

# TRACKING THE FLIGHT OF THE SNOWBIRD

*Smarter Way to Cross Blog Archives*  
April 6, 2015

It is the time of year when the seasons change...And snowbirds return to Canada from their winter havens...And I debunk the common myths about the immigration rules for visitors.

For many of us non-snowbirds who weathered the coldest February in history, the change of seasons is a welcome one. But there is a group, or perhaps a subset of a group, that experiences the opposite. Their enjoyment of a warm winter is now turning to angst as they contemplate the return to Canada, and they add up their days in the United States. For many of them, the angst is rooted in the application of arithmetic formulas that are presumed to govern and determine one's fate under the U.S. immigration laws.

This anxiety level has increased over the past year or two because of the Canada/U.S. "Beyond the Border Action Plan" and its component, an [Entry/Exit Initiative](#), with the announced objective of capturing information "so that the record of a traveller's entry into one country can be used to establish the traveller's exit from the other."

The issues are not limited to Canadian snowbirds. The frequent business traveller to the United States is also faced with the same questions as his or her aggregate time in the United States continues to mount.

I am asked about a 180-day rule or one's entitlement to 182 days (but no more) as a visitor, either in one long visit or an accumulation of shorter visits. And within the past year, I have been asked more and more about a 30-day rule that contains an add-back feature (time spent during a short trip to Canada is supposedly tacked on to the calculation of the person's U.S. days of presence).

These rules share one thing in common: they do not exist within the immigration laws. They represent a distillation of legal principles over time into understandable, practical summaries. They are probably useful in most situations and even conclusive in some, but they can often be misunderstood and misapplied in ways that create false security or unnecessary anxiety.

I am reminded of a famous quote from New York Judge (and later U.S. Supreme Court Justice) Benjamin Cardozo in his decision in *Berkey v. Third Avenue Railway*, 244 N.Y. 84, 94, (N.Y. 1926): "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." The snowbird "rules" are a great example of that phenomenon. Helpful rules of thumb have become rigid cocoons of arithmetic formulas that are devoid of the immigration law principles from which they originated.

I challenge you to use your search engine of choice and find a U.S. government source that refers to any statutory 180-day rule, 30-day rule, or 182-day limit. There are none. See, for example, the U.S. State Department [online brochure on the same subject](#).

In fact, the [U.S. Citizenship and Immigration Services \(USCIS\) website](#) states that the "maximum total amount of time permitted in [visitor] status on any one trip is generally 1 year." Which also requires an explanation to be useful.

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The Canadian snowbird or frequent business traveler needs to understand the rules and move this from an numerical matter to an immigration law matter. The math may be important, but the person has to know why a number is important. A number by itself, without any context, is meaningless and has no predictive or conclusive value for U.S. immigration law purposes. The port of entry to the United States is usually the most important place for these principles to converge. One's ability to gain entry or re-entry as visitor is not going to be determined by a calculator. Entry is gained through a favorable analysis of the question: "Are you a visitor?"

In a series of articles to follow this one, I will address each of these issues and explain where these rules came from and how they should be understood and applied. The immigration law principles are distinct and separate from the tax laws of both countries and ancillary issues for Canadians such as retention of health care coverage. The same facts that are evaluated for immigration law purposes will have an effect on those issues as well, and one must consider all such issues in planning and ordering one's affairs. But this series of articles is devoted solely to the U.S. Immigration laws relating to visitor entries. Look for answers to these questions:

1. How does the Entry/Exit Initiative affect me? Will my number of days in the United States pop up on the computer screen when my passport gets swiped? Will the border officer then push another button and forward that information to the Internal Revenue Service?
2. What is the 180-day rule? Am I entitled to 182 days a year in the United States as a visitor? What happens on day 183? Does it make a difference if the time is continuous or cumulative? What does the USCIS website mean in its reference to visits of up to a year?
3. What is the 30-day rule? How does the U.S. Department of Homeland Security treat my short trips back to Canada during an extended stay in the United States?