



Coronavirus Information for F1 & J1 Students and Scholars

The global outbreak of the COVID-19 virus (the COVID-19 Emergency) has significantly limited the ability of many individuals to leave the United States. Regardless of whether they are 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, or they may feel unsafe traveling during the COVID-19 Emergency due to recommendations to implement social distancing and limit exposure to public spaces (collectively, COVID-19 Emergency Travel Disruptions). Nonresident alien individuals who perform services or other activities in the United States may be considered engaged in a US trade or business (USTB). If the individuals performing those services or other activities are temporarily in the United States solely due to COVID-19 Emergency Travel Disruptions, this may cause the nonresident alien to become engaged in a USTB when the nonresident alien would not be so engaged were these individuals not present in the United States. Generally, a nonresident alien that is engaged in a USTB is taxable on its business income connected to that USTB. Some students have expressed their concern about the pandemic has had or will have on their tax status.

The Coronavirus Aid, Relief and Economic Security Act (CARES), signed into US law on March 27, 2020 and Internal Revenue Procedure 2020-20 have been put into place to provide guidance for Nonresident Aliens present in the United States impacted by COVID-19. While the CARES Act focuses more discussion on the Economic Impact on taxpayers, Rev Proc 2020-20 provides language on how travel has affected Nonresident Aliens in the US.

A major highlight of the CARES Act is the Economic Impact Payments (Payments) that are available to individuals. There are certain requirements that must be met in order to receive this payment. Millions of Americans have already received their Payments authorized by the Act. The Internal Revenue Service (IRS) continues to calculate and automatically send the Payments to most eligible individuals, however some may have to provide additional

information to the IRS to get their Payments. It is important to note that these are considered one-time payments and are not taxable income for recipients because the rebate is a credit against tax liability and is refundable for taxpayers with no tax liability to offset. In order to claim CARES, each taxpayer must also have a Social Security Number.

Below are Frequently Asked Questions and Answers related to the CARES Act and Revenue Procedure 2020-20 for international students and scholars.

1. **Question:** If I am a Nonresident Alien is present in the United States, and due to COVID-19 would not normally meet the Substantial Presence Test, have enough days of presence, will I be considered a Resident Alien for income tax purposes?

Answer: An Eligible Individual who intended to leave the United States during the individual's COVID-19 Emergency Period, but was unable to do so due to COVID-19 Emergency Travel Disruptions, may exclude the individual's COVID-19 Emergency Period (up to 60 calendar days of presence in the United States) for purposes of applying the Substantial Presence Test. The COVID-19 Emergency will be considered a medical condition that prevented the Eligible Individual from leaving the United States on each day during the individual's COVID-19 Emergency Period and, as generally required by the Medical Condition Exception, will not be treated as a pre-existing medical condition. Also, in determining an individual's eligibility for treaty benefits with respect to income from employment or the performance of other dependent personal services within the United States, any days of presence during the individual's COVID-19 Emergency Period on which the individual was unable to leave the United States due to COVID-19 Emergency Travel Disruptions will not be counted. The days will be required to be reported on IRS Form 8843 in conjunction with the Form 1040-NR or 1040-NR-EZ.

2. **Question:** Who is eligible to receive the payment?

Answer: You may be eligible to receive a Payment if you:

- Are a U.S. citizen, Permanent Resident, or qualifying Resident Alien;
- Cannot be claimed as a dependent on someone else's return;
- Have a Social Security number (SSN) that is valid for employment (valid SSN);
- and Exception: If either spouse is a member of the U.S. Armed Forces at any time during the taxable year, then only one spouse needs to have a valid SSN;
- Have Adjusted Gross Income below an amount based on your filing status and the number of your qualifying children.

3. **Question:** I need to file a tax return but am concerned about visiting a tax professional or local community organization in person right now to get help with my tax return. How long is the Payment available?

Answer: Payments will be made throughout the rest of 2020. If you do not receive a Payment this year, you can also claim it by filing a tax return for 2020 next year.

4. **Question:** I filed a joint tax return with my spouse. Will we receive a Payment if I have a valid SSN and my spouse has an Individual Taxpayer Identification Number (ITIN)?

Answer: No, when spouses file jointly, both spouses must have valid SSNs to receive a Payment with one exception. If either spouse is a member of the U.S. Armed Forces at any time during the taxable year, only one spouse needs to have a valid SSN.

If spouses file separately, the spouse who has an SSN may qualify for a Payment; the other spouse without a valid SSN will not qualify.

5. **Question:** What is meant by a valid SSN for a Payment?

Answer: A valid SSN for a Payment is one that is valid for employment and is issued by the Social Security Administration (SSA) before the due date of your 2019 tax return (including the filing deadline postponement to July 15 and an extension to October 15 if you request it) or your 2018 tax return (including extensions) if you haven't filed your 2019 tax return.

If the individual was a US citizen when they received the SSN, then it is valid for employment. If "Not Valid for Employment" is printed on the individual's Social Security card and the individual's immigration status has changed so that they are now a US citizen or permanent resident, ask the SSA for a new Social Security card. However, if "Valid for Work Only With DHS Authorization" is printed on the individual's Social Security card, the individual has the required SSN only as long as the Department of Homeland Security authorization is valid.

6. **Question:** As a US Citizen living abroad, am I entitled to a Payment?

Answer: Yes, US citizens living outside the country are eligible for the Payment. Anyone eligible to file Form 1040 or Form 1040-SR is an eligible person if they have a valid SSN and cannot be claimed as a dependent of another taxpayer. Nonresident aliens who file or would file Form 1040-NR or Form 1040-NR-EZ are not eligible for the Payment.

7. **Question:** Will I receive the Payment if I am not a US Citizen, US Permanent Resident, or a resident of US territories?

Answer: US resident aliens with a valid SSN are eligible for the Payment if they can't be claimed as a dependent of another taxpayer. If you are eligible to file Form 1040 or Form 1040-SR like US citizens for 2019, including by filing a joint federal tax return with a US citizen or US resident alien spouse, file Form 1040 or Form 1040-SR with the IRS for 2019 even if your income isn't enough to require you to file a tax return. You don't need to take any action if you already filed a Form 1040 or Form 1040-SR for 2019 or 2018.

If you are considered a US resident alien for 2020 but not for 2019, you can claim the Payment when you file Form 1040 or Form 1040-SR with the IRS for tax year 2020.

If you are considered a US resident alien for 2019 but not for 2020, you won't be required to repay the Payment you received in 2020 based on your Form 1040 or Form 1040-SR for tax year 2019.

8. **Question:** In 2018 I mistakenly filed my tax return as a Resident. I should have filed as a Nonresident Alien. I have now received the CARES Payment. What should I do?

Answer: If you filed as a resident by mistake, all you need to do is file an amended tax return for each year that you filed incorrectly and pay any tax liability that you owe. If you believe that you have received the CARES Payment in error, it is probably best to return the payment to the IRS.

How to return your CARES payment

It is important to return the stimulus payment if you believe that you received it in error.

You should return the payment separately to your amended return. In other words, the IRS is advising that you do not add the CARES Payment to the check or electronic transfer you submit to cover your tax liability.

Instead you should follow the directions the IRS have laid out on the IRS' website.

(<https://www.irs.gov/taxtopics/tc161>).

It is necessary to include an explanation with your amended tax return to confirm why you are returning the payment.

You should also keep copies of everything that you send to the IRS – both physical and electronic. They may be required for any visa applications you submit in future.

9. **Question:** I filed as a Resident in 2018 but I have since left the United States. I received the CARES Payment to my American bank account. Am I entitled to keep this money?

Answer: Countless international students and scholars who had filed (either correctly or incorrectly) as residents for the 2018 tax year, and since left the US, have received the \$1,200 payment.

While you may be entitled to this money, as per the stated eligibility requirements of the payment, the IRS has yet to confirm whether they intended to send money to tax filers who are no longer US residents or earning US sourced income.

Whether the IRS will look to recoup this money in the coming months remains to be seen. They may stipulate that it must be accounted for on a 2020 tax return. Or alternatively, accepting the money could also conceivably affect any future US visa application you submit.

Factoring in the considerable disruption caused by COVID-19, it may be sometime before the IRS can provide total clarity on these issues.

In either scenario, the safest option is likely to return the money.

10. **Question:** I am an International Student attending a University in the United States as a non-resident scholar. I also teach a class at the University. Due to COVID-19 I am currently teaching my class online from my home country. Do I have a US tax filing requirement for teaching income I earn while in my home country?

Answer: Typically if you earn US sourced income you will have a US tax filing requirement. Your income will be defined as 'US sourced' if:

- the property that produces the income is located in the US;
- the services for which the income is paid were performed in the US;
- or, the income is a dividend equivalent.

If you are not a resident of the US and you are earning income from teaching a class for a US university while you are outside the US (such as your home country) this income will be treated as foreign income and is not reportable and not taxable in the US.

Similarly, if you are doing research or writing your thesis while outside the US, the grant you receive to cover your expenses while you work, will be treated as foreign income and is not reportable or taxable in the US.

11. Question: I am an International Student attending a University in the United States as a non-resident student. Before COVID-19, I had been working on campus and earning an income. Fortunately, I can continue this employment while working from my home country. Do I have to pay US tax on the income I earn while working from my home country?

Answer: As mentioned above, your income will be defined as ‘US sourced’ if the property that produces the income is located in the US. When carrying out your work from your home country, if you are using a software or platform which is installed on a server in the US, the property that produces the income is likely to be considered to be located in the US. Therefore, the income that you earn will be taxable in the US.

In other words, you will have the same tax filing and payment obligations as you would if you had earned the income while working on campus.

What’s more, if the payment is provided for a work that you do would normally be performed in the US (for example, after the COVID-19 crisis is over), the income earned is taxable in the US.