
Federal Tax Day - Current

The Treasury Department and the IRS have provided tax relief to individuals and businesses affected by travel disruptions arising from the coronavirus (COVID-19) emergency. Under the guidance:

- up to 60 consecutive calendar days of U.S. presence that are presumed to arise from COVID-19 travel disruptions will not be counted for determining U.S. tax residency under Code Sec. 7701(b), or determining whether an individual qualifies for tax treaty benefits for income from personal services performed in the United States;
- for certain U.S. citizens and residents, qualification for gross income exclusion of foreign earned income under Code Sec. 911 will not be impacted by days spent away from a foreign country due to the COVID-19 emergency based on certain departure dates; and
- certain U.S. business activities by a nonresident alien or foreign corporation will not be counted for determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment, if the activities would not have been conducted in the United States but for COVID-19 travel disruptions.

COVID-19 Travel Disruptions

The relief recognizes that the global outbreak of the COVID-19 virus 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 a government authority. Individuals who do not have the COVID-19 virus and attempt to leave the United States may face canceled flights and disruptions in other forms of transportation, shelter-in-place orders, quarantines, and border closures. Those who can travel may feel unsafe doing so during the COVID-19 emergency due to recommendations for social distancing and limiting exposure to public spaces.

COVID-19 Medical Condition Travel Exception for Foreign Individuals

Travel and related disruptions resulting from the COVID-19 emergency may cause foreign individuals who did not anticipate meeting the “substantial presence test” under Code Sec. 7701(b)(3) to become U.S. residents for federal income tax purposes during 2020, and may impact the individual’s qualifications for certain treaty benefits. To address this, Rev. Proc. 2020-20:

- allows certain foreign individuals to claim a COVID-19 Medical Condition Travel Exception to becoming U.S. residents; and
- provides similar relief for determining whether an individual (whether or not an eligible for the medical travel exception) qualifies for U.S. income tax treaty benefits for income from dependent personal services performed in the United States.

Under the general medical condition exception to the substantial presence test, an alien individual is not treated as present in the United States on days when he or she intended to leave the United States but was unable to because of a medical condition that arose while the individual was present in the United States. This does not apply, however, 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 (Reg. §301.7701(b)-3(c)).
An individual is eligible to claim a COVID-19 Medical Condition Travel Exception if he or she:

- was not a U.S. resident at the close of the 2019 tax year;
- is not a lawful permanent resident at any point in 2020;
- is present in the United States on each day of his or her COVID-19 Emergency Period; and
- 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.

The 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 he or she is physically present in the United States on each day.

An eligible individual who intended to leave the United States during his or her COVID-19 Emergency Period but could not leave due to COVID-19 emergency travel disruptions can exclude up to 60 calendar days of presence in the United States for the substantial presence test. The COVID-19 emergency will be considered a medical condition that prevented the individual from leaving the United States on each day during his or her COVID-19 Emergency Period, and will not be treated as a pre-existing medical condition.

Further, in determining an individual's eligibility for treaty benefits for income from employment or from performing other dependent personal services within the United States, any days of presence during the individual's COVID-19 Emergency Period on which he or she was unable to leave the United States due to COVID-19 emergency travel disruptions will not be counted.

Eligible Individuals who must file a Form 1040-NR, U.S. Nonresident Alien Income Tax Return, for 2020 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 return by its due date (with extensions), and mailing the forms to the address in the Form 1040-NR instructions.

Eligible Individuals who are not required to file a 2020 Form 1040-NR are not required to file Form 8843 to claim the exception, but should retain all relevant supporting records and be prepared to produce these records and complete a Form 8843 if requested by the IRS.

To claim an exemption from withholding on income from dependent personal services under a U.S. income tax treaty, an individual should provide the employer or 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. The guidance provides other details for completing the form.

The guidance also provides information and other details on completing Form 8233, failure to file Form 8843, other exceptions to substantial presence, and the availability of the normal medical condition exception.

### Foreign Earned Income Exclusion Relief

Rev. Proc. 2020-27 provides a waiver for certain individuals who failed to meet the eligibility requirements of Code Sec. 911(d)(1) for the foreign earned income exclusion because adverse conditions in a foreign country precluded the individual from meeting the requirements during 2019 and 2020. Under Code Sec. 911(d)(4), the COVID-19 emergency is an adverse condition that precluded the normal conduct of business in:

- the People’s Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau (China)) as of December 1, 2019; and
- globally, as of February 1, 2020.

The covered period ends on July 15, 2020, unless the Treasury Department and IRS announce an extension.

Under this relief, an individual who left China on or after December 1, 2019, or left another foreign country on or after February 1, 2020, but on or before July 15, 2020, will be treated as a qualified individual under the foreign earned income exclusion rules for the period during which he or she was present in, or was a bona fide resident
of, that foreign country if the individual establishes a reasonable expectation that he or she would have met the requirements of Code Sec. 911(d)(1) but for the COVID-19 Emergency.

An individual who was first physically present or established residency in China after December 1, 2020, or another foreign country after February 1, 2020, is not eligible for this relief.

Individuals seeking to qualify for the foreign earned income exclusion because they could reasonably have been expected to have been present in a foreign country for 330 days but for the COVID-19 Emergency, and have met the other requirements for qualification, may use any 12-month period to meet the qualified individual requirement.


**U.S. Business Activities of Nonresident Aliens and Foreign Businesses**

Nonresident aliens who perform services or other activities in the United States, and foreign corporations that employ individuals or engage agents to perform services or other activities in the United States, and are engaged in a U.S. trade or business are subject to federal tax on their business income from that trade or business. If the individuals performing those services or activities are temporarily in the United States solely due to COVID-19 emergency travel disruptions, the nonresident alien or foreign corporation might be treated as engaged in a U.S. trade or business even though it would not be so treated if these individuals were not present in the United States.

IRS frequently asked questions (FAQs)—at https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions—address this problem. The FAQs generally provide that certain U.S. business activities conducted by a nonresident alien or foreign corporation will not be counted for up to 60 consecutive calendar days in determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment, if those activities would not have been conducted in the United States but for travel disruptions arising from the COVID-19 emergency.

**Rev. Proc. 2020-27**
**Rev. Proc. 2020-20**
**IR-2020-77**

Other References:

- Code Sec. 911
- CCH Reference - 2020FED ¶28,049.5775
- Code Sec. 7701
- CCH Reference - 2020FED ¶43,125A.80
- Tax Research Consultant
  - CCH Reference – TRC EXPAT: 3,108.15
  - CCH Reference – TRC EXPAT: 12,058