

From Our Members

IRS Publishes New Guidance for 2020 Income Tax Residency Due to COVID-19

*By Jeffrey S. Hagen**

The COVID-19 pandemic continues to permeate most legal practice areas. On April 21, the IRS issued Revenue Procedure 2020-20 ("RP 2020-20") to provide relief to nonresident alien individuals who would not have otherwise intended to become U.S. income tax residents but may do so in 2020 due to COVID-19 due to being present in the U.S. for too many days.

In a typical year (remember those?), a nonresident alien individual would be considered a U.S. income tax resident for a particular year if present 183 days or more in the U.S. in that year under the substantial presence test. That is, the nonresident was actually present 183 days or more in the particular year in the U.S., or was considered present 183 days or more in that year according to a formula which takes into account days present in the U.S. over a three year period in its calculation. There are exceptions for certain days present in the U.S. to be excluded, one of which would be a medical condition arising while in the U.S. which does not allow for travel.

COVID-19 has prevented individuals from traveling even if they were not infected with the virus, as most governmental authorities have restricted international movement. Therefore, RP 2020-20 qualifies the normal substantial presence test in the following respects:

- Eligible nonresident alien individuals may exclude up to 60 days in applying the substantial presence test in 2020.
- Such 60-day or less period can only be applied if beginning on or after February 1, 2020 and on or before April 1, 2020.
- Eligibility is contingent on not being a U.S. resident in 2019, not being a lawful permanent resident at any point in 2020, the period of "emergency stay" being continuous, and not being present in the U.S. 243 or more days in 2020.

Eligible individuals claiming COVID-19 medical travel exception who would otherwise be required to file a Form 1040-NR for income tax by a nonresident alien would file a Form 8843, Statement for Exempt Individuals With a Medical Condition and complete line 17 of the form as instructed in RP 2020-20. Other eligible individuals not filing a Form 1040-NR

are instructed to retain all relevant records which support reliance on RP 2020-20 although no filing is required.

It is worthy noting that claiming this COVID-19 medical *travel* exception does not preclude an individual from also claiming the typical medical exception or other exceptions such as closer connection to another country (Form 8840). RP 2020-20 will also become relevant when analyzing tax treaty rules as it exempts services income accumulated during this same "emergency stay."

While RP 2020-20 has provided some clarity on one topic, it is safe to expect more legal updates and changes throughout 2020 related to COVID-19 as we adjust to our "new normal."

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