

Death and Taxes —

A monthly column on tax issues and estate planning

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IN TWO PLACES AT THE SAME TIME — Medical Treatment in the United States While Present in the Virgin Islands for Income Tax Purposes

The American Jobs Creation Act of 2004 and subsequently issued Treasury regulations, changed the definition of who qualifies as a Virgin Islands (USVI) resident for income tax purposes. Now, even long time USVI residents who cannot meet any of five “physical presence” tests, (plus closer connection and tax home tests discussed in prior articles), can find themselves treated as non-USVI residents for income tax purposes for that year.

Three of the tests focus specifically on how much time a person physically spends in the USVI, generally requiring 183 days (or partial days) in the USVI in one year or on average per year over a rolling three-year period – or spending more days in the USVI than in the United States and having de minimus U.S. source income. A fourth “day counting” test focuses on how much time a person is in the United States and requires a person to spend no more than 90 days in the fifty states to be a USVI resident. But for certain medical purposes, a day in the United States counts as a day in the USVI – and not a day in the United States – so the actual days spent in the United States can exceed the statutory maximums.

Specifically, USVI residents can be in the United States for qualifying medical treatment and the day can be counted as a USVI day and not as a U.S. day – if certain conditions are met. A medical treatment exception day is any day that the individual is outside the USVI to receive, or to accompany (on a full-time basis) a parent, spouse or child who is receiving qualifying medical treatment. In contrast, if a person were in the United States accompanying other

family members receiving qualifying medical treatment, such as a mother-in-law, uncle, or cousin, those days would count as U.S. days and not as USVI days. For example, if a couple were accompanying the wife’s mother for qualifying medical treatment in the United States, the days could count as U.S. days for the husband and USVI days for the wife.

“Qualifying medical treatment” is defined as treatment by or under the supervision of a physician for an illness, injury, impairment or physical or mental condition. The condition must require a period of “inpatient care” in a hospital or hospice and any period immediately before or after that inpatient care to the extent it is medically necessary, or any temporary period of inpatient care in a residential medical care facility for medically necessary rehabilitation services. No outpatient care can ever qualify as “qualifying medical treatment.”

Once the overnight stay requirement is met, any days for which the treating physicians deem it to be medically necessary for the person receiving qualifying medical treatment to remain in the United States immediately before or after the inpatient care period also count as USVI days – for the patient and for accompanying parents, spouse, and children. These periods would include days preparing for the overnight stay, days of follow up treatment and medically necessary rehabilitation, and days for which the physician prohibits travel.

The taxpayer must be prepared to justify the medical treatment days, whether as a caregiver or as a patient. In order to satisfy the documentation and production requirements for a qualifying medi-



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cal treatment, an individual is required to prepare (or obtain), maintain, and make available within 30 days of request by the Internal Revenue Service (or presumably the Virgin Islands Bureau of Internal Revenue) records that provide (1) the patient’s name and relationship to the individual (if the medical treatment is provided to a person other than the individual); (2) the name and address of the hospital, hospice, or residential medical care facility where the medical treatment was provided; (3) the name, address, and telephone number of the physician or physicians who provided the medical treatment; (4) the dates on which the medical treatment was provided; and (5) receipts of payment for the medical treatment.

The taxpayer must also provide a signed certification of the providing or supervising physician that the medical treatment was qualified medical treatment as defined above, and that sets forth (a) the patient’s name; (b) a reasonably detailed description of the medical treatment provided by (or under the supervision of) the physician; (c) the dates on which the medical treatment was provided; (d) the medical facts that support the physician’s certification and determination that the treatment was medically necessary; and (e) such other information as the Treasury may in the future prescribe by publication.

Suggestions for future columns should be sent to AskJorie@TradewindsHouseandHome.com.

The information provided in this column is not legal advice and readers should consult with their professional advisors to determine how this information may apply to their specific circumstances.