

COVID-19 AND CERTAIN BONA FIDE RESIDENTS OF PUERTO RICO

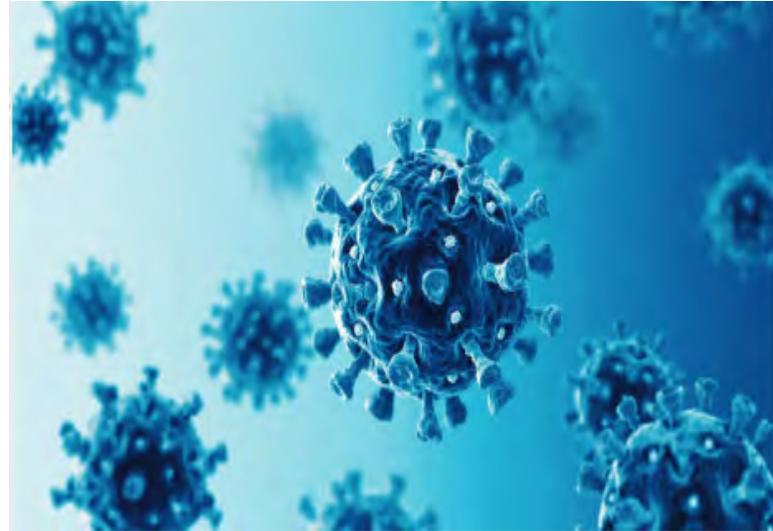
In volume No. 24 of our March 31, 2020 News and Alerts, we examined the potential effect of travel and mobility restrictions associated with the COVID-19 pandemic, on the Puerto Rico bona fide resident status of certain individuals. Shortly after the publication of our News and Alert, the President of the United States issued a notice of federal declaration of a major disaster for the Commonwealth of Puerto Rico resulting from the Coronavirus.

In this News and Alert, we will analyze the effect of the notice of federal declaration of a major disaster for the Commonwealth of Puerto Rico, and the interference of the spread of the Coronavirus on travel plans to return to Puerto Rico on the bona fide resident status of many individuals.

Introduction

The frequency of travel for many taxpayers has changed since the COVID-19 emergency began this year. The concern among many regarding the possibility of contracting the virus while in an airplane, in addition to government orders to avoid unnecessary travel and the travel restrictions of many countries presents a challenge to many taxpayers who are bona fide residents of Puerto Rico, and traveled from Puerto Rico to the United States during 2020.

The pandemic has altered the travel plans of many bona fide residents of Puerto Rico. Altered travel plans for some may have resulted in a longer stay in the United States affecting the total number of days during which a person is physically present in Puerto



Rico; and therefore, potentially, threatening a taxpayer from losing his or her bona fide resident status during 2020.

Physically Present in Puerto Rico

A bona fide resident of Puerto Rico must be physically present in Puerto Rico for certain periods of time every calendar year (known as the presence test). Generally, to be physically present in Puerto Rico under the U.S. Internal Revenue Code means that a taxpayer must be in Puerto Rico at least 183 days during a tax year (other specific scenarios allow an individual to comply with this requirement.)

Regulations under the U.S. Internal Revenue Code created a 14-day period exception to help taxpayers comply with the total number of days present in a U.S. territory when a major disaster declaration has been declared.

This 14-day period exception will apply to a taxpayer who is either outside or leaves a U.S. territory and is unable to return due to the occurrence of a major disaster in the place of residency; in this case Puerto Rico. This exception requires a Declaration of a Major Disaster formally issued by the President of the United States.

The President of the United States issued a Declaration of Major Disaster for Puerto Rico due to the COVID-19 pandemic on March 27, 2020. As a result of this declaration, a taxpayer who needs to qualify as bona fide resident of Puerto Rico for 2020 may now count as a day physically present in Puerto Rico any period up to 14 days of being present in any State of the United States beginning on January 20, 2020 as the determination is retroactive. In other words, for purposes of the presence test a taxpayer will be allowed to count up to 14 days of being considered present in Puerto Rico when he or she was in United States unable to return due changes in travel plans related to COVID-19.

In addition to the COVID-19 Presidential Declaration, there is a Presidential Declaration of Major Disaster in effect since December 28, 2019 following the 6.4 magnitude earthquake which affected the Island.

This Declaration allows the 14-day exception to apply to taxpayers affected by the earthquakes who were forced to leave or

unable to return from the United States following the earthquake. This means that as many as two separate 14-day exception periods are available for a taxpayer to meet the necessary 183 days physically present in Puerto Rico test for this year (certain exceptions may apply).

For example, a bona fide resident of Puerto Rico who was present in Puerto Rico during the period of January 1, 2020 through March 1, 2020 travels on March 1, 2020 to New York to visit his in-laws, but is unable to return due to health concerns. In this case the taxpayer has until September 16, 2020 to return to Puerto Rico to meet the 183 days presence test requirement. Moreover, an additional 14 days may be available for the earthquake disaster declaration.

As of the day of this newsletter, there has not been an extension of the 14-day exemption issued by the IRS for Puerto Rico similar to the one issued after Hurricane Maria.

Should you have any questions or interest concerning the physical presence requirements, you may contact the attorneys at Vidal, Nieves & Bauzá, LLC, a corporate law firm with particular emphasis in energy and environmental matters, corporate, tax, transactional, real estate and insurance practices.

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