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Deemed if you do

The strong Canadian buck might encourage you to extend your stay in the U.S. this winter but be careful of deemed residency rules

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Forever Young

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As a mature Canadian, just about now is when you might be contemplating a trip south during our cold winter. And this year the strong loonie makes the U.S. south more affordable for greater numbers than in many years.

But here's a word of advice - if you are thinking that the extra value of the Canadian buck might translate into a longer stay, make sure you don't fall afoul of Canadian residency rules.

The first rule for the prospective snowbird is, plan ahead as much as possible, looking around for good early-bird deals on travel health insurance and keeping your eye on relative real estate prices down south.

If you are eyeing the United States, you may be planning to move permanently or else spend long months of the year south of the border as an integral part of your retirement. But did you know that your time spent in the U.S. might cause you to be deemed a resident of the U.S. for income taxes, estate taxes or both?

Conversely, you may be deemed to no longer be a resident of Canada, and could be risking government benefits, income-tax breaks, deductions and credits. Those wanting to take advantage of lower income-tax rates in another country may find that the CRA (Canadian Revenue Agency) still considers them to be residents of Canada for income-tax purposes.

And in a worst-case scenario, one may be deemed to be a resident of both countries.

Deemed residency is an income-tax classification used in both Canada and the U.S. to determine whether an individual pays income tax in a particular jurisdiction on income streams.

The opportunity of double taxation exists where snowbirds are subjected to income tax in Canada and the U.S. on the same income.

There are different treatments of income not just at the federal level of each country but at a provincial and state levels as well. Certain exemptions and reductions are available to minimize unfairness to taxpayers.

The Canadian income-tax system is based on residency, not citizenship. As such, Canadian residents are liable for income tax on their worldwide income. Canada only taxes non-residents on Canadian-source income. In the U.S., both citizens and residents are taxed on their worldwide income.

Canadian residents can be deemed to be U.S. residents according to the 183-day rule, or "physical

presence" test. To see if your residency status will be affected, use the following calculation. Add up the total number of days spent in the U.S. in the current year, one/third of the days spent in the U.S. in the previous year and one/sixth of the days spent in the U.S. the year before that. If your "physical presence" in the U.S. totals 183 days or more, you will be deemed to be a U.S. resident.

A key question to ask when travelling for extended periods is whether there is an intention to leave Canada or whether there is a risk of being deemed to be a resident of the U.S. In either case, ensure that documentation regarding such items as directives is recognized in the new domicile. This can be problematic even if moving between provinces, let alone countries.

There are steps you can take to avoid being deemed a U.S. resident after meeting the physical-presence test. The tax and estate-planning issues are complex and based on the facts of each particular case. Use the services of a qualified financial or tax professional to help you explore the use of corporations and trusts to protect assets both in tax and estate-planning processes.

- Kelley Keehn of Edmonton is a financial speaker, elder-planning counsellor and author of four books, including The Woman's Guide to Money. Sources for this article included the Canadian Initiative for Elder Planning Studies. See kelleykeehn.com.