

## US Taxation of Canadian Snowbirds

There may be as many as one million Canadians that spend four months or more in the US each year and many of them are considered by the IRS to be US residents and therefore should be filing US tax returns on their worldwide income. However, there are ways to spend up to six months in the US and not be considered a resident.

### Residency Rules

As a Canadian citizen and resident, you are considered a US foreign national, which is anyone that is not a U.S. citizen. A foreign national is presumed to be a nonresident alien, unless he or she passes one of the two tests of being a resident alien. Those tests are:

1. Lawful Permanent Resident Alien card, a.k.a. Green Card, or
2. Substantial Presence Test – you must be physically present in the U.S. for at least:
  - (a) 31 days during the current year, and
  - (b) a total of 183 days over the last three years where the IRS counts:
    - i) all of the days in the current year, plus
    - ii) one-third of the days in the preceding year, plus
    - iii) one-sixth of the days in the second preceding year

Applying this formula, if you stay in the US 122 days (four months) every year, you will fail Part 2 of the test and be considered a US resident and therefore a US taxpayer. A US resident taxpayer is subject to tax on their worldwide income. Being subject to US tax is not the problem since the large majority of people will not pay any additional tax in the US and in fact most Canadians find that they pay substantially less tax in the US than in Canada. The problem is being subject to US tax and not filing a tax return.

### Example:

| Year                           | Actual Days in the US | Factor | Formula Days in the US |
|--------------------------------|-----------------------|--------|------------------------|
| Current                        | 122                   | 100%   | 122                    |
| 1 <sup>st</sup> Preceding Year | 122                   | 33.33% | 41                     |
| 2 <sup>nd</sup> Preceding Year | 122                   | 16.67% | 20                     |
| Total                          |                       |        | 183                    |

For those that pass the first part of the substantial presence test and fail the second part, there is an easy way to avoid being considered a US resident and therefore subject to US tax. If you fail only the second part of the test, you can claim that you have a “closer connection” to Canada by filing IRS [Form 8840](#).

### Closer Connection Exception – can avoid resident alien status if:

1. You were in the U.S. less than 183 days during the tax year, and
2. You have a tax home in another country, and
3. You hold yourself out as a resident of that country, and

4. You file IRS [Form 8840 - Closer Connection Exception for Aliens](#) each year you fail Part 2 of the test

[Form 8840](#) is designed to gather information so that the IRS can determine where you reside. The form asks questions such as:

1. Where is your family located? (spouse/partner and minor children)
2. Where are your automobiles located?
3. Where are your automobiles registered?
4. Where is your personal belongings, furniture, etc. located?
5. List social, cultural, religious organizations and where they are located?
6. Where are the banks with which you conduct your everyday business?
7. Where is your driver's license issued?
8. Where are you registered to vote?
9. From what country did you receive the majority of your income?

**Note:** If you fail Part 1 of the test (spend 183+ days in the US during any calendar year), you will have to file a US return and claim that you are a resident of Canada and nonresident of the US under the Treaty tie-breaker rules. [Form 8833](#) is used to take advantage of any Treaty provision.

Article IV of the Treaty defines the term resident. Where it is determined that a person is a resident of both countries, the Treaty has four tests to determine the status (residence) of the person. These questions are what is known as the tie-breaker rules. The tests are:

- (a) Where do you have permanent home available to you? If you have a permanent home available in both Countries or in neither Country, you shall be deemed to be a resident of the Country with which your personal and economic relations are closer (center of vital interests);
- (b) If the country in which you have a center of vital interest cannot be determined, you shall be deemed to be a resident of the Country in which you have a habitual abode;
- (c) If you have a habitual abode in both Countries or in neither Country, you shall be deemed to be a resident of the Country of which you are a citizen; and
- (d) If you are a citizen of both Countries or of neither of Country, the competent authorities of the two countries shall settle the question by mutual agreement.

Once a country can be determined by one of the questions, that is the country of residence and the test stops; you do not go on to the next question.

**Resources:**

[IRS Publication 519 – US Tax Guide for Aliens](#)

[Form 8833 – Treaty-Based Return Position Disclosure](#)

Blog Post: [How long do I stay outside of the US before I can return as a visitor?](#)

Book: [The Border Guide](#)