dates that would otherwise be reflected under line 17b and line 17c, should be included in each separate statement. Neither of these conditions require a physician's statement, so Line 18 should be left blank.

Note, however, if an alien individual is also claiming a Medical Condition Exception that requires a physician's statement, the signature and relevant information from Line 18 should be included in the separate attachment related to that medical condition.

Question No. 5: What types of documentary evidence should eligible individuals retain to support their eligibility for the relief provided under Revenue Procedure 2020-20?

Answer: An eligible individual claiming relief under the guidance should retain evidence of his or her presence in the United States during the individual's claimed COVID-19 Emergency Period (such as a Customs and Border Protection Form I-94 showing the individual's entries into the country; hotel receipts; or travel reservations, including confirmation of changes or cancellations). If the eligible individual was ill or advised to self-quarantine in the United States during the individual's excluded days, he or she may also retain the documents described in FAQ No. 2 to demonstrate presence in the United States through U.S.-based medical records and treatments. Failure to document an actual illness, however, won't affect eligibility to claim relief under Revenue Procedure 2020-20.

An eligible individual who doesn't qualify for the presumption of an intent to leave the United States as outlined in Revenue Procedure 2020-20 should also retain any documents that may support a "facts and circumstances" analysis of his or her intent to leave the United States under the applicable regulation. This generally applies to an individual who has applied or otherwise taken steps to become a lawful permanent resident of the United States but isn't yet a lawful permanent citizen. These documents shouldn't be submitted with Form 8843, but eligible individuals claiming relief under the guidance should be prepared to produce these records upon IRS request. •