

U.S. bill to extend Canadian snowbirds' visa-free stays could pose tax, financial hurdles, experts warn

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A new bill in the U.S. appears to be a win for Canadian retirees who want to spend more time residing south of the border, but experts warn it doesn't address key tax and regulatory hurdles that come with longer stays.

The bipartisan Canadian Snowbird Act was introduced in the U.S. House of Representatives in late April. It proposes to extend how long Canadians aged 50 and older can spend in the U.S. without a visa – 240 days a year, up from 182 – so long as they own property in the U.S. or have a signed rental agreement for the duration of their stay.

While the bill has a brief mention that Canadians would retain their nonresident tax status, financial planners and lawyers say that would be harder to achieve in practice. Some also said it likely wouldn't override the new 30-day registration requirements required for all "aliens" 14 years or older – including Canadians – without a visa, unless otherwise exempted.

Darren Coleman, senior portfolio manager with Coleman Wealth at Raymond James Ltd. in Oakville, Ont., said the bill would be "extremely appealing" to many of his snowbird clients. But, he added, the real concern is avoiding U.S. taxes.

Currently, the U.S. levies taxes on non-citizens if they reside in the U.S. for a certain amount of time. To determine that, a test, called the "substantial presence test" uses a calculation based on a person's days spent in the U.S. over a three-year period. If the total surpasses 183 days, individuals may be considered U.S. tax residents – requiring them to file a U.S. tax return and potentially splitting tax dollars between both countries.

The bill does not explain how this longer stay period would interact with the substantial presence test or the Canada-U.S. tax treaty.

"I imagine that would take a massive overhaul of the process that's been in place for a long time," Mr. Coleman said. "There needs to be more meat on the bone for us to really be comfortable." The bill also says Canadians would not be permitted to work for U.S. employers or access public assistance programs.

A version of the Canadian Snowbird Act was passed in the U.S. Senate in 2013 but failed to make it in the House. Since then, similar bills have been introduced but have never succeeded.

Terry Ritchie, a senior director and private wealth manager with Cardinal Point Wealth Management ULC in Calgary, said such legislation has largely failed because they don't meaningfully address the tax complications. He said he believes the latest version of the bill will likely face the same fate.

Experts also warn that the measure doesn't appear to negate the recent U.S. rule requiring Canadians and other visitors without visas to register if they plan to stay in the U.S. for 30 days or longer. For Canadian snowbirds without visas who own or lease property in the U.S., they are still required to register in most cases.

"They are completely separate," said Eileen Martin, a partner at law firm Lippes Mathias in Buffalo. "People would still have to take into account those types of requirements even if they were allowed to stay longer."

Staying longer in the U.S. could also jeopardize access to provincial health coverage, said Rosanna Berardi, an immigration lawyer in Buffalo. For example, Ontario residents must spend at least 153 days out of a 12-month period in the province to be eligible for coverage.

Ms. Berardi, who said the details of the bill are "clear as mud," still sees it as the U.S. "extending the olive branch" to Canadians who have been spurning U.S. travel in response to the Trump administration's trade war and threats of annexation.

Canadian residents driving back from the U.S. in March declined nearly 32 per cent compared with the same month last year, according to Statistics Canada.

The Canadian Snowbird Act would likely help regions in the U.S. that depend on Canadian dollars and are feeling the pinch.

"Providing Canadians who own homes and property in the United States with extra time to visit and boost our economy will help revive Canadian tourism to the United States," said Elise Stefanik, a Republican Representative for an upstate New York district that borders Canada who co-introduced the bill, in a statement.