

Many Canadians regularly visit the United States, and it is not uncommon for these Canadians to rent or purchase properties in the US. While many of these Canadian travellers are familiar with the tax implications of the Canadian “sojourner rule” (i.e. being present for more than 183 days in a calendar year), many travellers are less familiar with the US “substantial presence” test.

The US substantial presence test is more complex as it looks at presence during the given year and its two previous calendar years. If considered to have a substantial presence in the US, a Canadian citizen may be subject to various US income tax laws.

The substantial presence test for a particular calendar year is outlined below. Note that you would need to be present for at least 31 days in the particular year. If the sum of the following meets or exceeds 183 days, you would be deemed to have a substantial presence in the US.

- The number of days spent in the US during the specific year, plus
- 1/3<sup>rd</sup> of the number of days spent in the US during the preceding year, plus
- 1/6<sup>th</sup> of the number of days spent in the US during the second preceding year

For example, during the past three years, you spent the following number of days in the US:

<b>Actual Days</b>	<b>Effective Days</b>
Calendar 2013 – 130 Days	all 130 days count towards the substantial presence test
Calendar 2012 – 120 Days	40 days count towards the substantial presence test
Calendar 2011 – 120 Days	20 days count towards the substantial presence test

As the total of the above figures is equal to or greater than 183 days (i.e. 190), you would be considered a resident of the US for income tax purposes beginning in 2013.

It is possible to apply for an exemption to the substantial presence test if the total number of days spent in the US in the calendar year (i.e. 2013) is less than 183 days. You would need to file Form 8840 with the Internal Revenue Service (IRS) to make a claim that you had a closer connection to another country (i.e. Canada). This form is generally due by April 15 of the following calendar year. Using the example above, you would need to file the Form 8840 by April 15, 2014. If the form is not filed by the due date, you will not be able to claim the closer connection exemption.

We understand that recent enhancements to the information systems at the Canada-US border will soon allow both governments to better determine if travellers are meeting the substantial presence test.

We ask that you review your personal situation and let us know if you may meet the substantial presence test. We can then further discuss the tax implications of your situation and the options available to you.

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