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TAX MATTERS

# Welcome home, snowbirds – but don't forget your U.S. tax filings

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My parents just returned from their winter home in Arizona. They've made lots of friends down there. Friends my mother can share her innermost secrets with. It's not that they've become really close – it's just that they're all old enough that they can't remember anything she's said to them.

Now that my parents are back, I reminded them of the rules around U.S. tax filings. Many Canadian snowbirds are surprised to find out that spending time down south can make them subject to U.S. taxes on their worldwide income – if they're not careful. Here's a primer on the rules.

## The test

The U.S. levies taxes on its citizens but also on non-citizens if they reside in the U.S. for a certain amount of time. There's a test, called the "substantial presence test" (SPT), that could cause you to face taxes in the U.S.

The SPT adds up three numbers: (1) your days spent in the U.S. in the current year, (2) one-third of the days spent in the U.S.

in the preceding year and (3) one-sixth of the days in the U.S. in the year before that. If the total is 183 or more, you'll meet the SPT (although you'll automatically avoid meeting it if you spent less than 31 days in the U.S. in the current year). If you do meet the SPT, the Internal Revenue Service will consider you to be a resident of the U.S. for tax purposes unless you take some additional steps.

Being a U.S. resident for tax purposes may require you to file a full-blown U.S. tax return (Form 1040). It's not only painful paperwork; it means splitting your tax dollars between the U.S. and Canada every year (you won't save tax overall, but you'll have to file in both countries).

As for the average snowbird? Many will be caught meeting the SPT. If you spend, on average, 122 days (about four months) or more in the U.S. each year, you'll meet the SPT after three years.

What should you do if that happens? You may be able to maintain your tax status as a non-resident of the U.S. and avoid

having to file a tax return there, but that will require filing a special form.

### The form

Filing U.S. Form 8840, Closer Connection Exception Statement, essentially tells the IRS that, notwithstanding the fact you meet the SPT, you have a closer connection to Canada as your permanent home and should not be considered a resident of the U.S. for tax purposes.

To be eligible to file Form 8840, you must have spent fewer than 183 days (about six months) in the U.S. in the current year. If you spend 183 days or more in the U.S. in any year, you may then need to rely on the Canada-U.S. tax treaty's tiebreaker rules to avoid facing taxes in the U.S.– but this gets complicated (you'll need to file U.S. Form 8833 and may need legal help).

Form 8840 is due by June 15 each year for the prior calendar year's filing. If you meet the SPT for 2024, the deadline is extended to June 16, since June 15 is a Sunday this year.

Some Canadians may be required to file a U.S. non-resident tax return (Form 1040-NR) if they earned certain types of U.S. income (rental income or income for work performed in the U.S., for example). If you have to file Form 1040-NR, then your Form 8840 is due with that tax return (generally by June 15 each year, but this deadline can be extended to Oct. 15). Speak to a tax pro about Form 1040-NR.

If you fail to file Form 8840 on time, or if you meet the SPT but don't meet the other conditions to file Form 8840 (see below), you could become subject to U.S. tax on your worldwide income or face a

penalty for not filing the appropriate statements with the IRS.

### The nuances

You won't be eligible to file Form 8840 if you spent 183 days or more in the U.S. in a particular tax year – as I mentioned – or if you're a green card holder or have applied for a green card.

Also, you've got to count a partial day in the U.S. as a full day. In some limited cases, you can ignore certain days spent in the U.S. – if you're unable to leave the country owing to a medical condition, if you're in the U.S. for less than 24 hours while in transit to another country or in certain other cases for students, teachers, trainees, foreign government officials or commuters.

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