

Firm Seeks COVID-19 Relief for Bona Fide USVI Residents

Dated May 6, 2020

Full text Published By Tax Analysts

May 6, 2020

Ms. Brenda Zent
Special Advisor on International Taxation
U.S. Department of Treasury
Room 3048
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Treatment of COVID-19 Emergency for Bona Fide Residents of the United States Virgin Islands

Dear Ms. Zent:

Given the current COVID-19 virus global health emergency and the extreme difficulty in returning to and remaining in the U.S. Virgin Islands ("USVI"), we respectfully request that:

(1) USVI residents be deemed present in the USVI during the duration of the current Presidential Major Disaster Declaration; and

(2) there be a waiver of the current hospitalization requirement for days spent outside of the USVI for medical reasons to count as days spent in the USVI.

Request for Extension of Deemed USVI Presence for Duration of Major Disaster Declaration

On April 2, 2020, President Donald J. Trump granted a Major Disaster Declaration for the USVI, thereby triggering the application of Treasury Regulation ("Reg.") § 1.937-1(c)(3)(i)(C)(I), which states that an individual is considered to be present in the USVI on any day that he or she is outside the USVI because such individual leaves or is unable to return to the USVI during any 14-day period within which such a major disaster declaration is issued. Further, on March 29, 2020 President Trump announced physical distancing guidelines for the entire country including restrictions on non-essential travel. The President's Coronavirus Guidelines for America, as published by the White House, include

avoidance of all discretionary travel,¹ and the Guidelines for Opening Up America Again, as published by the White House on April 16, 2020, recommend that Americans continue to minimize non-essential travel.² Accordingly, we request that the 14-day period be extended for the duration of the Major Disaster Declaration. The global outbreak of the COVID-19 virus is clearly disrupting life in the USVI and making it extremely difficult for many people to return to or remain in the USVI. The danger associated with additional potential exposure to the virus that occurs in airplanes and airports, government-imposed travel restrictions and a limited number of flight opportunities severely restrict the ability to travel back to the US VI.³ Also, the medical facilities in the USVI are still recovering from Hurricanes Irma and Maria and they lack sufficient resources to adequately care for those sick with COVID-19. The two hospitals on St. Thomas and St. Croix are understaffed and together have 20 intensive care unit beds and 127 ventilators. Local health officials project more than 20,000 infections and upward of 100 hospitalizations if people abide by the strictest measures. According to Dr. Esther Ellis, the USVI territorial epidemiologist, with looser rules, hospitalizations would rocket up to almost 1,000 “at any one point in time.”⁴

Granting such an extension would be consistent with recent concessions granted to non-citizens of the United States and U.S. citizens living outside the U.S. by the Treasury Department (“Treasury”) and Internal Revenue Service (“IRS”). As you are aware, on April 21, 2020, Treasury and the IRS issued Revenue Procedure 2020-27 (“Rev. Proc. 2020-27”). Rev. Proc. 2020-27 provides that qualification for exclusions from gross income under Internal Revenue Code § 911 will not be impacted as a result of days spent away from a foreign country due to the COVID-19 emergency so long as the individual had established residency, or had been physically present, in the foreign country on or before the applicable dates outlined in Rev. Proc. 2020-27.

On the same date that Treasury and the IRS issued Rev. Proc. 2020-27, they also issued Revenue Procedure 2020-20 (“Rev. Proc. 2020-20”), which provides relief to certain non-U. S. resident individuals who, but for COVID-19 emergency travel disruptions, would not have been in the United States long enough during 2020 to be considered resident aliens under the applicable substantial presence test or to be ineligible for treaty benefits on services income. With respect to the relief provided under the aforementioned substantial presence test, this Revenue Procedure establishes procedures to apply such test's medical condition exception to exclude up to 60 consecutive days spent in the United States. Rev. Proc. 2020-20 specifically provides:

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.

Given the ongoing COVID-19 global health emergency and the extreme difficulties that USVI residents encounter in returning to and remaining in the USVI, and particularly those residents with underlying health conditions that can increase risks of developing dangerous symptoms in the event of a COVID-19 infection, we ask that the challenges facing U.S. citizens residing in the USVI be recognized as similarly impacting their ability to return to or remain in the USVI. USVI residents would of course still be required to comply with the “closer connection” and “tax home” tests of Section

937(a)(2) of the Internal Revenue Code of 1986, as amended and as applicable in the USVI.

Request for Waiver of Hospitalization Requirement in Determining Qualifying Medical Treatment

We also request a waiver of the current requirement that USVI residents be hospitalized in order for them to be considered present in the USVI for days spent outside of the USVI for medical reasons. Reg. § 1.937-1(c)(3)(i)(B) states that an individual is considered to be present in the USVI on any day that such individual is outside the USVI to receive, or to accompany a family member who is receiving, “qualifying medical treatment.” Reg. § 1.937-1(c)(4) generally defines “qualifying medical treatment” as medical treatment provided by or under the supervision of a physician that involves one or more nights of hospitalization, results in the individual being unable to travel back to the USVI and the individual makes all documents and records of such treatment available upon request. We are asking that the aforementioned hospitalization requirement be waived during the COVID-19 virus global health emergency, so long as all the other requirements under Reg. § 1.937-1(c)(4) are complied with. These requirements include having the physician provide documentation as to the name and address of the medical care facility where medical treatment was provided, the name, address, and telephone number for the physician providing the treatment, the date on which the medical treatment was provided, and a certification that includes a reasonably detailed description of the medical treatment and the medical facts supporting the physician's determinations that the treatment was medically necessary.

Under normal circumstances, hospitalization may be a reliable benchmark of a serious medical condition that would warrant granting an exception to the normal USVI presence tests. These are not normal times. During the ongoing COVID-19 virus global health emergency, medical authorities throughout the United States are discouraging hospital treatment for COVID-19 for all but the most critically ill patients. According to the Centers for Disease Control and Prevention, most individuals who suspect they are infected with the COVID-19 virus should not go to the hospital. Individuals should seek medical attention if they “develop emergency warning signs for COVID-19 such as trouble breathing. . . .”⁵ Other medical experts concur. “As a general rule, people should stay out of the hospital if they don't need to be in the hospital. . . . most cases of COVID seem to be able to be managed at home.”⁶ Moreover, providers “[s]trongly discourage persons who have a mild or moderate disease consistent with COVID-19-like illness (fever, cough, shortness of breath, or sore throat) and who do not require medical care from leaving their homes. This minimizes the risk of transmission to others, especially health care workers.”⁷

Rev. Proc. 2020-20 allows non-U.S. citizens to meet the Medical Condition Exception to the applicable substantial presence test merely because of the COVID-19 virus global health emergency. We are requesting much less. While we are requesting that the hospitalization requirement to meet the definition of qualifying medical treatment be waived, those U.S. citizens seeking to be considered present in the USVI for days spent outside of the USVI for medical reasons will still have to be under the treatment and/or supervision of a physician and satisfy the specified documentation and production requirements.

* * * *

Thank you in advance for your attention to this matter. Please let us know if you would like to discuss

our requests or if you would like us to provide any additional information regarding the impact of the COVID-19 virus on the US VI and its residents.

Sincerely yours,

Marjorie Rawls Roberts
MARJORIE RAWLS ROBERTS, P.C.
Attorneys At Law
St. Thomas, U.S. Virgin Islands

FOOTNOTES

¹https://www.whitehouse.gov/un-content/uploads/2020/03/03.16.20_coronavirus-aidance_8.5x11_315PM.pdf.

²<https://www.whitehouse.gov/openingamerica/#guidelines>.

³We note that many USVI residents spend the winter, spring and early summer months in the USVI, but schedule off-island travel during hurricane season and particularly during the active months of August through October. Meteorologists have forecasted above-normal hurricane activity for the 2020 Atlantic hurricane season (see <https://www.sciencenews.org/article/weather-forecasters-predict-very-active-2020-atlantic-hurricane-season>) thus potentially impacting the ability to return to or remain in the USVI especially to conduct business from July 1 to November 30.

⁴See “Moored in a Fragile Paradise,” *New York Times*, April 17, 2020; <https://www.nytimes.com/2020/04/17/travel/coronavirus-stjohn-caribbean.html>.

⁵<https://www.cdc.gov/coronavirus/2019-icov/if-Vou-are-sick/steps-when-sick.html>.

⁶<https://www.npr.org/sections/health-shots/2020/04/02/825491635/think-vouve-got-covid-19-here-s-what-doctors-say-about-when-to-see-help> (quoting Dr. Michelle Ng Gong, Chief of Critical Care Medicine at the Montefiore Health System in New York City).

⁷*Id.*

END FOOTNOTES

(C) Tax Analysts . All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.