

## ATTENTION: CANADIAN RESIDENTS TRAVELLING TO THE UNITED STATES

**Are you a Canadian resident that visits the U.S. for several months out of the year?** If so, there may be a requirement to file U.S. information returns or tax returns.

Outlined below are three common scenarios that may be applicable to you:

### Scenario 1 – You do not meet the Substantial Presence Test

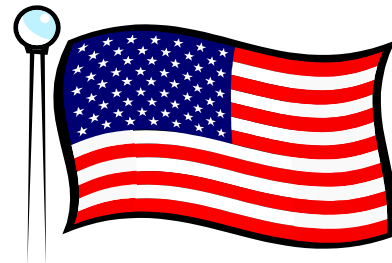
If you are present in the U.S. less than 183 days and do not meet the substantial presence test as outlined in Scenario 2 below, then you do not have any U.S. income tax filings provided you did not earn any U.S. source income.

### Scenario 2 – You meet the Substantial Presence Test

If you are considered to be a U.S. resident alien, you will be required to file a U.S. tax return reporting your worldwide income. For U.S. income tax purposes, you would be considered a U.S. resident alien if you meet the substantial presence test. To meet this test for the 2022 tax year, you must be physically present in the U.S. for more than:

- a) 31 days during 2022; and
- b) 183 days or more during the three-year period, based on the following calculation:
  - Count each day in 2022 as one full day;
  - Count each day in 2021 as one-third of a day; and
  - Count each day in 2020 as one-sixth of a day.

*If a) and b) above are both met, you are considered a U.S. resident alien for U.S. tax purposes.*



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However, even if you are deemed to be a U.S. resident alien because you meet the substantial presence test, you may still be treated as a non-resident alien for U.S. tax purposes if:

- a) You were present in the U.S. for less than 183 days in 2022;
- b) Your tax home is in Canada;
- c) You had a closer connection to Canada than to the U.S. during 2022; and
- d) You filed or will file, Internal Revenue Service Form 8840 “Closer Connection Exception Statement for Aliens” by June 15, 2023.

If you meet the substantial presence test, but do not file Form 8840 by June 15, 2023, you will not be eligible to claim the closer connection to Canada for 2022. You will, therefore, be treated as a resident alien for U.S. tax purposes and taxed in the U.S. on your worldwide income.

### **Scenario 3 – You are present in the United States 183 days or more**

If you were present in the U.S. for **183** days or more in 2022, you must file a U.S. income tax return. However, if you continue to have a permanent home in Canada, you may still be able to be treated as a non-resident alien for U.S. income tax purposes due to the Income Tax Treaty between Canada and the U.S. To claim the treaty benefit, you must file a U.S. income tax return and attach Form 8833 “*Treaty-Based Return Position Disclosure Under Section 6614 or 7701(b)*”.

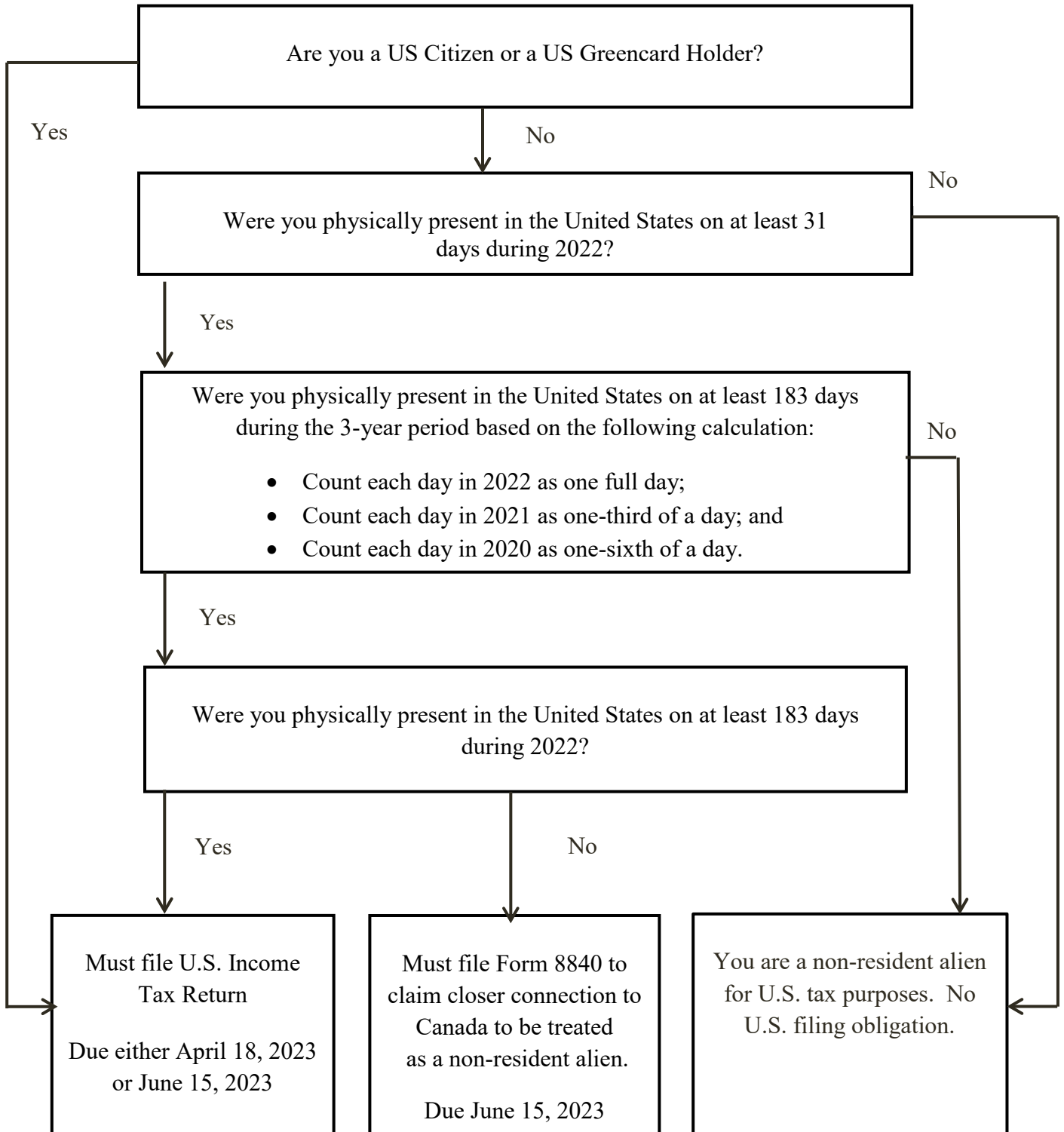
If you fall into Scenario 2 or 3 please contact us to discuss your U.S. filing obligations.

We have attached a simplified decision tree that can be used to determine your residency status and US filing obligations.

*Changes to tax law occur frequently and, at times, retroactively. Any advice herein is based on tax law as it currently stands including administrative and judicial interpretation. If the law or its interpretation changes, our advice may not be appropriate. We are not responsible for updating the advice herein for subsequent changes in tax law or the interpretation thereof.*

**February 2023**

## Determining Residency Status – Decision Tree



## FORM 8840 – QUESTIONNAIRE

If you think you may have a Form 8840 filing requirement, please complete and return the questionnaire below.

FOR CALENDAR YEAR ENDED \_\_\_\_\_ CURRENT DATE \_\_\_\_\_

1. Name: \_\_\_\_\_
2. U.S. taxpayer identification number, if any \_\_\_\_\_
3. Countries of citizenship \_\_\_\_\_ , \_\_\_\_\_  
Country of Birth \_\_\_\_\_
4. What countries issued you a passport? \_\_\_\_\_ , \_\_\_\_\_
5. Passport number(s) \_\_\_\_\_
6. Do you have a U.S. visa?  Yes  No  
If yes, type \_\_\_\_\_ Visa number, if any \_\_\_\_\_
7. Number of days you were present in the US during:  
2022 \_\_\_\_\_ 2021 \_\_\_\_\_ 2020 \_\_\_\_\_
8. Do you have a permanent home available to you at all time during the year in the US? If so, what is the address? \_\_\_\_\_
9. Where is your immediate family located? \_\_\_\_\_
10. Where are your automobiles located and registered? \_\_\_\_\_
11. Where is your driver's license issued? \_\_\_\_\_
12. Where are your personal belongings located? \_\_\_\_\_
13. Where are your banks located that you regularly conduct your personal banking activities?
  - 1) \_\_\_\_\_
  - 2) \_\_\_\_\_
  - 3) \_\_\_\_\_
14. Where are you registered to vote? \_\_\_\_\_
15. Have you ever completed a Form W-8BEN or any other W-8 form?  Yes  No
16. Have you ever completed a Form W-9?  Yes  No
17. Have you ever completed any other U.S. official forms?  Yes  No  
If yes, what forms? \_\_\_\_\_