



THE NAVIGATOR

EXTENDED STAY IN THE U.S. UNDER NEW RULES MAY CREATE TAX ISSUES FOR CANADIAN SNOWBIRDS

Canadian snowbirds may soon be able to spend an extra two months in the United States each year.

U.S. immigration legislation, which has not yet become law, is making its way through Congress. It will allow Canadians aged 55 and older to spend up to 240 days — about eight months — in the country without a visa, 58 days longer than the current six month limit. To be eligible, Canadians will have to maintain a residence in Canada and own a residence in the U.S. or have a rental agreement for accommodations in the U.S.

Before heading off to the U.S. this winter, Canadians should take all U.S. tax and estate issues into account. Failing to adhere to applicable U.S. laws may have serious implications if not followed carefully. The issues are not merely south of the border — eligibility for Canadian provincial health care coverage may also be affected by a long stay out of province.

This article assumes you are a Canadian resident and not a U.S. citizen or a green card holder. The article is for information purposes only and does not provide tax or legal advice. You should consult with your own tax advisor before acting on any information contained in this article.

RESIDENCY STATUS AND U.S. INCOME TAX

Canadian snowbirds that spend a considerable amount of time in the

U.S. each year may be considered to be U.S. residents under U.S. income tax laws.

U.S. residents must file a U.S. income tax return to report worldwide income. Additional filing requirements, for example, U.S. Form TDF 90.22.1 – *Report of Foreign Bank and Financial Accounts* and Form 8938 – *Statement of Foreign Financial Assets*, may also be required depending on facts and circumstances. Ask your RBC advisor for our article titled *U.S. Residency Status – Canadian Snowbirds Beware* which discusses the U.S. income tax requirements in greater detail.

U.S. income tax laws use a test based on physical presence (days spent in the U.S.) referred to as the Substantial Presence Test (SPT) to determine if a Canadian snowbird is a U.S. resident in a particular year.

The SPT averages the number of days of presence in the U.S. during the past three-year period, beginning with the current year. If the total days of presence amount to at least 183 days the SPT will be met and the Canadian snowbird will be considered to be a U.S. resident.

A Canadian snowbird can determine if they will be considered a resident of the U.S. in a particular year under the SPT as follows:

- add up all the days you will be present in the U.S. in the current year plus
- one third of the days you were present in the U.S. in the prior year plus
- one sixth of the days you were present in the U.S. two years prior.

If the sum adds up to at least 183 days,



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As a rule of thumb, if a Canadian snowbird spends more than four months (122 days) every year in the U.S. they will meet the SPT after the third year and annually thereafter.

you will be considered to be a U.S. resident under U.S. income tax laws for that particular year.

Canadian snowbirds that take advantage of the proposed rules and stay longer in the U.S. are more likely to meet the SPT. If they spend over 183 days in the current year, they will automatically meet the SPT. As a rule of thumb, if a Canadian snowbird spends more than four months (122 days) every year in the U.S. they will meet the SPT after the third year and annually thereafter.

QUALIFYING FOR RELIEF FROM U.S. RESIDENT STATUS

If the SPT is met, there are two possible options to qualify for relief from U.S. resident status.

Under U.S. tax rules, Canadian snowbirds that spend no more than 182 days in the current year in the U.S. may be able to claim the “closer connection exception” by filing U.S. Form 8840 - *Closer Connection Exception Statement for Aliens*. By filing this form on a timely basis with the Internal Revenue Service, a Canadian snowbird will generally be exempt from having to file a U.S. income tax return or other U.S. filings.

If a Canadian snowbird does not qualify to claim the “closer connection exception”, the other option is to claim a treaty exemption under the Canada-U.S. tax treaty. In order to claim a treaty exemption, a U.S. income tax return is filed and a treaty statement (using U.S. Form 8833) is attached. The treaty exemption does not however, exempt a Canadian snowbird from additional U.S. reporting requirements (e.g. Forms TDF 90.22.1 and Form 8938) that may be required.

To claim the treaty exemption, Canadian snowbirds must show that personal and economic ties, or “center of vital interest” are closer to Canada than to the U.S. For example, Canadian snowbirds would need to establish that they have a permanent home, family, personal and financial property, drivers’ license, voting, religious, political or cultural organizational memberships in Canada.

Canadian snowbirds who are considering establishing ties in the U.S. and/or severing ties to Canada due to a longer stay should consider the effect on their ability to claim the treaty exemption.

U.S. ESTATE TAX

In addition to the U.S. income tax issues, Canadian snowbirds should consider potential U.S. estate tax exposure. If the U.S. considers a Canadian snowbird to be domiciled in the U.S. as a result of extended stays, they may also be subject to U.S. estate tax on their worldwide assets as opposed to only U.S. situs assets (i.e. assets with a U.S. location such as U.S. real estate or U.S. securities). Domicile may be established due to the time spent in the U.S. and facts and circumstances that support an intention to permanently reside in the U.S.

PROVINCIAL HEALTH CARE COVERAGE

Canadians who are out of their province of residency for extended periods of time (the length of time differs by province) may jeopardize their entitlement to provincial health care coverage. Finding health care coverage in the U.S. may be difficult and more costly. It is unknown whether any changes to provincial

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eligibility will be made to allow for Canadians taking extended stays in the U.S.

ASSESSING THE BENEFITS OF THE PROPOSED LEGISLATION

In addition to healthcare coverage and potential U.S. estate tax exposure, Canadians who are determining whether to extend their stay in the U.S. should also consider the potential

U.S. tax reporting consequences and the associated preparation cost when weighing the benefits of spending more time south of the border.

Canadian snowbirds should consult with a professional tax advisor before they take advantage of the opportunity to extend their stay in the U.S. so that they may understand how they may be affected.

Please contact us for more information about the topics discussed in this article.

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