

THE BORDER GUIDE

THE ULTIMATE GUIDE TO LIVING, WORKING,
AND INVESTING ACROSS THE BORDER

Robert Keats, CFP® (US), CFP™ (CDA), RFP (CDA), MSFP

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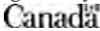
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Notice

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*This book is dedicated to my late father and mother,
Gordon Keats (1922–1992) and Anne Keats (1924–2006).
May they rest in peace with our heavenly Father.
Dad and Mom, I miss you.*

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The research required to prepare any book of this scope is enormous, even under ideal circumstances. Taking highly technical topics such as immigration, tax planning, and estate planning between Canada and the United States, and presenting them in a format that is both logical and readable, have been formidable tasks.

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Introduction

Because our social and cultural institutions are so similar, many Americans and Canadians feel completely at home on either side of our two nations' border. Many incorrectly assume that the laws governing investment, taxation, and immigration are the same as well. Unfortunately, this can lead to some unpleasant surprises, particularly when conducting basic financial transactions such as buying or selling real estate. The US Mexico Canada Agreement (USMCA), the demographic push of baby boomers adopting a cross-border lifestyle or retiring in large numbers to the US Sunbelt, the affordable US real estate, and the relatively lower cost of living and income taxes in the US have only served to fuel the fires of cross-border commerce. Many Canadians migrate to the Sunbelt seeking respite from harsh winters, and many Americans migrate to Canada for the pleasant summers.

The Border Guide is specifically written for both Canadians and Americans, regardless of which kind of cross-border lifestyle they are choosing to live across the 49th parallel. This, the 12th edition of *The Border Guide*, has been updated and rewritten to allow readers to live the most amazing cross-border lifestyle possible. It is a particularly great resource for Canadians who are considering some form of permanent or seasonal residency in the United States, or who have resided there for employment or other reasons and are contemplating returning to Canada. It will also prove extremely useful for US citizens living in, investing in, or moving to Canada, or those who are married to Canadians. It will be of particular value to Canadians who intend to invest or do business in the United States, even if their financial curiosity is limited to an occasional shopping trip or vacation. Whatever your interest, the information contained in these pages will help you to transact your cross-border business affairs with competence and confidence. It is the only step-by-step guide for people who want to understand and take advantage of American and Canadian tax, financial, and medical institutions. It will

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also show you how to avoid many of the common pitfalls of having assets and spending extended periods of time in both countries.

Chapters 1 through 7 deal primarily with Canadians visiting and investing in the US, and Chapters 8 to 11 address Canadians moving and immigrating to the US. Although many of the issues discussed in these chapters are not relevant to Americans immigrating to or investing in Canada, Americans face many similar cross-border issues when they move north. I therefore recommend that American readers review these chapters, paying particular attention to the concerns of US citizens and green card holders living in Canada, and the differences in both income and estate taxation between Canada and the United States. Chapters 10 and 11 discuss the residency status of new or returning immigrants to Canada and certain Canadian tax regulations that apply to Americans who invest in Canada. To get the full picture, both of these chapters should be read by Americans moving to Canada for the first time. Chapters 14 to 16 address investment, social benefits, medical coverage, estate tax, and issues relating to small business ownership for cross-border residents. Check also the download kit, which includes detailed information on the role of a cross-border financial planning professional in helping you get the most benefits from living or investing across the Canada/US border.

To prevent this book from becoming a dry technical manual that is factually accurate but functionally useless, I have presented my ideas in a nontechnical fashion. Certain concepts have been simplified for readability. Sound professional advice is recommended for applying any of the ideas or techniques detailed in this guide. Please be aware that tax and other rules are constantly changing, which can make some of this information outdated the minute the book reaches the shelves. Please rely on your advisors as well as the resources mentioned in the download kit at www.self-counsel.com/updates/borderguide/16kit.htm to keep current on all of these issues as well as to check for possible future updates to *The Border Guide*.

At the end of many of the chapters I have included some typical questions from readers, along with my responses, to illustrate and broaden the concepts presented. The majority of these questions were posed by readers of my numerous newspaper and magazine columns and articles, or by readers of a previous edition of *The Border Guide*. Most were looking for advice relating to their own specific problems or situations, but I hope that my responses will help to answer your questions as well.

The Swinging Door

1

CREATING THE MOST AMAZING
CROSS-BORDER LIFESTYLE

The ideal cross-border lifestyle is best portrayed as your own virtual private swinging door on the Canada/US border. The door allows you to go through in either direction whenever you want, for whatever time period you want, free from worry of either Canadian or US immigration or tax authorities. Plus, this swinging door would give you fully paid access to both US and Canadian medical systems for the rest of your life.

This book will endeavor to get each and every reader as close to his or her own private swinging door as possible under individual circumstances.

When I was a young boy living in Hudson Bay, in northern Saskatchewan, we had a swinging door between the kitchen and dining room. I remember how much fun it was as a five- or six-year-old to be able to run through that door in either direction, chasing my brothers at full speed and not having to worry about opening the door. We did have to be careful to make sure nobody was coming through the door in the opposite direction, but it was a great convenience that made our small house with its two-hole outhouse (a very cold proposition in the long Saskatchewan winters) a little bit more livable. The swinging door and its ease of movement back and forth stuck in my mind and helped me create a system to assist the many Canadians and Americans who enjoy a cross-border lifestyle and do not wish to encounter the hassles of worrying about immigration issues, tax issues, medical insurance concerns, and the amount of time they can spend in each other's countries.

In the chapters of this book I will cover all the necessary details that one needs to put together to construct a virtual swinging door that will allow an amazing, worry-free lifestyle. *The Border Guide* will provide you the answers for the new ability to move back and forth between Canada and the US while eliminating or minimizing potential obstacles, so you can enjoy the cross-border lifestyle to its fullest.

CHOOSE YOUR CROSS-BORDER LIFESTYLE

In my many years' experience dealing with individuals and couples attempting to live a cross-border lifestyle, I have found that there are three basic categories of cross-border lifestyles that people fall into or desire:

- **The Vacationer:** The casual, short-term visitors looking to get a break, such as Canadians wanting a break from Canadian winters by using their vacation time to enjoy the warmth of the Hawaiian beaches or some other US Sunbelt state. Generally, these individuals are still working full time and often bring children with them; they may or may not return to the same area every year and likely have not yet purchased a residence in the US.
- **The Snowbird:** The regular, longer-term visitors who wish to spend the majority of the winter in the US Sunbelt and limit their stay to less than six months per calendar year. They are generally retired or semi-retired with the flexibility to be away from their home bases for long periods of time, and to return periodically for family events during the winter. The majority of these people would have either an RV of some form, a long-term lease, or own a US permanent vacation property in their Sunbelt area of choice.
- **The Settler:** Those committed to settling into a full-time cross-border lifestyle for the long haul, including tax relief from high Canadian income taxes. They live in the US the majority of the time and decide that there is no reason to go back to Canada, other than for short visits on special occasions and/or for a few months during the summer. Settlers are generally retired or have their businesses running at a level where they are no longer required to work day-to-day. They frequently purchase a substantial US residence and downsize or sell their Canadian homes. They will normally receive a large tax advantage by changing their official tax residence from Canada to the US. They obtain some form of year-round immigration status in the US, for example, a green card, which is the US legal permanent residence status.

Refer to Chapter 9 for more details with respect to income tax savings when adopting a Settler lifestyle in the US.

Regardless of which of the three categories you fall into, being prepared by building your own virtual Swinging Door can eliminate any potential obstacles and create the most amazing cross-border lifestyle. By putting in place the private Swinging Door that will protect the cross-border lifestyle you choose you can avoid all the problems one hears

about visitors to the US or Canada who were not prepared and had their vacations ruined. Some have even been banned from visiting the US for a period of several years. I will refer to the three categories as described above throughout the book so please remember which category applies to your desired cross-border lifestyle in order for you to focus on the parts of the book that apply to the specific category that applies to you.

AN INTRODUCTION TO PERSONAL CROSS-BORDER FINANCIAL PLANNING

After many years of providing cross-border financial planning services, I have come to the conclusion that the US is the best tax haven for Canadians and is likely to remain so for the foreseeable future. The same tax advantages that are available to Canadians by going to a remote island in the middle of nowhere can be had by driving across the US border. Ninety percent of Canada's population is located within a few hours of the US border, so the United States is a very accessible tax haven. In addition, Canadians are familiar with US cities, modes of transportation, the primary language, and other cultural similarities.

The economic and tax environment of the US and Canada has grown in breadth and complexity over the past few decades; along with it, the need for comprehensive personal cross-border financial planning analysis. The intent of such planning is to capitalize on the most satisfactory mix of savings plans, insurance coverage, investment vehicles, tax strategies, retirement plans, and estate-planning techniques available in each country. These cross-border planning opportunities can reap great financial rewards for you and your heirs.

Cross-border financial planning analysis encompasses all the basic individual financial planning requirements of both Canada and the US in the areas of immigration, net worth, cash flow, risk management, retirement goals, taxation, estate planning, and investments. It analyzes each area according to your situation, then weighs options; completes timely currency conversions; factors in your immigration status; examines applicable tax treaty rules; and develops a road map for you to follow to achieve your financial goals with maximum income, safety, and tax savings.

One of the major difficulties inherent in cross-border financial planning is that the rules change depending on immigration status and on which direction the cross-border movement is going. For example, a Vacationer or Snowbird to the United States who marries a US resident dramatically alters his or her financial planning options, and new cross-border financial planning analysis becomes necessary in order to take

advantage of new opportunities and avoid any costly mistakes. In addition, performing a seemingly simple task (such as purchasing a home in the US) can affect a person's tax status with respect to both income tax and estate tax in the US. The effects are mostly positive if you understand what to do with this changing status and plan appropriately. A Vacationer or Snowbird from Canada has to follow different sets of tax and immigration rules than a Settler with a US visa or green card. Planning issues for each status category are discussed in detail in subsequent chapters.

THE FREQUENT TRAVELER STATUS

Most people are familiar with frequent flyer programs and frequent stay rewards programs. Those with the highest status in their programs get the best perks. To live the most amazing cross-border lifestyle, I have developed what I call frequent Canada/US border crossing program statuses to help readers of *The Border Guide* more easily understand what is necessary to get the most benefits. Here are the categories rated by the ease of crossing the 49th parallel anytime by any transportation mode:

- **Platinum:** Those that are dual US/Canadian citizens are in the highest category. They cannot be denied access from either country even if they have a criminal record. Individuals in this category can spend 365 days or 0 days annually and work in either country anytime they want for the rest of their lives. If they make the effort to get a NEXUS card (explained later in this chapter), I would consider them Platinum Plus.
- **Gold:** Canadian citizens with a US green card, which is legal permanent residence status in the US. Their status is similar to that of the Platinum travelers with the exception that there are restrictions on continuing to maintain a green card, such as continuing to maintain a US residence and following basic morals and laws by avoiding anything more serious than things like traffic tickets. Those in this category with a NEXUS card are Gold Plus.
- **Silver:** Canadians with a non-immigrant visa which allows multiple entries to the US along with the ability to live and work in the US for 365 days a year if they desire. In Chapter 8, I summarize these potential different non-immigrant visas, each with their own qualifications and expiration dates. Silver Plus are those at this level with a NEXUS card.
- **Bronze:** These are Canadians in the Vacationer or visitor category with no visa to remain in the US other than the standard six-month

visitor's arrangement between Canada and the US. Those with a NEXUS card are Bronze Plus.

The goal for some people will be to have the Platinum level of frequent traveler status as they can truly live totally amazing cross-border lifestyles without any hassles or concerns whatsoever with respect to immigration or border-crossing issues, unless they are importing or exporting goods. Those with the Settler lifestyle should generally fall into Platinum, Gold, and to a limited extent, the Silver frequent traveler status level so they can also have some extremely beneficial tax reduction opportunities, which I will cover later in the book.

HOW LONG CAN CANADIANS REMAIN IN THE US? IMPORTANT NEW RULES

There have been many new rules implemented over the last couple of years jointly by Canadian Border Services Agency (CBSA) and US Customs and Border Protection (CBP) that have greatly affected Canadians attempting to live the cross-border lifestyle. In fact, a lot of what you might have remembered in the past is no longer applicable and outright wrong; it might get you in trouble, or conversely new rules may create opportunities for better and smoother border crossings. This section of this chapter is critical in understanding the new rules to use them to your advantage.

CANADIANS DO NOT REQUIRE A VISA TO ENTER THE US

To provide the most accurate picture of what the immigration rules mean, with respect to who can enter the US and for how long, I have gone directly to the proverbial horse's mouth to provide two very significant quotes for Canadians traveling to the US. This should help Canadians focus on what really matters when crossing the border rather than worry about all of the rumors and confusing hype surrounding Canadians entering the US. The first quote is directly from the Canadian US embassy's website (ca.usembassy.gov, accessed January 2019): "Canadian citizens do not require a visa to enter the United States directly from Canada for the purposes of visiting or studying."

This statement could not be clearer or broken down to a more simple format but it is very important that Canadians understand that the US and Canada do have a special relationship to allow each other's citizens to enter the other's country easily and without formal paperwork other than the required passport or other authorized identification. The next quote is directly from the US Customs and Border Protection (CBP) website, addressed specifically to Canadians:

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“The burden of proof that the Canadian citizen is not an intended immigrant [plans to make the US their primary residence] is always on the applicant. There is no set period of time Canadians must wait to re-enter the US after the end of their stay, but if it appears to the CBP Officer that the person applying for entry is spending more time overall in the US than in Canada, it will be up to the traveler to prove to the officer that they are not de-facto US residents. One of the ways to do this is to demonstrate significant ties to their home country, including proof of employment, residency, etc.” (“Canadian Citizens/Residents/Landed Immigrants entering the U.S.”, cbp.gov, accessed January, 2019).

Regardless of what anybody tells you, whether it be the border officials themselves, friends, relatives, accountants, or attorneys, it is these two simple quotes that are the basis for understanding how to create your swinging door on the Canada-US border regardless of whether you are a Vacationer, Snowbird, or Settler. Using these two quotes along with the following summary of suggested recommendations will allow you smooth travels back and forth across the 49th parallel whenever you need to travel:

- Know the US visitor rule (generally never spend more than 6 months at a time in the US, or more time in the US than Canada in the previous 12 months). Settlers can ignore this rule.
- Subscribe to NEXUS, Global Entry, TSA Pre or similar trusted traveler programs and never breach the trust; work towards the Platinum Plus frequent border crossing status.
- Avoid the red flags of the border crossing (the red flags are covered later in this chapter).
- Know and follow any rules with respect to bringing goods across the border.
- Understand and follow any IRS income tax rules that may apply to you.
- Always travel with your Border Kit/proof of your status (see what should be included in your Border Kit later in this chapter).
- Ignore the rumor mill.

VISITOR RULES APPLIED

Starting in mid-2014, the United States Citizenship and Immigration Service through their Customs and Border Protection (CBP) personnel (the people you actually meet when you’re clearing customs to enter US), have started to implement new policies that affect Canadians. These

new procedures are important to understand, since ease of crossing the border is vital to that amazing cross-border lifestyle. Unfortunately, these rules are being implemented inconsistently and create substantial confusion. I will attempt to clarify some of the issues as much as possible but please keep in mind CBP is a large government organization that is very bureaucratic, and it is difficult to consistently get the correct information to act upon appropriately. Settlers can ignore this section as it deals strictly with those in the Visitor and Snowbird lifestyle categories.

The first point of confusion is how long a Canadian can stay in the US as a Vacationer or Snowbird. The rules as applied in the past have always been that a Canadian would get six months to visit the US from the date of entry into the country and although this is technically not changed I will explain a few ways that have made it appear as if it has changed. If the Canadian left the US and returned at a later date, the six month clock was reset to that current date of the entry, not at all affected by any previous border entry. Traditionally, Canadians did not have their passports stamped unless it was a simple date-of-entry type stamp and they were not required to have paper I-94 cards (an I-94 card is simply a small card or a dated passport stamp issued by USCIS Indicating a B-2 visitor/tourist visa has been granted, it is inserted into the passport of the visitor and it indicates the date of entry and the expiration of their visitor's time in the US). As noted earlier in this chapter Canadians do not require a visa to visit the US, so this attempt by the USCIS to require Canadians to have B-2 visitors visas and I-94 cards or date stamps indicates to me the struggle the US immigration people are having with dealing with the tradition of free travel between Canada and the US. This simply means more rules with less flexibility and a greater need for diligence on the part of Canadian Vacationers and Snowbirds to the US to build their own swinging doors to achieve as close to the Platinum level of cross-border travel status they can.

To provide a bit of necessary background information, all US visitors, other than Canadians, have needed to have an I-94 card in their passport as proof of their B-2 visitor visa, however the procedure was changed in May 2013 to an automatic electronic authorization for the I-94 combined with a simple B-2 visa passport stamp, included with the visa expiration date in the passport of the visitor. The typical visitor from one of the countries that has a visa waiver program with the US is only allowed a 90-day visa to visit the US before he or she is forced to leave or apply for an extension. This new procedure is only for those countries that are on a visa waiver program with the US which includes most European countries and other major democratic countries around the world.

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Canada, because of its special status with the US is technically not part of this visa waiver program and as noted above has a special relationship. The automatic I-94 authorizations for this new program for the visa waiver countries are created electronically from the passenger manifests from airlines and cruise lines submitted to USCIS in advance of the respective flight or cruise. What this has meant to Canadians, primarily flying to the US, is they are frequently getting this B-2 visa stamp in their passports with the infamous expiration date that tells them when they need to get out of the US.

This creates many concerns and brings up many questions. The first concern is that it is not consistently applied throughout all the ports of entry into the US or even amongst the US CBP personnel themselves. This policy, if it is applied at all, appears to be only at airports and seaports. Does this mean those crossing the border at the land points of entry are under a different set of rules? Not really, it just adds to the confusion. Consequently, it is difficult to advise people what to do since US CBP personnel seem to be confused themselves as to how to apply these new procedures to Canadians with their special 180-day visitor time limit. Another major concern is that what happens to a Canadian who has a date stamped B-2 visa in his or her passport who returns to Canada for a short period of time then returns to the US. Does he or she get a new stamp upon re-entry or is the date on the initial B-2 stamp in the passport still the governing date that the visitor needs to be concerned with in order to not overstay legal time in the US?

THE 30-DAY RULE

Those visitors to the US from the typical visa-waiver countries who get their automatic 90-day visitor's visas under this new electronic format with the B-2 visa stamp in their passport can leave the US and visit Canada or Mexico for up to 30 days without having to qualify for or apply for a new visitor's B-2 visa. However, the 30 days they are out of the US does not increase the length of the B-2 visa stamped in their passport. In other words they have a total of 90 days to visit the US and if they use 30 days of it to visit Canada or Mexico, that is up to them, but they do not get an additional 30 days in the US. Even though Canada is not part of this visa waiver program this 30-day rule applies to, in many circumstances, the US CBP border personnel are applying this rule to them at airports. Consequently, if a Canadian visitor were to return to Canada for, say, two weeks at Christmas, does he or she need to subtract two weeks from the total 6-month stay in the US or is he or she allowed to stay in the US 6 months out of the last 12? Would that change if he or she actually had

the B-2 visa stamp with expiration date in the passport? Similarly, what happens if the Canadian stays out of the US for 30 days at Christmastime and returns to the US; does he or she get a new 6-month authorization to stay in the US or how do the CBP personnel calculate the time he or she can stay in the US from their latest date of entry? Is this different whether the person flies or drives across the border? Unfortunately, the answer to all these questions is subjective and depends a great deal on the US CBP person you meet when you're entering the US. This person can range from being very pleasant and professional to being quite curt and outright nasty. Personnel could be very experienced or it could be their first day on the job, yet it is their demeanor and interpretation of the rules and the procedures that govern your experience crossing the border. They could stamp your passport, not stamp your passport, decide to allow you to stay 30 days, 90 days, 180 days, ban you from entering on that trip or for up to five years; whatever they determine based on their interpretation of the facts presented. By the power granted to them by the USCIS rules, they are the judge, jury, and executioner. Your recourse to their decision as to what they do or not do for you is very limited.

The Canadian Snowbird Association wrote to USCIS to attempt to clarify this 30-day rule and they got a letter saying that yes it does apply to Canadians. However, besides the CSA not asking the right questions in their letter to the USCIS, there is no explanation or backup to why it might apply to Canadians who do not even require a visa to visit the US. Nor does it make any sense for Canadians who live near the border and cross to the US for shopping or entertainment weekly or more often throughout the year. In addition, the rules are not applied consistently throughout the entire US port of entry CBP system; in fact, those that use a NEXUS card to enter and leave the US apparently never get this rule applied. I think asking the CBP whether this 30-day rule applies is like a Canadian writing to the CRA and asking them if the Canadian Income Tax Act applies to them; the answer is always going to be yes.

There is plenty of controversy and confusion with respect to how it is determined, as a Canadian visitor whether you have the legal right to visit the US for 180 days out of every 12 months, or 180 days from the date of last entry, and then how this is affected by the number of entries and exits back and forth during any given time period. It used to be fairly clear; six months from the date of your most recent entry. However, now with computers tracking you in and out of the US and airplane manifests being submitted to USCIS prior to your departure from Canada or when leaving the US after a visit, along with myriad new rules, it is less clear. Some CBP personnel look at your travel record and decide you have

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spent too much time in the US in the recent past and they decide to limit your stay on this visit to a certain fixed time such as 30 days, perhaps much less time than you were hoping to spend in the US on that particular visit. Yet, others will welcome you for another full six-month stay as a visitor without hesitation on the same exact facts. The question is how do you know the correct amount of time a visitor can spend? The answer is you don't, but you do have a lot of control over your experience. If you follow the recommendations in this book it will help you build that virtual swinging door that will make your travels back and forth across the US border much easier and with the results you desire.

We've covered a lot of ground and it gets very confusing so here is a summary of the key points.

SUMMARY OF THE FACTS

- Canadians and Americans have a special relationship that allows them easy access as visitors to each other's countries, a special visitor status.
- No paper visa or prior approval visa is required for Canadians to travel as visitors to the US for up to six months or 180 days at a time. You just go to the border and present yourself with proper identification and enter the US.
- A B-2 visa status is the *de facto* automatic status granted to Canadians who are Vacationers or Snowbirds to the US, or a B-1 visa for those conducting business in the US.
- The 30-day rule that applies to those visitors to the US from a visa waiver country when they want to leave the US to visit Canada or Mexico for up to 30 days does not apply to Canadians on the B-2 visitor status. However, certain CBP personnel have been known to apply this rule to Canadians so Canadian visitors to the US must be aware of it, be prepared to deal with it, and avoid circumstances where it could cause problems for them.
- For Canadians who do get their passports stamped by a CBP official with the B-2 visa (not just a normal entry date stamp), with the expiration date included, it is important that they respect that expiration date and have proof they were back in Canada on the date of expiration of the visa on the stamp in their passport.

Although the stamping of Canadian passports with the date that the Canadian visitor must exit the US is not consistently applied throughout

ports of entry to the US, it appears primarily in the Canadian airports that have US customs officials that are applying this procedure. The vehicle border crossings to the US still are not following this procedure at time of writing. No NEXUS travelers, according to my research, have yet ever had the 30-day rule apply to them.

Although there is no official rule as to how many 180-day visiting periods Canadians can start in the US by leaving and then re-entering, it is generally understood that they should spend less than 180 days out of every 365 rolling calendar days.

Canadian Border Services Agency (CBSA) and US Customs and Border Protection (CBP) can and do share information on a regular basis. More and more of this information is online and accessible to the customs officials at the border. In the fall of 2015 the Canadian federal government issued a statement that they were now going to use the information from tracking Canadians going back and forth across the border to reduce or eliminate certain benefits like Employment Insurance, certain tax credits, and qualification for Canadian Old Age Security. The government warns Canadians that they are using this information if you look at the fine print on the customs form that you complete when you enter Canada. Both the US and Canadian governments face challenging privacy violations by using this information so it may not ever actually be able to be used in the manner in which the governments would like.

Consequently, understand that both the CBSA and the CBP are getting better at this tracking so you can make the assumption that either now or in the future they will have every single time you have crossed the border in either direction on their computer systems exactly to the time, date, and mode of travel. All travelers can now go to the CBP website, (cbp.gov) under I-94 arrival/departure history, obtain a complete travel history each and every time they have crossed the Canada/US border in either direction for up to the past five years. However, please note, even after several years of allowing travelers to access these records the Canadian and US immigration information-sharing program has not been very accurate. Many travelers find the information unreliable and many entrances or exits to and from are missed entirely, especially land crossings in the more remote areas. It is always best to keep your own records as you could be denied entry to the US because of inaccurate history in your CBP records. The Canada Border Services Agency can also supply entrance and exit travel records but they are certainly not available online and must be applied for under the *Access to Information and Privacy Act* which takes about 30 days to complete.

EFFORTLESS BORDER CROSSINGS

Regardless of your category, the Vacationer, Snowbird, Settler, or even if you are a Business Traveler, these pointers will help you make your border crossings in either direction fast, smooth, and stress-free.

1. Enroll in any of the trusted traveler programs such as NEXUS, Global Entry, and CANPASS (NEXUS is recommended; currently you get a free registration for Global Entry when you are a NEXUS member). These programs are all pre-clearance for both customs and immigration and they prove to Canadian and US border professionals that you are a trusted traveler, and you do not need to be screened to the same level as the other 90 percent of the travelers trying to cross the border at the same time as you. These programs can be easily applied for online, they are relatively low cost, and they will save time because they allow you to bypass long lineups. Once you are on these programs it is extremely important that you keep your trusted traveler program abreast of any changes in address or other information such as a new passport number. You are required to have a perfect record with both Canadian and US customs and immigration to get on and maintain these programs as they are zero tolerance. I am a member of the NEXUS program and on a recent trip through the very busy Toronto Pearson Airport from Washington DC; it took less than ten minutes total time from leaving the aircraft to the time I was at the curb getting into my cab and I did not have to say one single word to any Canadian customs official; how smooth is that? This is certainly the Platinum Plus status, as other travelers on the same flight who did not have NEXUS probably spent 30 minutes or more in line at Canadian customs.
2. Do not attempt to travel on a passport that has fewer than six months to its expiration date. Canadian passports can now be renewed for up to 10 years at a time, I recommend you use this new option as it will save you money, hassles, and time.
3. Body language is extremely important; border professionals are trained to look for signs in a person's behavior to determine who to examine or question more closely. Act cool, confident, and professional at all times in any custom/immigration area.
4. When speaking to a customs professional, speak in a normal tone of voice, do not talk down to him or her, or have any anger or frustration in your voice. Answer questions without hesitation, simply and accurately. Rehearse mentally the answers to all of the

standard questions customs and immigration persons normally will ask such as: what is the purpose of your visit, what is the length of your visit, where will you be staying in the country?

5. Have any documents that may be requested by the border professional easily accessible and if you are bringing goods across the border that you purchased make sure you know exactly where those items are and the receipts for the purchase are.
6. Know the dollar limits of any amount of goods that applicable custom rules allow you to bring with you duty free, and be prepared to pay duty as required if you are over these limits, and don't try to hide or not declare any goods you have purchased.
7. Do not try to enter the US with any fruits, nuts, or meats of any kind including prepackaged ones.
8. Always carry a Border Kit to prove what you are saying when entering the country. Read about the Border Kit in this chapter.
9. Keep a travel log with you to track each time and mode of transportation that you crossed the border for at least the past 12 months or more and be able to produce it easily. It is also useful to back up this log with boarding passes or actual flight itineraries. If border computers are wrong or inaccurate, it is up to you to provide the proof needed to correct or dispute them; the respective governments will not do this voluntarily.
10. If traveling with a spouse, have one spouse do the talking and the other spouse do the document management or production as required. If you're traveling with children, either bribe them or threaten them within an inch of their life to say nothing to any border professional unless specifically addressed, and no fooling around or joking with brothers and sisters while waiting in line.
11. Smile and be pleasant, and bite your tongue, regardless of how nasty or unprofessional the customs or immigration official is being or how tired you are from a long flight.
12. If you are a business visitor going to be doing work in the US for your Canadian company, state so to the immigration professional at the inspection window, do not say you're coming for a vacation just because it is easier and you have done that many times before. Have a letter from the company (even if it is your own company) that states the purpose of your work in the US and the length of time you are likely to need to do your job, and confirm

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the fact that you will be paid only from the Canadian company while working in the US.

13. The long-time standard paper customs forms are rapidly becoming dinosaurs; most Canadian and US airports have automated passport control kiosks where you complete the customs questions on the kiosk screen, and there are now mobile passport control apps that you can download onto your smartphone and complete your customs clearance in advance of arriving at the border crossing inspection stations. Please note that if you have a Global entry/NEXUS trusted traveler program you no longer have to fill out forms as you answer the required questions on the trusted traveler kiosk terminal that scans your fingerprints.
14. When traveling with a spouse or companion with a different immigration status than you for the country you are entering it is normally best to go through customs and immigration separately or even take separate flights. For example, if you were traveling from Canada to the US with your spouse who is a US citizen and you are simply a visitor to the US it is normally best to travel separately or at the very least don't clear customs at the same time. See Red Flags when Crossing the Border later in this chapter.
15. If you are frequent traveler and make multiple entrances and return visits back and forth across the Canada/US border as a Canadian citizen, consider getting some form of immigration status with the US that allows multiple entries such as an investor visa, a green card, or even becoming a dual US citizen. Having one of these visas can elevate your cross-border travel status to as high as Platinum Plus. Getting visas, green cards, and becoming a dual citizen is covered in detail in Chapter 8.
16. When you are traveling to the US by vehicle, make sure the vehicle you are driving is registered to you or at least somebody who's traveling with you and that the vehicle is licensed in the province and the exact address at which you live. Clean out your trunk of items such as your hunting rifle, tools, marijuana or marijuana paraphernalia, and other items that may cause an inspecting officer to ask embarrassing questions. When in the US as a visitor from Canada, be very careful when you need to make a quick trip, for example, from Palm Springs to Vancouver and you fly to Seattle and rent a car to drive up to Vancouver and then try to return to the US in that same vehicle. See Red Flags when Crossing the Border later in this chapter.

17. Use modern technology to make your travel safer and easier. Use one of the many free applications for your smartphone or tablet or just basic secure Internet drop boxes (a secure place on the web where you can store or share personal documents) so that you can access important documents instantly while traveling. In these drop boxes, keep copies of your passports, visas, wills, powers of attorney, doctor/prescription phone numbers, and details of charge card information. Don't be technology deficient; if my 5-year-old grandson and my 95-year-old client can efficiently operate an iPad, anyone can learn. They are great devices, as easy to use as most remote controls.
18. Do not travel to the US on one-way tickets or tickets that you purchased for cash immediately before the flight is to leave. These are red flags as discussed later in this chapter.
19. Declare all monetary instruments or cash that totals more than \$10,000 in the currency of the country in which you're arriving; better still don't travel with that much cash or valuables/jewelry in your possession.
20. Be aware that many foreign-made (from a US-perspective) medications are not FDA-approved, and you cannot bring them into the US; check with a US pharmacist ahead of time if you are unsure. Even though marijuana is approved for medical and recreational use in Canada and in several US states, it is still illegal under US federal law and cannot be brought into the US even with a valid prescription. Also, when traveling to the US, bring only the amount of medication you'll need during the trip in its original container.
21. As noted in points 16 and 20 above, the fact that marijuana is now legal in Canada does not change how the US federal government views marijuana use, it is still a Class I drug along with cocaine or heroin, and a felony to use or distribute. There is sporadic enforcement in each of the 50 US states. However, at the border if you are entering the US you should never voluntarily admit to having used any form of cannabis, invested in cannabis businesses, or created a cannabis related business. Such an admission could have you banned from ever entering the US so this is still quite serious. CBP personnel are having a difficult time dealing with this Canadian legalization of marijuana but to date there has been little special treatment for Canadians (the only special treatment officially from the CBP is that they will not ban employees

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of cannabis related businesses), so it's user beware. In addition, I remind you that it is a felony to lie to the border personnel.

These pointers give you a solid foundation for the start of building your virtual swinging door to that amazing cross-border lifestyle you desire. If you follow all of these pointers consistently and avoid the red flags noted later in this chapter you will alleviate 95 percent of all cross-border travel hassles. The other 5 percent are things that are beyond your control, for example who you get at the customs/immigration inspection window and what kind of mood he or she is in.

THE BORDER KIT

The Border Kit is, very simply, proof that you are not intending to take up permanent residence in the US without obtaining proper visas or authorizations to do so. It is your obligation to provide this proof, not the customs person's responsibility to attempt to look it up or check for other sources of information pertaining to you. Officials only use the information they have on hand to support what you are saying and if you have nothing to support what you are saying with respect to your intentions when entering the US they automatically assume you are intending to do something illegal. By carrying the information below you will always have proof of your intentions on you at all times —

- most recent phone, electricity, and other utility bills,
- most recent property tax notice if you own, or rental agreement if you rent,
- most recent Canadian tax return and non-resident IRS forms filed, such as Form 8840 or 1040NR (see Chapter 4),
- valid provincial driver's licence and medicare card,
- proof of employment if still employed (e.g., latest pay stub),
- Canadian vehicle registrations if driving or return plane tickets if flying,
- a travel log of every time you have crossed the border in either direction including times, dates, and modes of transportation, boarding passes, and itineraries to back up your records, and
- charge card statements showing recent purchases.

Don't carry any items that may indicate US residency, such as a US driver's licence, US mail, anything relating to US property you own, none

of those business cards where you have a Canadian address on one side of the card and a US address on the other, US bank credit cards, etc.

Although carrying this Border Kit may be a pain, Murphy's Law of travel means that if you have the kit in your possession when you enter the United States, you likely won't be asked to produce proof of Canadian residence; the first time you travel without it, you may be refused entry until you can provide proof of your Canadian residence and your intention to return to Canada.

RED FLAGS WHEN CROSSING THE BORDER

In addition to carrying a Border Kit, you can make cross-border travel in either direction much less stressful if you avoid the red flags that immigrations and customs officers are constantly on the lookout for. Some of these red flags are —

- traveling without a valid passport or approved equivalent identification (also, traveling on a passport that is about to expire or is likely to expire during the six-month visitor visa status is grounds for refused entry to the US),
- traveling on a one-way ticket,
- traveling on a ticket that was purchased for cash and/or immediately before a flight,
- traveling with US immigration documents such as a completed green card or visa application ready for filing once you get across the border,
- entering the country as a visitor yet having documents in your possession that suggest you may be conducting business in the US,
- owning rental property in the US and carrying any information that might indicate you are actually working in or on the rental properties, fixing them up, or collecting rent; this may be an indication you are working in the US without authorization to do so,
- traveling in a vehicle that is not registered to you or any other person in the vehicle,
- traveling in a vehicle registered to you in a country in which you have no legal immigration status, for example, a Canadian winter visitor in the US attempting to drive a Florida-registered car into Canada and then back into the US again,

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- traveling with a spouse or other companion who has a different immigration status than you do in the country you are attempting to enter, for example, a US citizen or green card holder traveling to the US with a Canadian companion who has no legal status in the US and is attempting to enter the US as a visitor,
- traveling to the US after just marrying a US citizen in Canada or alternatively entering the US with definite plans to get married to a US citizen or resident while visiting the US,
- attempting to cross the border under the influence of alcohol or drugs,
- having a common name (although having a common name is not your fault, your identity may be confused with many others whose names are similar and who are on a terrorist watch list, for example. You may mitigate this concern by having your passport or other forms of identification spell out your entire name. For example, use John Albert Smith rather than John A. Smith and be very diligent in avoiding any other of the red flags noted above),
- having different names or variations of your name on your plane ticket and passport such that the two documents do not match perfectly, or
- traveling with someone who has potentially one or more of the red flags noted above.

IMMIGRATION RULES ARE NOT TAX RULES, AND VICE VERSA

So far we have focused entirely on the immigration rules when crossing back and forth across the US-Canada border and how to use these rules in your favor to make your crossing as effortless as possible. However, to maintain your virtual swinging door's ability to allow you to go back and forth with ease, it is extremely important to understand that there are entirely different sets of rules with respect to taxation of residents and non-residents of the US alike, and, the same for Canada and its residents and non-residents. A great deal of confusion comes into play when Canadians attempt to merge tax rules with immigration rules rather than keep them entirely separate, as they were designed and intended. Immigration rules are enforced by the US Customs and Immigration Service (USCIS), tax rules are enforced by the Internal Revenue Service (IRS), entirely separate branches of the US government which operate without any collaboration or coordination of their separate sets of rules.

Few things cause more confusion and controversy among visitors to the United States than how long they can legally remain in the country without breaking any rules when tax and immigration rules are attempted to be applied together. One key thing to remember to help one separate tax rules from immigration rules is that the tax rules apply regardless of immigration status in the US; in fact you can be 100 percent illegal in the US and the tax rules still apply to you 100 percent (see Chapter 2).

In other words, the IRS doesn't care whether you have violated any immigration rules, they apply their rules separately and will collect taxes regardless where you fall under immigration rules. There are several chapters in *The Border Guide* that discuss immigration and tax rules to show that they are different and are applied under different circumstances to visitors to the US. (For Americans visiting or moving to Canada, see Chapter 13.) The source of this confusion is primarily the fact that there are multiple sets of rules governed by various government agencies that deal with tax residency.

Border Guide readers are encouraged to participate in a cross-border Q&A through the Contact Us tab on keatsconnelly.com. After registering, you can easily post questions about the contents of this book.

CROSS-BORDER Q&A

THE 30-DAY RULE: MYTH OR FACT?

I was told by some snowbird friends that the US is considering a new law that snowbirds who return to Canada for less than one month would be considered not to have left and so their time spent here would become contiguous; i.e., if they spent October through April here in Canada, going back to the US for just three-week increments every other month, they would be deemed to have stayed for the entire six months. Do you know anything about that?

— *Peter V. Phoenix, AZ*

This is a rumor that has been circulating and recirculating. As with most rumors, there is a small bit of truth in what is being said but it is being misconstrued by almost everyone. Certainly, there is no new rule, only a few US border officers applying an old law differently than they have in the past. Canada has a special arrangement with the US. Canadians automatically get six months' visitor time in the US from their latest date of entry; technically no visa is required to start any six-month stay as a visitor to the US. Most other countries have more structured visa waiver programs and therefore when their citizens come to the US as visitors with a visitor's visa identified by a US Customs and Immigration

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Service I-94 electronic authorization or passport stamp (visitors from a visa waiver country are generally allowed to visit the US for up to 90 days at a time). When a visa waiver person is in the US and decides to, for example, go from Arizona to Mexico for part of their US trip, the time of the trip they go to Mexico does not extend their US visitor's visa, so the number of days out of the US on a side trip is subtracted from the 90 days originally authorized. Therefore, if they had a 90-day visitor's visa to the US and decide to go to Mexico 30 days, they would have to either return to the US before the 30 days was up or if the Mexico side trip was to take them beyond their 90-day visa end date on the US I-94 stamp, they would need to apply for a new visitor's visa from outside of the country at their country's consulate in Mexico. In addition, if they spend more than 30 days out of the country on their US I-94 Visa, they must apply for a new visa before they can return to the US, hence this is where the 30-day rule originated. Some US border agents are wrongly interpreting this requirement, and not extending the Canadians' six-month visitor visa when they leave the country for less than approximately 30 days. However, since Canadians are not subject to this visa waiver program this 30-day rule doesn't make any sense as no visa is issued normally. It is only a few misguided US border customs officers that interpret these rules as applying to Canadians and actually issued I-94 visitors cards or stamps in passports. If Canadians understand the rule, it's actually quite easy to get around, even though they technically should never have to get around it since it doesn't apply to them. The easiest way to avoid having this 30-day rule applied incorrectly to a Canadian is to just travel back and forth via the NEXUS program, eliminating most potential concerns.

This is all subject to the interpretation of the people at the border, and as everyone well knows they do not do this very consistently throughout all of the staff and border crossings. Canadians just need to be aware that this can be an issue with the wrong border agent and if they get their US visit shortened they have no choice but to follow what the border person is imposing on them as officials do have the authorization to apply the rules on the spot without challenge.

As of July 1, 2014 Canada and the US have agreed to share information from all the entrances and exits from their respective countries so that each side will have exactly the number of days their citizens spend in each country on their computers at the border. Those flying by air will be automatically checked and recorded according to the airline manifests, and those crossing the land borders will have their passports scanned going both directions. even though this recording of each border crossing will be a bit of a hassle, it will certainly help those Canadian snowbirds who

have been honest with tracking their time in the US. If you are not traveling using a NEXUS or Global Entry card, you are well within your rights and it is recommended that you request an entrance or an exit stamp in your passport every time you cross the border.

The bottom line is this mythical 30-day rule should not be a concern for Canadians, because of the no visa requirement for Canadians visiting the US for up to six months from the date of each entrance to the US.

CROSSING THE BORDER WITH MINOR CONVICTIONS OR ADMISSION OF ILLEGAL DRUG USE

With marijuana being legalized in several US states and in all Canadian provinces, what effect does this have for those of us crossing the border into the US?

— *MP, Vancouver, BC*

This is a short but interesting question and it is extremely important to understand that if you tell a US border official you have eaten a pot brownie, gummies, or smoked a joint, even though it may have been legal or a prescribed medicine where you were when you did this, your ability to freely enter the United States will go up in smoke. The US, at the federal level (which governs immigration), still considers marijuana an illegal substance in the same class of drugs as heroin and cocaine. Any use of it, especially by non-US citizens, can have them banned permanently from entering the US. You do not need a drug conviction to be turned away for drug crimes under the US Immigration and Nationality Act, as anything drug-related is typically a crime involving moral turpitude. Even if you are a US green card holder living in a state where marijuana is legal for recreational use, you still could lose your green card next time you cross the border into the US if you admit you used marijuana in any fashion. To make it even more complicated, Canadians who have participated in the ownership or creation of cannabis businesses or assisted anybody to do the same could also be banned as essentially an accomplice. The Customs and Border Protection department head issued a policy memo in November 2018 that stated they will not give employees of Canadian cannabis companies who are merely employees any banishment from entering the US. Although this is a very small concession from the US CBP, it is the first of hopefully many concessions to come for Canadians regarding the marijuana legalization.

Any Canadian who has a drug conviction, even though it may be very minor, totally pardoned, or a very long time ago, must apply for a

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visa waiver that will let him or her cross into the US. A visa waiver takes about six months to get so it needs to be applied for well in advance. Lately, with the US and Canadian immigration people sharing records and getting historical legal data into the computers, convictions are showing up that have long been forgotten and getting individuals banned at the border. If you have any kind of drug conviction, get a waiver before your records catch up to you on your next border crossing. Even though, with the Canadian legalization, Canadians with past minor marijuana convictions can have their convictions quashed, this is technically no help to them on the US side of the border as they still must apply for this visa waiver to enter the US.

What if a border agent asks if you've ever smoked a joint? Say you have never been convicted if that is the truth; certainly don't lie as that is fraud which may have worse consequences. You can also refuse to answer the question and you may not be allowed to enter the US at that time, but it is better than being convicted of the felony or fraud as that would be a lifetime mark with criminal charges by the US immigration system. The border agent has no way to tell whether or not you've actually tried pot or any other drug unless you have been foolish enough to post or discuss it on any social media. CBP personnel can do a quick and easy Google search of your name in conjunction with marijuana or cannabis and if something comes up that shows you have not been truthful you may be charged on the spot with lying.

US RESIDENCY HAS MANY OBLIGATIONS REQUIRING CAREFUL FINANCIAL PLANNING

I am writing to you on behalf of my aunt who is a citizen and resident of Canada. For a number of years she was a United States resident with a green card that was reissued to her. Is she eligible to stay in the United States for more than six months? Six months only is required by Canada, but will having a green card entitle her to a longer stay?

— R.J., Glendale, Arizona

If your aunt has a current, valid green card, she is able to stay in the United States for as long as she likes. The green card confers legal permanent residence status. There are many US tax obligations of green card holders that your aunt needs to get in compliance with if she wishes to keep the green card. A good cross-border financial planner will be able to review her situation and make appropriate recommendations on taxes, medical coverage, investments, and estate planning. She does need professional help, as there are some complex issues to address.

SICK RELATIVE NOT ENOUGH TO JUSTIFY VISITS

I am a Canadian citizen living in Toronto. For the past three years I have spent some months with my sister in Ormond Beach, FL. Last year her husband passed away, and this year she has had a couple of bouts of illness and she should no longer live alone. She can't afford a retirement home. Three years ago we filed a petition for my immigration to the United States, but have been told that there is a 10- to 15-year wait for a visa. I phoned USCIS recently and learned that their "six months in the United States" is six months per visit, so that theoretically I could go home for a few days every six months and stay here indefinitely otherwise. Actually I am going home February 11 to 28. So technically, I could stay to the end of August.

But the IRS is another matter. I worked in the United States for 26 years before returning to Canada to retire. Had I known then that I could get dual citizenship I would have done so. I now receive Social Security, income from small annuities from which 15 percent non-resident tax is deducted, and a little from an IRA. I also have US Medicare Parts A and B. I file a T1 General in Canada and a 1040NR in the United States, which gives me a small refund. I have never filed a Closer Connection form, but will probably have to do so for this year. My Canadian income is limited to OAS and interest from about \$120,000 in investments.

I talked with an IRS representative recently, and he suggested that I might be better off filing as a US resident and staying on the six-month basis. But how does that affect my Canadian connections? Of course, OAS would be taxed, but Social Security would not. I own a condo in Canada and am buying a life-lease apartment there, so I do not want to stay here indefinitely. However, a few months more next year would be helpful. Can I do it without running afoul of the USCIS, IRS, or Canadian authorities?

— **F.R.B., Ormond Beach, Florida**

Dealing first with the USCIS, you are technically correct that you can renew your six-month visitor's status by leaving the country and re-entering for another six months. However, every time you enter the United States, you must be prepared to justify why you are asking for a visitor status when in fact your intentions are other than those of a temporary visitor. Any time you enter the United States and tell the USCIS officials you are doing one thing, when in fact you are acting to the contrary, is an illegal entry. Therefore, they can deny you entry if they have suspicions or evidence indicating that your intention is different from what you have told them. Please remember that each entrance and exit from the US is now tracked by computer and each US immigration and customs agent

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that reviews your travel record on their computer screen will see that you are spending more time in the US than in Canada, and that is an indication of possible illegal residence that you would have to explain. I recommend you talk to an immigration attorney about other visa alternatives as there may be some compassionate grounds to allow you to look after your sister.

With respect to the IRS, if you spend more than 183 days in a calendar year in the United States, you are considered a tax resident and are required to file a US tax return on your world income. You then have to rely on the Canada/US Tax Treaty to ensure you are not double-taxed on income sourced in one country but taxable by both countries. Canada will not recognize you as a resident of the United States until you are legally able to live there; therefore, you would likely have to file tax returns in both countries on a continual basis.

There is irony in the fact that complying with the IRS rules by filing required tax returns gives the USCIS clearly documented proof you are acting like a resident of the US when you are not legally allowed to do so.