

Snowbirds

Snowbirds are people who are ordinarily resident in Canada but spend part of the year in the United States. With harsh Canadian winters, many individuals prefer to spend the winter months in a warmer climate, such as Florida, Arizona or California, to name a few of the more popular destinations. Due to the time spent away from Canada, snowbirds must take caution to ensure they are not spending too much time away and in the U.S. to deem them a U.S. resident for tax purposes and potentially a non-resident of Canada.

Canada and the U.S. both have substantial presence tests that can deem a normally non-resident individual to be a resident of that country for tax purposes. This becomes a very important issue when you consider the tax implications it can have on an individual and their family. Canadian taxation and benefits are based on residency and U.S. taxation and benefits are based on residency as well as citizenship.

An individual will be considered a U.S. resident for tax purposes if they meet the substantial presence test for the calendar year. To meet this test, they must be physically present in the United States for 183 days in the current year or 183 days over a 3-year period. If the test is met over a 3 year period, a form 8840 Closer Connection form will need to be filed with the IRS; however, if the test is met in the current year alone, the taxpayer will need to file a 1040NR non-resident income tax return with a form 8833 treaty election claiming closer ties to Canada under the rules of the Income Tax treaty. Meeting the test in the current year could mean the taxpayer may have U.S. immigration issues as well; immigration rules and tax rules are very different. Immigration time tests run on a rolling 12-month period; whereas tax tests are on a calendar year basis.

I have authored a book titled **Canadian and the IRS: What You Need to Know About Uncle Sam** and have also authored a professional certificate course called **Cross Border Taxation** where I discuss all these rules and many more.

The new border tracking systems that are currently in place allow both Canada and the U.S. to track the amount of time a person spends inside and outside the particular country. As mentioned in a recent article for CBC, Canada and the U.S. will be using this information to determine an individual's residency and in turn, eligibility for various tax benefits and credits only available to residents of the particular country. Because of this, it is now more important to accurately track your time away from your country of residence and be aware of potential foreign filing requirements that may exist in the non-resident country so you don't fall into unexpected trouble.