

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.

(Also: Part I, §§7701(b), 894; Treas. Reg. § 301.7701(b)-3)

Rev. Proc. 2020-20

SECTION 1. PURPOSE

Travel and related disruptions resulting from the global outbreak of the COVID-19 virus may cause certain Eligible Individuals, as defined in section 3.04 of this revenue procedure, who did not anticipate meeting the “substantial presence test” under section 7701(b)(3) of the Internal Revenue Code (the Code) to become residents of the United States for federal income tax purposes during 2020 and may impact an individual’s qualifications for certain treaty benefits. This revenue procedure provides procedures for Eligible Individuals to claim the COVID-19 Medical Condition Travel Exception, as described in section 4.01 of this revenue procedure. Similar relief applies in

determining whether an individual (whether or not an Eligible Individual) qualifies for benefits under a U.S. income tax treaty with respect to income from dependent personal services performed in the United States.

SECTION 2. BACKGROUND

.01 The COVID-19 Emergency, as defined in section 3.01 of this revenue procedure, may have affected the travel plans of foreign travelers who intended to leave the United States. Regardless of whether they were infected with the COVID-19 virus, individuals may have become severely restricted in their movements, including by order of government authorities. Individuals who do not have the COVID-19 virus and attempt to leave the United States may also face canceled flights and disruptions in other forms of transportation, shelter-in-place orders, quarantines, and border closures.

Additionally, even those who can travel may feel unsafe doing so during the COVID-19 Emergency due to recommendations to implement social distancing and limit exposure to public spaces.

.02 Section 7701(b) defines resident and nonresident alien individuals for purposes of the Code (other than subtitle B). Unless an exception applies, alien individuals who are not lawful permanent residents (that is, green-card holders), and who meet the substantial presence test for a given calendar year by virtue of having sufficient days of presence in the United States, are generally treated as U.S. residents for that year. An alien individual is a resident under the substantial presence test in the tested calendar year if: (1) the individual is present in the United States on at least 31 days during the tested calendar year; and (2) the sum of (i) the number of days of

presence in the tested calendar year; (ii) one-third of the number of days of presence in the preceding calendar year; and (iii) one-sixth of the number of days of presence in the second preceding calendar year totals 183 or more.

.03 When applying the substantial presence test, an alien individual may exclude certain days of physical presence in the United States, including if the individual qualifies for the Medical Condition Exception, as defined in section 3.05 of this revenue procedure. The Medical Condition Exception provides that an alien individual is not treated as present in the United States on days when the individual intended to leave the United States, but was unable to do so because of a medical condition that arose while the individual was present in the United States. Treas. Reg. § 301.7701(b)-3(c)(1). A medical condition will not be considered to arise while the individual is present in the United States if the condition or problem existed before the individual's arrival in the United States and the individual was aware of the condition or problem. Treas. Reg. § 301.7701(b)-3(c)(3).

.04 Individuals claiming the Medical Condition Exception must file Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, by the due date (including extensions) for filing Form 1040-NR regardless of whether they are required to file a Form 1040-NR. Treas. Reg. § 301.7701(b)-8(c). However, in certain circumstances, the requirement to timely file Form 8843 may be disregarded. See, Treas. Reg. §§ 301.7701(b)-8(d)(2) and 301.7701(b)-8(e).

.05 Consistent with the Medical Condition Exception, under U.S. income tax treaties, days spent in the United States due to an illness that prevents an individual

from timely leaving the country are not taken into account in determining the availability of treaty benefits with respect to income from dependent personal services performed in the United States. For example, many U.S. income tax treaties exempt income from employment (or other dependent personal services) if, among other things, the recipient is present in the United States for no more than 183 days in any twelve-month period that begins or ends in the relevant taxable year. See, e.g., Article 14(2) of the 2006 U.S. Model Income Tax Convention. For purposes of computing days of presence in the United States under this type of test, days on which an illness prevented the individual from leaving the United States are not counted. See, e.g., the Technical Explanation to Article 14(2) of the 2006 U.S. Model Income Tax Convention.

SECTION 3. DEFINITIONS

This section 3 defines terms for purposes of this revenue procedure.

.01 COVID-19 Emergency. The term COVID-19 Emergency means the global outbreak of the COVID-19 virus.

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

.03 COVID-19 Emergency Travel Disruptions. The term COVID-19 Emergency Travel Disruptions means the travel disruptions described in section 2.01 of this revenue procedure.

.04 Eligible Individual. The term Eligible Individual means any individual (1) who

was not a U.S. resident at the close of the 2019 tax year, (2) who is not a lawful permanent resident at any point in 2020, (3) who is present in the United States (without regard to this revenue procedure) on each of the days of the individual's COVID-19 Emergency Period, and (4) who does not become a U.S. resident in 2020 due to days of presence in the United States outside of the individual's COVID-19 Emergency Period.

.05 Medical Condition Exception. The term Medical Condition Exception means the exception from the substantial presence test provided under section 7701(b)(3)(D)(ii) and section 301.7701(b)-3(c).

SECTION 4. APPLICATION OF THE COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION

.01 COVID-19 Medical Condition Travel Exception to days of presence. An Eligible Individual who intended to leave the United States during the individual's COVID-19 Emergency Period, but was unable to do so due to COVID-19 Emergency Travel Disruptions, may exclude the individual's COVID-19 Emergency Period (up to 60 calendar days of presence in the United States, as explained in section 3.02 of this revenue procedure) for purposes of applying the substantial presence test. The COVID-19 Emergency will be considered a medical condition, as described in section 301.7701(b)-3(c), that prevented the Eligible Individual from leaving the United States on each day during the individual's COVID-19 Emergency Period and, as generally required by the Medical Condition Exception, will not be treated as a pre-existing medical condition, as described in section 301.7701(b)-3(c)(3). Also, in determining an

individual's eligibility for treaty benefits with respect to income from employment or the performance of other dependent personal services within the United States, any days of presence during the individual's COVID-19 Emergency Period on which the individual was unable to leave the United States due to COVID-19 Emergency Travel Disruptions will not be counted.

.02 Presumption of intent and inability to leave the United States. For purposes of this revenue procedure, an Eligible Individual will be presumed to have intended to leave the United States on any day during the individual's COVID-19 Emergency Period, unless that individual has applied, or otherwise taken steps, to become a lawful permanent resident of the United States. An Eligible Individual will be presumed unable to leave the United States for purposes of the substantial presence test on any day during the individual's COVID-19 Emergency Period. Similarly, an individual claiming benefits under an applicable U.S. income tax treaty with respect to income from employment or other dependent personal services performed in the United States will be presumed unable to leave the United States on any day during the individual's COVID-19 Emergency Period.

SECTION 5. PROCEDURES FOR CLAIMING THE COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION

.01 In General. Eligible Individuals who have a requirement to file a Form 1040-NR for 2020 (taking into account the application of this revenue procedure) must claim the COVID-19 Medical Condition Travel Exception by attaching Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition*, to their Form 1040-NR,

by the form's due date (with extensions), and mailing the forms to the address shown in the Form 1040-NR return instructions. Eligible Individuals who are not required to file a 2020 Form 1040-NR are not required to file Form 8843 to claim the COVID-19 Medical Condition Travel Exception under this revenue procedure, but those individuals should retain all relevant records to support reliance on this revenue procedure and be prepared to produce these records and complete a Form 8843 if requested by the IRS.

.02 Instructions for completing Form 8843. Subject to section 5.01 of this revenue procedure, to claim the COVID-19 Medical Condition Travel Exception, Eligible Individuals should complete Form 8843 as follows:

- Part I and the general identifying information sections should be completed pursuant to the form instructions;
- Parts II, III, and IV, if applicable, should be completed pursuant to the form instructions;
- Part V should be completed by writing the following in each respective space:
 - for line 17a, "COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION."
 - for line 17b, the start date of the Eligible Individual's COVID-19 Emergency Period.
 - for line 17c, the end date of the Eligible Individual's COVID-19 Emergency Period.

- line 18 should be left blank. There is no need for a physician's statement when claiming the COVID-19 Medical Condition Travel Exception.
- The individual should sign and date the form consistent with the form instructions.
- The individual should retain a copy of the completed Form 8843 and be prepared to produce the copy if requested by the IRS, as well as documentation demonstrating that the individual was physically present in the United States during all of the individual's COVID-19 Emergency Period.

.03 Failure to file. Eligible Individuals who are required under section 5.01 of this revenue procedure to file Form 8843 with their Form 1040-NR to claim the COVID-19 Medical Condition Travel Exception, but who fail to do so, may be eligible for the procedural relief under section 301.7701(b)-8(d)(2) or the relief under section 301.7701(b)-8(e). Eligible Individuals who are not required to file a Form 8843 under section 5.01 may submit the completed Form 8843 at a later date as needed, including if the individual's nonresident status for 2020, 2021, or 2022 is later challenged under examination or otherwise.

.04 Other exceptions to substantial presence. 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.

Specifically, relief provided under this revenue procedure does not change the application of other applicable exceptions to the substantial presence test: (i) exclusion of days of presence for exempt individuals described under section 7701(b)(3)(D)(i) and section 301.7701(b)-3(b), (ii) exclusion of days of presence under the Medical Condition Exception for medical problems or medical conditions other than those related to the COVID-19 Medical Condition Travel Exception, as addressed in section 5.05 of this revenue procedure, (iii) the closer connection exception under section 301.7701(b)-2, and (iv) relief pursuant to treaty provisions applicable to dual residents under section 301.7701(b)-7. Individuals who qualify for other exceptions to the substantial presence test do not need to claim the COVID-19 Medical Condition Travel Exception in order to claim other available exceptions, or they may choose to claim all exceptions for which they are eligible. For example, an alien individual who would be a U.S. resident due to days spent in the United States even after excluding eligible days under the COVID-19 Medical Condition Travel Exception may still be considered a nonresident alien if the individual is eligible to claim the closer connection exception under section 301.7701(b)-2.

.05 Medical Condition Exception available. 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 the COVID-19 virus, with respect to any period during 2020 in which the individual satisfies the requirements to do so. Individuals claiming the Medical Condition Exception for any period outside of the individual's COVID-19 Emergency Period should file Form 8843

consistent with the applicable regulations and form instructions.

.06 *Claiming a treaty benefit for services income.* To claim an exemption from withholding on income from dependent personal services pursuant to a U.S. income tax treaty in accordance with this revenue procedure, an individual should provide the employer or other withholding agent a Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, certifying that the income is exempt. However, if the withholding agent currently treats the income as exempt based on a previously submitted Form 8233, it is not necessary to provide an additional Form 8233. Form 8233 should be completed pursuant to the form instructions. On line 14 of Form 8233, write “COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION” and specify the individual’s COVID-19 Emergency Period. If a new Form 8233 is not provided to a withholding agent, or if the withholding agent already has withheld income tax that would be exempt from withholding in accordance with this revenue procedure, the nonresident individual should file Form 1040-NR and attach a statement including the same information requested on the Form 8233 (including the phrase “COVID-19 MEDICAL CONDITION TRAVEL EXCEPTION,” the individual’s COVID-19 Emergency Period, the applicable tax treaty, and the tax treaty article).

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Sarah Stein and Ryan Connery of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Sarah Stein at (202) 317-4917 or Ryan

Connery at (202) 317-4972 (not a toll-free call).