

Canadian Snowbirds and U.S. Income Tax

If you plan to spend your winters in the U.S., you should be concerned with more than just ensuring you have your passport and that all your bags are packed. Snowbirds (Canadian residents who spend part of each year in the United States), need to be aware of the potential liability to pay U.S. income tax on the same basis as a permanent U.S. resident. U.S. citizens and green card holders are taxable in the U.S. on their worldwide income, regardless of their country of residence.

Even though snowbirds only visit the U.S. for the winter months, they can be “deemed” to be U.S. residents for income tax purposes and in certain circumstances, they may be taxed in the U.S. on their worldwide income.

Counting the Days Down South

If you are not a green card holder or a U.S. citizen, you may still be considered to be a resident for U.S. tax purposes if you were present in the U.S. for more than 30 days and meet the *Substantial Presence Test* outlined below.

Substantial Presence Test	
Number of days in current year	_____ x 1 =
Number of days in the year before the current year	_____ x 1/3 =
Number of days in the second year before the current year	_____ x 1/6 =
	Total
When you are counting your days for the formula, include the total number of full and partial days you were physically present in the U.S.	

If the total from the calculation exceeds 182 days, you have met the Substantial Presence Test and may be subject to tax in the U.S. on your worldwide income. However, if you are present in the U.S. for less than 183 days in the current year, you may be eligible to claim the Closer Connection Exception (see below).

Since the Substantial Presence Test calculation considers days of presence in the U.S. during the current and the two preceding years, you should keep a record of the number of days you are physically present in the U.S. during each calendar year.

Closer Connection Exception

If you have met the *Substantial Presence Test*, you will be considered to be a U.S. resident alien and be required to file a U.S. individual income tax return (Form 1040) to report your worldwide income. However, if you were present in the U.S. for less than 183 days during the year and can demonstrate that you have a closer connection to Canada than the U.S., you may be able to claim a closer connection exception and be treated as a non-resident of the U.S. The IRS will consider the following factors in their determination of a closer connection:

- location of permanent home
- location of family
- location of personal belongings
- country where your driver's license was issued
- country of residence listed on official documents
- country where you derive the majority of your income in the current year

To claim the Closer Connection Exception, you must file Form 8840 with the IRS by the due date of filing a U.S. non-resident income tax return (Form 1040 NR) which is June 15 of the following calendar year (June 15, 2011 for the 2010 calendar year) if you did not earn wages as a U.S. employee.

The Tax Treaty Tie Breaker Rules

If you are present in the U.S. more than 182 days in the current year, you will not be eligible for the Closer Connection Exception and are considered to be a U.S. resident for tax purposes under U.S. tax law. However, if you are also considered to be a tax resident of Canada, you may be able to claim that you are a non-resident of the U.S. by applying the *treaty tie-breaker* rules provided by the income tax treaty between Canada and the U.S. If you maintain a permanent home in Canada and your personal and economic ties are closer to Canada than the U.S. you would likely be considered to be a non-resident of the U.S. under the treaty tie breaker rules.

Before You Fly South

As the tax filing requirements and residency determination can be complex, it is important that you consult with a professional advisor experienced in cross-border taxation to ensure that you are complying with all your tax obligations south of the border. Upon request, your BMO Nesbitt Burns Investment Advisor can introduce you to an external cross-border tax professional for assistance with your personal situation.

The comments included in the publication are not intended to be a definitive analysis of tax law: The comments contained herein are general in nature and professional advice regarding an individual's particular tax position should be obtained in respect of any person's specific circumstances.

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