



**CANADIAN SNOWBIRD  
ASSOCIATION**

## Canadian Snowbird Association FAQs

*The information provided in this Canadian Snowbird Association FAQs fact sheet is accurate as of the time of printing. The content of this fact sheet is to be used for general information purposes only. The Canadian Snowbird Association (CSA) assumes no responsibility for the advice and information presented.*

### **IMMIGRATION**

#### **HOW LONG CAN I STAY IN THE UNITED STATES?**

- ➔ For tourism purposes, Canadian citizens are permitted to spend up to a maximum of *six months less a day* (182 days) in the United States in a **12-month period**. The 12-month period generally begins on your admission date to the United States and concludes one year later. For example, if you entered the U.S. on November 1<sup>st</sup> of 2017, then October 31<sup>st</sup> of 2018 would be your one year period. The decision to allow entry into the United States is made at the discretion of the U.S. immigration officer. For more detailed information, see page 17 of the *CSA Travel Information Guide*.

#### **DO I NEED TO INCLUDE SHORT-TERM TRIPS BACK TO CANADA OR ABROAD IN MY SIX MONTH ALLOTMENT?**

- ➔ If you are already present in the United States and you leave for Canada or take a cruise outside of the United States, for **less than 30 days**, and you return to the United States, your departure may be included in your 182 day total. The U.S. Customs and Border Protection officer **MAY** rule, at their discretion, that your absence was not of sufficient duration to “stop the clock.” The CSA’s recommendation is to err on the side of caution and to treat short trips back home or abroad that are less than 30 days in duration, as if you never departed the United States.

#### **DOES MY CANADIAN PASSPORT NEED TO BE VALID FOR SIX MONTHS BEYOND MY DEPARTURE DATE?**

- ➔ For most travellers to the United States, passports must be valid for six months beyond their departure date. **This does not apply to Canadian citizens** – passports only need to be valid for the duration of their trip. However, if you will be travelling abroad, you should verify passport requirements of your travel destination, as these will vary. Some countries may require you to have a passport which is valid for 3 or 6 months beyond your departure date.

#### **WHAT DOCUMENTATION SHOULD I TRAVEL WITH TO THE UNITED STATES?**

- ➔ Under U.S. immigration law, there is a presumption that every visitor visa applicant is arriving in the United States with the intent to be a permanent immigrant. It is therefore important for the traveller to overcome this presumption both verbally and with paper documentation. The CSA recommends that all travellers to the U.S. carry a “**border binder**” – a set of documents which prove your closer ties to Canada and your intention to visit the U.S. on a temporary basis. For example, utility bills, property tax notice, copy of latest 8840 (if applicable), credit card and bank statements. For a more detailed list, see page 24 of the *CSA Travel Information Guide*.

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## **AM I BEING RECORDED WITH VIDEO AND AUDIO EQUIPMENT AT THE BORDER?**

- Both the United States and Canada have the capability to record your actions and conversations at their respective border crossings. This is to ensure that immigration officials have a record of your interaction with customs officials. In Canada, it will be clearly posted at the border check point that this is occurring.

## **CAN CUSTOMS AGENTS SEARCH MY ELECTRONIC DEVICES?**

- Customs officials at both the United States and Canadian border inspection points have the right to examine your baggage and other possessions including devices such as laptops and smartphones. In both Canada and the United States, these activities may be conducted without a warrant. Customs officials have been granted broad powers of search and seizure at border crossings due to national security interests. If asked, you are required to provide your passwords to the customs official. Failure to do so may result in the seizure of your electronic device and denial of entry into the United States.

## **TAXATION**

### **WHAT IS IRS FORM 8840? DO I NEED TO FILE IT?**

- Under the *Internal Revenue Code*, Canadian and other foreign visitors to the United States will either be treated as resident aliens or non-resident aliens for tax purposes. Resident aliens of the U.S. are treated similarly to U.S. citizens in that they are taxed on their worldwide income. If a Canadian traveller typically spends **four months or more** in the United States each calendar year, they may be deemed a **resident alien** for tax purposes.
- In order to be treated as a non-resident alien, and avoid U.S. taxation, Canadian snowbirds need to file **IRS Form 8840 – Closer Connection Exception Statement for Aliens** annually (one form per person) by **June 15th**. The CSA recommends that travellers **make a copy** of their 8840 Form and include it in their border binder as further evidence of their closer residential ties with Canada. For more detailed information, see page 52 of the *CSA Travel Information Guide*.
- If you do not timely file Form 8840, you will not be eligible to claim the closer connection exception and may be treated as a U.S. resident. You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

### **ARE DAYS BACK IN CANADA OR ABROAD INCLUDED ON IRS FORM 8840?**

- **No**. While short trips back to Canada or abroad **may** be included in your six month allotment for immigration purposes, from a tax perspective only days of physical presence in the United States are counted.

### **WHAT IS IRS FORM W8-BEN? DO I NEED TO FILE IT?**

- If you have a bank account with a financial institution in the U.S. **that earns interest on deposits**, then you should complete IRS Form W8-BEN (Certificate of Foreign Status) with your U.S. financial institution to avoid possibly having 30% of any interest earned on your deposits withheld and sent to the IRS. Additionally, the W8-BEN form ensures that you are registered as a

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non-resident of the United States with the financial institution or credit union. Unlike the 8840 form that is sent directly to the IRS each year, the W8-BEN form is kept on file by the financial institution for IRS audit purposes and is valid for up to **three years**.

### WHAT HAPPENS WHEN I SELL U.S.-BASED REAL PROPERTY?

- ➔ If your vacation home is located in the United States, generally a withholding amount of 15% of the gross sale price is payable under the *Foreign Investment in Real Property Tax Act, 1980* (FIRPTA). However, there are exceptions to this 15% withholding rule. For example, if the selling price of your U.S.-based property is less than \$300,000 USD **and** the purchaser or their family member has definite plans to reside at the property for at least one half of the time that the property is in use during each of the next two years following the sale, withholding under FIRPTA does not apply.
- ➔ In addition, the seller must report the sale of real property interests by filing a U.S. federal tax form 1040NR (if there is a gain realized on the sale of the property, you will need to pay U.S. tax). In order to submit a U.S. tax return, you must have an Individual Taxpayer Identification Number (ITIN). This number is obtained by filing IRS Form W-7. You will also need documentation verifying your identity to accompany IRS Form W-7, such as a certified true copy of your Canadian passport which can be obtained directly from Passport Canada.

### CAN I RENT OUT MY U.S. VACATION PROPERTY?

- ➔ Generally, if a Canadian resident receives rental income from real property based in the United States, he or she is subject to a non-resident withholding tax of 30% of the gross rental income. In this case, the tenant or management agent has to withhold the 30% non-resident tax from the gross rent and send it to the Internal Revenue Service using Form 1042 *Annual Withholding Tax Return for U.S. Source Income of Foreign Person's* and IRS Form 1042-S *Foreign Person's U.S. Source Income Subject to Withholding*. Unlike withholding taxes on interest and dividends, this tax is not reduced by the Canada/U.S. tax treaty.
- ➔ One way to possibly avoid the 30% gross withholding tax is to file a U.S. tax return and elect to pay tax on net rental income. Under the *U.S. 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. In this case, you may be eligible to receive a refund for any taxes withheld, to the extent of the withholding amount exceeds the tax payable.
- ➔ If you decide to make the election, to avoid the tenant or management agent from making the 30% withholding, you must provide the tenant or agent with **IRS Form W-8ECI *Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States***. For more information on this election, refer to IRS publication 519 Tax Guide for Aliens under the section entitled "Income from Real Property."
- ➔ Other issues to consider include determining whether association or park by-laws and regulations permit renting of units, home insurance coverage, state income taxes which exist in states such as Arizona and California, state sales taxes, tourist development taxes and Canadian income tax.

## **CANADIAN BENEFITS AND RESIDENCY REQUIREMENTS**

### **HOW LONG CAN I BE AWAY FROM MY PROVINCE/TERRITORY AND STILL MAINTAIN MY HEALTH BENEFITS?**

- ➔ From a health coverage perspective, each province and territory has set out residency requirements which residents must meet in order to remain eligible for continuous health coverage. Due to the advocacy work of the CSA, most jurisdictions allow residents to be absent for up to **seven months or 212 days** (in either a calendar year **OR** a 12-month period). Currently, PEI and Québec are the only provinces which have a **six month** residency rule. Further, many provinces also have policies which allow travellers to extend their benefits beyond the six or seven months. Please refer to the CSA's *Canadian Traveller's Report Card* for more detailed information.

### **HOW LONG CAN I BE OUTSIDE OF CANADA WITHOUT IMPACTING MY OLD AGE SECURITY (OAS)?**

- ➔ There are no residency requirements relating to the continued payment of OAS as long as the individual has lived in Canada for **20 years past the age of 18**. If this is not the case, members should contact Service Canada (**1-800-277-9914**). On the other hand, the **Guaranteed Income Supplement** (GIS) will be suspended if a recipient is outside of Canada for more than six months.

## **MISCELLANEOUS QUESTIONS**

### **HOW MUCH MONEY CAN I TAKE ACROSS THE CANADA/U.S. BORDER?**

- ➔ It is important to remember that, under the anti-terrorism and money-laundering laws of most countries, including Canada and the United States, you cannot take \$10,000.00 CAD or more (in the case of Canada) or \$10,000 USD or more (in the case of the United States) casually into or out of a country without reporting this to both customs services. Failure to report, even if you are taking or bringing back the money for a legitimate reason, could result in it being seized.
- ➔ If you are leaving or entering Canada with \$10,000 CAD or more you must complete CBSA Form E677 *Cross-Border Currency or Monetary Instruments Report – Individual*. If you are carrying \$10,000 CAD across the border for someone else, you must complete CBSA Form E667 *Cross-Border Currency or Monetary Instruments Report – General*. Additionally, you must also complete FinCEN 105 *Report of International Transportation of Currency and Monetary Instruments* and submit it to U.S. Customs and Border Protection.

### **CAN I VOLUNTEER OR WORK IN THE UNITED STATES?**

- ➔ The *Immigration and Nationality Act* (INA) establishes the types of visas available for travel to the United States and what conditions must be met. When Canadian snowbirds are permitted entry to the United States, they travel under a visitor visa status known as B-2. Under this visa classification, individuals may engage in the following activities:
  - tourism
  - vacation (holiday)
  - visit with friends or relatives

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- medical treatment
  - participation in social events hosted by fraternal, social, or service organizations
  - participation by amateurs in musical, sports, or similar events or contests, if not being paid for participating
  - enrolment in a short recreational course of study, not for credit toward a degree (for example, a two-day cooking class while on vacation)
- ➔ Admitted travellers are permitted to perform volunteer community service provided it truly is “volunteer” – such as working in a hospital, community recreation centre or place of worship. There can be no pay or compensation received other than perhaps free refreshments/meal and/or complimentary parking while performing the service. Entering the U.S. as a tourist-class visitor without a proper U.S. work permit does not permit any form of paid work, regardless if payment is in the form of cash, cheque, or “in consideration” of some benefit which has a monetary value.

### **ARE MY TRAVEL MEDICAL INSURANCE PREMIUMS DEDUCTIBLE?**

- ➔ **Yes.** The premiums you pay for supplementary travel medical insurance are tax deductible in Canada as a medical expense under line 330 of your tax return.

### **CAN I LEAVE MY CANADIAN VEHICLE IN THE U.S. ON A FULL-TIME BASIS?**

- ➔ **No.** U.S. Federal policy allows foreign registered vehicles to be present in the United States for up to 12 months; beyond this the vehicle must be officially imported or exit the country. Further, leaving a vehicle in a foreign jurisdiction may void the auto insurance policy. Please see page 42 of the *CSA Travel Information Guide* for more details related to the importation process.

### **CAN THE CSA ASSIST ME WITH ANY CROSS-BORDER LEGAL QUESTIONS I MAY HAVE?**

- ➔ As part of your membership in the Canadian Snowbird Association, you may contact – free of charge – the CSA General Counsel regarding cross-border legal matters. To obtain the contact information for the CSA General Counsel, please contact the CSA head office at **1-800-265-3200**.

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## **CONTACTS**

### Canadian Snowbird Association

Tel. **1-800-265-3200**

### U.S. Customs and Border Protection (U.S. CBP)

Tel. **(202) 325-8000**

### Internal Revenue Service (IRS)

Tel. **(267) 941-1000**

### U.S. Citizenship and Immigration Services (USCIS)

Tel. **1-800-375-5283**

### Canada Border Services Agency

English Tel. **1-800-461-9999**

French Tel. **1-800-959-2036**

### Canada Revenue Agency

English Tel. **1-800-959-8281**

French Tel. **1-800-387-1194**