



Canada Revenue  
Agency

Agence du revenu  
du Canada

# Canadian Residents Going Down South

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## **Your opinion counts!**

We review this pamphlet each year. If you have any comments or suggestions that would help us improve the explanations it contains, we would like to hear from you.

Please send your comments on this pamphlet to:

Client Services Directorate  
Canada Revenue Agency  
750 Heron Road  
Ottawa ON K1A 0L5  
CANADA

The Internal Revenue Service (IRS) of the Government of the United States of America provided information for the section called "How U.S. tax laws apply."

La version française de cette publication est intitulée *Résidents canadiens qui séjournent dans le Sud*.

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## Before you start

### Is this pamphlet for you?

This pamphlet is for you if you spent part of the year in the United States (U.S.) for health reasons, to vacation, or for other reasons, and you still maintained residential ties in Canada.

This pamphlet will give you information about certain income tax requirements that may affect you. It will also help you understand the U.S. tax laws that may apply to you.

This pamphlet does **not** apply if you:

- are a U.S. citizen;
- have been granted permanent resident status by the U.S. Immigration and Naturalization Service (i.e., granted a “green card”); or
- have residential ties to a country other than the U.S. and Canada.

### What are residential ties?

Residential ties include things such as:

- a home in Canada;
- a spouse or common-law partner and dependants who stay in Canada while you are in the U.S.;
- personal property, such as a car or furniture in Canada; and
- social ties in Canada.

Other relevant ties may include a Canadian driver’s licence, Canadian bank accounts or credit cards, and hospitalization insurance with a province or territory of Canada.

# How Canadian income tax laws apply

If you spend part of the year in the U.S. for health reasons, to vacation, or for other reasons, and you maintain residential ties in Canada, we usually consider you to be a factual resident of Canada.

As a factual resident, we tax your income as if you never left Canada. You will continue to:

- report all income you receive from sources inside and outside Canada for the year, and claim all deductions that apply to you;
- claim federal and provincial or territorial non-refundable tax credits that apply to you;
- pay federal tax and provincial or territorial tax where you keep residential ties in Canada;
- claim federal and provincial or territorial refundable tax credits that apply to you; and
- be eligible to apply for the goods and services tax/harmonized sales tax (GST/HST) credit.

## Completing your Canadian return

You will find most of the information you need to complete your return in your income tax guide and forms book. However, this pamphlet includes some additional information you will need.

If you are a factual resident of Canada, get Form T1248, *Information About Your Residency Status*, and attach it to your return.

## Identification

When you complete the “Identification” area on your return, **do not** show a date of entry or departure. Only immigrants and emigrants use these spaces. If you enter a date of entry or

departure, we may reduce your claim for federal and provincial or territorial non-refundable tax credits.

On the line “Enter your province or territory of residence on December 31,” enter the name of the province or territory where you have residential ties.

### **Do you hold foreign property?**

You may have been in one of the following situations:

- at any time in 2005, you held foreign property with a total cost of more than CAN\$100,000;
- in 2005 or a previous year, you loaned or transferred funds or property to a non-resident trust; or
- in 2005, you received funds or property from, or were indebted to, a non-resident trust under which you were a beneficiary.

If any of these situations apply to you, special rules may apply. For more information, see your income tax guide.

### **Income**

As a factual resident, you will continue to pay tax on your world income as though you had lived in Canada for the whole year. Report all amounts in Canadian dollars.

### **Did you receive an NR4 or NR4-OAS information slip?**

Social Development Canada sends an NR4 or NR4-OAS information slip to all individuals who receive certain income from Canada (such as Old Age Security pension and Canada Pension Plan benefits) and who have an address outside Canada. If you receive this type of slip, report the income and any tax withheld on your Canadian tax return as usual.

### **Did you receive U.S. lottery or gambling winnings?**

This income is not taxable in Canada, so you do not have to report it on your Canadian return. Additionally, you cannot claim a credit for the taxes withheld on your winnings.

## **Did you have rental income from property in the U.S.?**

If so, keep records to support your income and expense claims. For information, get guide T4036, *Rental Income*.

## **Federal tax and credits**

To calculate your federal tax and the credits that apply to you, use Schedule 1, *Federal Tax*.

## **Federal non-refundable tax credits**

### **Can you claim medical expenses paid in the U.S.?**

You can claim eligible expenses that were paid for yourself, your spouse or common-law partner, and certain other individuals who were dependent on you for support. You can claim medical expenses that were paid in any 12-month period ending in the year, if they were not claimed in the previous year.

Your total expenses have to be more than either 3% of your net income (line 236) or \$1,844, whichever is less.

### **Did you pay premiums to private health-services plans?**

If so, you can claim most of them as a medical expense on your return.

For more information, see line 330 in your income tax guide, or get Interpretation Bulletin IT-519, *Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction*.

### **Did you donate to U.S. charities?**

If you are including U.S. income on your return, you can claim a credit for donations to U.S. charities that would be allowed on a U.S. return. The total donations to U.S. charities you can claim cannot be more than 75% of the net U.S. income you report on your Canadian return.

### **Can you claim a federal foreign tax credit?**

If you paid U.S. tax on U.S. income that you are reporting on your Canadian return, you may be able to claim a federal foreign tax credit to reduce your Canadian federal tax payable.

For more information, see lines 431 and 433 in your *General Income Tax and Benefit Guide*, or get Interpretation Bulletin IT-270, *Foreign Tax Credit*.

**Note**

The province or territory where you maintained your residential ties may offer a similar tax credit. For more information, see the forms book for that province or territory.

**Provincial or territorial tax**

You have to pay tax to the province or territory where you maintained residential ties.

**Provincial or territorial non-refundable tax credits**

The province or territory where you maintained residential ties may offer non-refundable tax credits similar to the federal amounts you claimed. For details, see the forms book for that province or territory.

**Refund or balance owing**

**Provincial or territorial tax credits**

Certain provinces and territories have tax credits. For information about these credits and how to claim them, see your income tax guide and the forms book for the province or territory where you maintained residential ties.



## Need more information?

If, after reading this pamphlet, you need more information, you can visit our Web site at [www.cra.gc.ca](http://www.cra.gc.ca) or you can call any of our tax services offices at **1-800-959-8281**. If you need to call the International Tax Services Office, you can find the telephone numbers on the back cover of this pamphlet.

You can also order any forms you may need on our Web page at [www.cra.gc.ca/forms](http://www.cra.gc.ca/forms) or by calling **1-800-959-2221** (calls from **Canada and the U.S.**).

For personal and general tax information, use our automated services **T.I.P.S.** at **1-800-267-6999** (calls from **Canada and the U.S.**).

You can also view and manage some of your personalized information online using our My Account feature at [www.cra.gc.ca/myaccount](http://www.cra.gc.ca/myaccount). To use this service you will have to register online for a User ID and Password. This process requires the mailing of an activation code to you, after you have registered. The mailing takes approximately five business days to receive (15 days if mailed to an address outside Canada and the United States).

## Representatives

While you are staying outside of Canada, you can authorize us to give information on your tax matters to a representative, such as your spouse or common-law partner, tax preparer, or accountant, by completing and signing Form T1013, *Authorizing or Cancelling a Representative* (or a letter containing the same information).

## **Your provincial or territorial health-care coverage**

**B**efore you head south, don't forget to check that your provincial or territorial health-care coverage will continue during your stay in the United States.

Also, you may find that your province or territory now limits payment for health-care treatment in the U.S., and you may want to get supplementary health-care coverage.

For more information, contact the ministry responsible for health care in your province or territory. See the provincial or territorial government listings in your Canadian telephone book for the address and telephone number of your provincial or territorial ministry of health office.

## How U.S. tax laws apply

**A**s a Canadian resident who spends part of the year in the U.S., you are considered either a **resident alien** or a **non-resident alien** of the U.S. for tax purposes.

Resident aliens are generally taxed in the U.S. on income from all sources worldwide, and non-resident aliens are generally taxed in the U.S. only on income from U.S. sources. Therefore, it is important for you to determine if you are a resident alien or a non-resident alien.

### Are you a resident alien?

You are considered a resident alien if you meet the substantial presence test.

- If you were in the U.S. for 183 days or more in 2005, you meet the substantial presence test. If this is your situation, you are considered a **resident alien** of the U.S. Although the comments in this section and the following section do not apply to you, you should read “Residence under the treaty” and “Do you have to file a U.S. tax return?” on page 16.
- If you were in the U.S. for less than 31 days in 2005, you do not meet the substantial presence test. If this is your situation, you are considered a **non-resident alien** of the U.S. Although this section does not apply to you, you should read “Do you have to file a U.S. tax return?” on page 16.
- If you were in the U.S. for 31 to 182 days in 2005, you may meet the substantial presence test.

### What is the substantial presence test?

This test uses the number of days you were in the U.S. during a three-year period (the current and the two previous years) to determine if you are a resident alien or a non-resident alien.

To determine whether you meet the substantial presence test for 2005, calculate the number of days you were present in the U.S. during 2005, 2004, and 2003. The days do not have to be consecutive, and you are treated as being present in the U.S. on any day you were there for part or all of the day. Each day:

- in 2005 counts as a full day;
- in 2004 counts as one-third of a day; and
- in 2003 counts as one-sixth of a day.

If your total is **at least 183 days**, you have met the substantial presence test and you are considered a resident alien for 2005. If this is your situation, see “Are you a non-resident alien?” on page 13 for more information.

If your total is **less than 183 days**, you are considered a non-resident alien for 2005. If this is your situation, see “Do you have to file a U.S. tax return?” on page 16.

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### Example

Florence and Henry are residents of Canada and own a trailer home in Florida, where they spend each winter. Although they have no U.S.-source income, they need to determine their U.S. residency status. To do this, they have to determine how many days they were in the U.S. during 2005, 2004, and 2003.

During 2005, they were in the U.S. from January 1 to April 11, and from November 13 to December 31 (**150 days**).

During 2004, they were in the U.S. from January 1 to March 30, and from November 14 to December 31 (**138 days**).

During 2003, they were in the U.S. from January 1 to April 5, and from November 1 to December 31 (**156 days**).

Each day they were in the U.S. during 2005 counts as a full day (**150**). Each day they were in the U.S. during 2004 counts as one-third of a day ( $138 \times 1/3 = 46$ ). Each day they were in the U.S. during 2003 counts as one-sixth of a day ( $156 \times 1/6 = 26$ ).

They add the subtotals:  $150 + 46 + 26 = 222$ . Since this total is at least 183 days during the three-year period, they meet the substantial presence test, and they are considered resident aliens by the U.S. for 2005.

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For more information on this subject, see Chapter 1 of Internal Revenue Service (IRS) Publication 519, *U.S. Tax Guide for Aliens*.

## Are you a non-resident alien?

You are a non-resident alien if you **do not** meet the substantial presence test. If you have determined that you are a non-resident alien, read “Do you have to file a U.S. tax return?” on page 16.

If you have determined that you are a resident alien because you meet the substantial presence test, you can be considered a non-resident alien if:

- you were present in the U.S. for less than 183 days in 2005;
- your **tax home** is in Canada; and
- you had a **closer connection** to Canada than to the U.S. during 2005.

## What is a tax home?

If you are employed or self-employed, your tax home is the location of your principal place of business or employment, regardless of where you maintain your family home.

If you are not employed or self-employed, your tax home is where you regularly live. It can be a house, an apartment, or a furnished room, and you can rent or own it. It must have been available to you continuously and at all times throughout 2005, and not just for short stays during the year.

## **How do you determine a closer connection to Canada?**

You are considered to have a closer connection to Canada than to the U.S. if you maintain more significant ties to Canada. Some important ties include the location of the following:

- your permanent home and business activities;
- your family;
- personal belongings, such as cars, furniture, clothing, and jewellery;
- social, political, cultural, or religious organizations to which you belong;
- the jurisdiction where you vote; and
- the jurisdiction where you hold a driver's licence.

If you have applied to the U.S. Citizenship and Immigration Services for Lawful Permanent Resident status in the U.S. (i.e., applied for a "green card"), or you have been granted permanent residency status (i.e., granted a "green card"), you will not be eligible to claim the closer connection exception.

## **How do you advise the IRS about your closer connection to Canada?**

You have to file IRS Form 8840, *Closer Connection Exception Statement for Aliens*, to advise the IRS that your tax home is in Canada and that you maintained more significant ties in Canada than in the U.S. during 2005. We have included a copy of the form in the middle of this pamphlet.

If you have to file a U.S. income tax return for 2005, attach Form 8840 to it. If you do not have to file a return, send Form 8840 by **June 15, 2006**, to:

Internal Revenue Service Center  
Philadelphia PA 19255  
USA

Each individual claiming the closer connection exception has to file Form 8840. Therefore, if you have a spouse and children, each of them must file Form 8840 to claim the exception.

**Note**

If you do not file Form 8840 by June 15, 2006, you will not be eligible to claim the closer connection to Canada, and you will be considered a resident alien. However, if you tried to comply with this filing requirement but were unable to do so for a valid reason, attach an explanation to Form 8840 when you file it.

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**Example**

Florence and Henry have determined that they are resident aliens for 2005 because they meet the substantial presence test. However, they file Canadian returns as residents of Canada, and their family, belongings, and permanent home are in Canada. Also, they maintain social and religious ties in their home town in Canada.

Since Florence and Henry have closer ties to Canada than to the U.S., **and** they were present in the U.S. for less than 183 days during 2005, they may be considered non-residents of the U.S. under the closer connection exception.

Florence and Henry each have to submit Form 8840 by June 15, 2006, to advise the IRS of their closer connection to Canada, or they will not be eligible for the exception. If they do not file on time, they may be subject to U.S. income tax on their worldwide income.

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Each year, you have to determine if you are a resident alien or a non-resident alien. And each year, if you are a resident alien with closer ties to Canada than to the U.S., you have to file a new Form 8840.

## **Residence under the treaty**

If you are a resident alien because you met the substantial presence test and you cannot claim the closer connection exception, you may be able to determine your residency status under Article IV of the *Canada-United States Income Tax Convention*.

You may be treated as a non-resident alien under Article IV, for the purposes of calculating your U.S. income tax liability, if you meet the following conditions:

- you are considered a resident of both the U.S. and Canada under each country's tax laws (i.e., you are a Canadian resident and a U.S. resident alien); and
- your permanent home is in Canada.

If you also have a permanent home in the U.S., you may be treated as a non-resident alien if your personal and economic ties are closer to Canada than to the U.S.

For more information on this subject, see Chapter 9 of Publication 519, *U.S. Tax Guide for Aliens*. If you are claiming to be a resident of Canada under Article IV of the *Canada-United States Income Tax Convention*, you should complete and attach Form 8833, *Treaty-Based Return Position Disclosure Under Section 6614 or 7701(b)*, to your U.S. income tax return.

## **Do you have to file a U.S. tax return?**

### **Resident aliens**

Generally, resident aliens have to file a U.S. tax return to report worldwide income for the year if their annual gross income exceeds certain U.S. dollar amounts. For more information, see the section called "Filing Requirements" on Form 1040.



If you are a resident alien who cannot be considered a non-resident alien under Article IV of the *Canada-U.S. Income Tax Convention* or under the closer connection exception, you should file Form 1040 as a resident alien if you meet the filing requirements described in the Form 1040, *Instructions*.

## Non-resident aliens

If you are a non-resident alien, your income that is subject to U.S. income tax is divided into two categories:

- income that **is effectively connected** with a trade or business in the U.S. (including income from the sale or exchange of U.S. real property); and
- income that **is not effectively connected** with a trade or business in the U.S., but is from U.S. sources (including interest, dividends, rents, and annuities).

Effectively connected income, after allowable deductions, is taxed at the same rates that apply to U.S. citizens and residents. Income that is not effectively connected is taxed at 30% or a lower treaty rate.

As a non-resident alien, you have to file a U.S. tax return (Form 1040NR) by June 15, 2006, if:

- you have income that is effectively connected (even if you had no income in the tax year from that trade or business); or
- you have income that is not effectively connected and that did not have sufficient tax withheld at source.

If you have income that is not effectively connected and had too much tax withheld at source, you should file a U.S. tax return to claim a refund of the overpaid tax.

You have to file your U.S. return by April 15, 2006, if you were an employee in the U.S. and received wages subject to withholding.

For more information, get IRS Publication 519, *U.S. Tax Guide for Aliens*, or contact the IRS at the address and telephone number shown on page 23 of this pamphlet.

## **Did you receive U.S. gambling or lottery winnings?**

As a non-resident alien, you are subject to tax on gross U.S. gambling or lottery winnings at the rate of 30% at the time of winning. However, winnings from blackjack, baccarat, craps, roulette, and Big-6 wheel are exempt from tax.

If you received tax-exempt winnings, or if the correct tax was collected at the time of winning, you do not have to file a U.S. tax return if this is your only U.S. income.

Under the *Canada-U.S. Income Tax Convention*, you can claim your U.S. gambling losses up to the amount of your U.S. gambling winnings for the year using the same rules that apply to U.S. citizens and residents. To claim a refund of taxes withheld from gambling winnings, you must file Form 1040NR, *U.S. Nonresident Alien Income Tax Return*.

Since proceeds from blackjack, baccarat, craps, roulette, and Big-6 wheel are exempt from tax, you cannot claim any wagering losses you incur from these games. Be sure to keep an accurate record of your U.S. gambling losses and winnings.

## **Do you own U.S. property?**

If you own U.S. property, such as a condominium or house, you should be aware of the tax consequences of renting out or selling U.S. real estate.

## **Did you receive rental income from this property?**

As a non-resident alien, you are subject to U.S. income tax on rental income you receive from U.S. real property. You are considered to have received the income from a U.S. source, even if it was paid to you while you were in Canada. Rental income is **not** effectively connected with the conduct of a U.S. trade or business and, as such, is subject to a 30% tax on the gross income, with no expenses or deductions allowed.

However, under the *Internal Revenue Code*, you can elect to treat rental income as income that is effectively connected with the conduct of a U.S. trade or business. If you make this election, you are taxed on the net income. You can claim expenses related to owning and operating the rental property during the rental period, including a mandatory depreciation charge.

To make this election, attach a letter to Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, stating that you are making the election. Include the following information:

- the location of all your real property in the U.S.;
- the extent of your ownership in the property;
- a description of any major improvements to the property; and
- a list of any previous taxable years for which you made an election, or revocation, to treat U.S. real property income as effectively connected with a U.S. trade or business.

For more information on this election, please see IRS Publication 519, *Tax Guide for Aliens*, under the section called “Income from Real Property.”

For information on rental income and expenses, get IRS Publication 527, *Residential Rental Property (Including Rental of Vacation Homes)*.

If you have not made an election to treat your U.S. rental property income as effectively connected with a U.S. trade or business, then tenants or management agents (withholding agents) have to withhold a 30% non-resident tax from the gross rent and send it to the IRS using Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and Form 1042-S, *Foreign Persons’ U.S. Source Income Subject to Withholding*.

If you want to be exempt from the 30% non-resident withholding tax and are making the election to treat the U.S. rental properties as effectively connected with a U.S. trade or business, then you have to give the tenant or management agent Form W-8ECI, *Foreign Person’s Claim of Income Effectively Connected with the Conduct of a Trade or Business in the United States*.

For more information on U.S. withholding taxes, get IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

## **Did you dispose of U.S. real estate?**

As a non-resident alien, gains or losses you have from disposing of U.S. real property interests are considered to be effectively connected with a U.S. trade or business. If you sell or otherwise dispose of U.S. real estate, the purchaser, or his or her agent, is generally required to withhold 10% of the gross sale price at the point of sale. However, there are exceptions to this rule. For more information, see the section called “U.S. Real Property Interest” in IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

You then have to file Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, and the required schedules, to report the gain or loss.

If you own the real property with another person such as your spouse, each of you has to file a Form 1040NR.

Stock in a U.S. corporation or an interest in a partnership may be treated the same as real estate if the corporation owns a certain amount of U.S. real estate or if the partnership owns U.S. real estate.

For more information on gains and losses from the sale of U.S. real property, see the section called “Real Property Gain or Loss” in IRS Publication 519, *U.S. Tax Guide for Aliens*.

## **U.S. estate tax for non-resident aliens**

The U.S. imposes an estate tax on the transfer of a deceased person’s taxable estate. The taxable estate of a Canadian non-resident alien includes the following assets located in the U.S.:

- real estate and tangible personal property;
- stock in a U.S. corporation;

- debt issued by, or enforceable against, a U.S. entity (but most corporate debt instruments issued after 1984 are exempt from U.S. estate tax); and
- interest in a partnership, if the partnership's principal place of business is in the U.S.

The U.S. estate tax is based on the fair market value of the asset on the date of death, so there is no impact from a profit or loss because of a deemed disposition on the date of death.

Non-resident aliens cannot claim foreign tax credits on a U.S. estate tax return for deemed-disposition capital gains income taxes paid to Canada.

For the transfer of a decedent's U.S. assets, the IRS requires Form 706NA, *U.S. Estate (and Generation-Skipping Transfer) Tax Return*.

The *Canada-U.S. Income Tax Convention* provides significant changes to the U.S. estate tax provisions if you own U.S. property. These provisions are retroactive to November 10, 1988.

For more information, get Form 706NA and instructions from the IRS. You will find the address and telephone numbers of the IRS on page 23.

## **Individual Taxpayer Identification Number**

If you are a non-resident alien who has to file a U.S. tax return, you must have a taxpayer identification number. Generally, this is a Social Security Number from the United States. If you were ever issued a Social Security Number, you should use it. You must not use your Canadian social insurance number.

A non-resident alien who does not have a taxpayer identification number must apply for one. Generally, non-resident aliens are not eligible to apply for Social Security Numbers unless they have been authorized to be employed in the United States. If you are ineligible to apply for a U.S. Social Security Number, then you must apply for an IRS Individual Taxpayer Identification Number (ITIN).

If you were issued a U.S. temporary identification number by the IRS for a tax year before 1996, you can no longer use that temporary number and must apply for an ITIN. ITINs are intended for tax use only. They have no effect on being allowed to work or live in the U.S.

Use IRS Form W-7, *Application for IRS Individual Taxpayer Identification Number*, to apply for an ITIN. Under new procedures which went into effect in December 2003, your Form W-7 must be attached to a U.S. tax return.

## **State and local taxes**

You may be required to file a state or local income tax return for the state or city you were in while visiting the United States. Different states and cities have different filing requirements. For more information, contact the state or city authorities where you stayed.

## Need more information?

While you are in Canada, if you need more information about U.S. tax laws or tax-filing procedures, write to:

Internal Revenue Service  
P.O. Box 920  
Bensalem PA 19020  
USA

You can also contact the IRS office in Pennsylvania by telephone at (215) 516-2000.

If you want to order forms or publications, please write to:

Internal Revenue Service  
National Distribution Center  
P.O. Box 8901  
Bloomington, IL 61702-8901  
USA

If you are in the U.S., contact the IRS office in your area. A list of local IRS offices may be found on the IRS Web site at [www.irs.gov/localcontacts/index.html](http://www.irs.gov/localcontacts/index.html).

You may also get forms, publications, and tax information by visiting the IRS Web site at [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html).

You can find U.S. tax information for foreign nationals at [www.irs.gov/businesses/small/international/index.html](http://www.irs.gov/businesses/small/international/index.html).

# International Tax Services Office

Canada Revenue Agency  
2204 Walkley Road  
Ottawa ON K1A 1A8  
CANADA

## Regular hours of service

Monday to Friday (holidays excluded)  
8:15 a.m. to 5:00 p.m. (Eastern Time)

## Extended hours of telephone service

From mid-February through the end of April  
Monday to Thursday (holidays excluded)  
8:15 a.m. to 9:00 p.m. (Eastern Time)

Calls from Canada and the U.S. .... 1-800-267-5177  
Problem Resolution Program ..... (613) 952-3502 / 1-800-661-4985  
Fax number ..... (613) 941-2505

The International Tax Services Office **only** handles Canadian income tax queries. If you have questions about your U.S. income tax affairs, please contact the IRS.

Think Recycling!



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