

The comments offered in this presentation are meant to be general in nature and are not intended to provide legal advice regarding any individual situation. Before taking any action involving your individual situation, you should seek legal advice to ensure it is appropriate for your circumstances.



US AND CANADIAN
ATTORNEYS & NOTARIES



THE JEWISH
COMMUNITY
FOUNDATION
OF MONTREAL

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TAX, ESTATE PLANNING & OWNERSHIP NEEDS IN THE UNITED STATES

May 11, 2023

SPEAKER:

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LEVY SALIS LLP

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ABOUT THE SPEAKER


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Shlomi Steve Levy is a Partner of Levy Salis LLP and is a member of the Quebec Bar, the Law Society of Ontario, the Society of Trust and Estate Practitioners, and the Canadian Bar Association. He was the co-founder of one of the leading cross border tax and estate planning law firms in Canada prior to founding Levy Salis LLP. His practice is dedicated to US and Canadian tax and estate planning for individuals and corporations, Canadians doing business in the United States, US real estate transactions for Canadians, Americans living in Canada, domestic and international trusts, international taxation, corporate law, and cryptocurrency transactions.



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**CHOOSING AN
OWNERSHIP STRUCTURE**

PERSONAL NAMES(S)

- In your name alone

- Jointly as Tenants in Common

- Jointly With Rights of Survivorship

- Transfer on Death or Beneficiary Deed or Gift to Children

TRUSTS

- US Revocable Trust

- Canadian Family Trust

- Cross Border Trust (CBT)

- Cross Border Irrevocable Trust (CBIT)

PARTNERSHIPS

- Limited Liability Limited Partnership

- Limited Liability Partnership

- Limited Partnership

- Two-Tiered Limited Partnership

CORPORATION

- US C-Corporation

- US Limited Liability Company (LLC)

- Canadian Corporation

- Two-Tiered Corporate Structure

PROBATE

Scenario:

We bought a condominium in Florida for \$300,000 and put the title in my husband's name alone. Everything was fine until he passed away.

After that, I couldn't sell the property because the estate was frozen, probate took over a year and cost between \$10,000 and \$15,000!





CANADIAN TAX AND ESTATE PLANNING



CANADIAN TAX AND ESTATE PLANNING

BEWARE! WHEN SIGNING
US ESTATE PLANNING
DOCUMENTS, DO NOT
REVOKE YOUR
CANADIAN ESTATE
PLANNING DOCUMENTS!

WHAT ABOUT ESTATE
PLANNING FOR US
BENEFICIARY CHILDREN
AND GRANDCHILDREN?

A man in a dark suit and white shirt is seen from the back, looking out a large window. The window shows a blurred cityscape and water. The overall tone is professional and contemplative.

INCAPACITY

Scenario:

My parents own a condominium together in Florida but they can't enjoy it anymore since my mom developed dementia.

My dad couldn't sell the property because of my mom's condition and so we had to do a costly and time-consuming Florida guardianship procedure.

PROTECTION FOR YOUR BENEFICIARIES

Scenario:

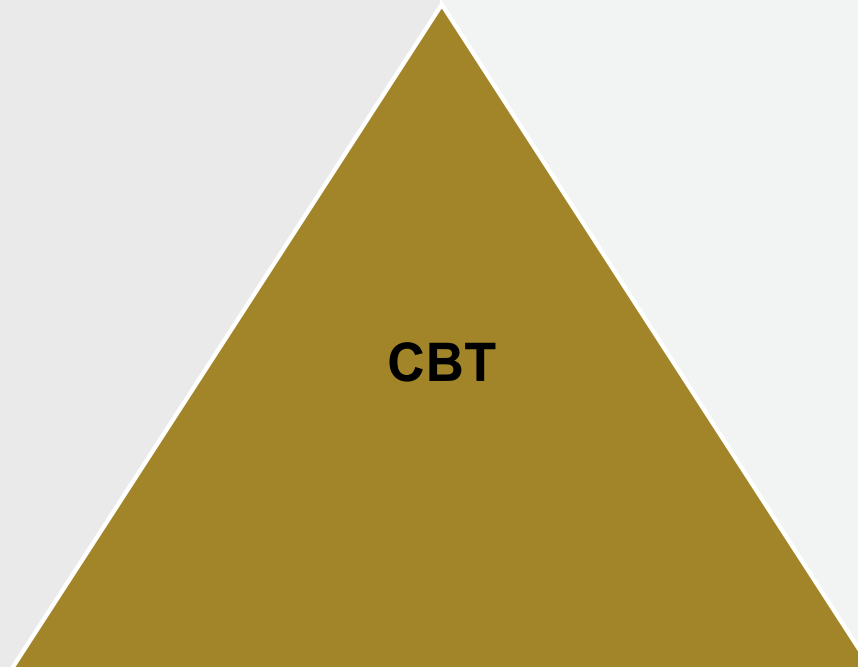
We are worried about what happens to our kids after we pass away. What if my son/daughter inherits my \$300,000 house in Florida and then his/her business goes bankrupt, can his/her creditors seize the house? Also, if his wife divorces him, will she get 50% of the property? What if I want to add my children to the title?

CROSS BORDER TRUST (“CBT”)

- Avoids probate & incapacity issues
- Protects inheritance from divorcing spouses/creditors
- Preserves foreign tax credits (on sale/death)
- Reduces and defers US estate tax (QDOT & discounting)

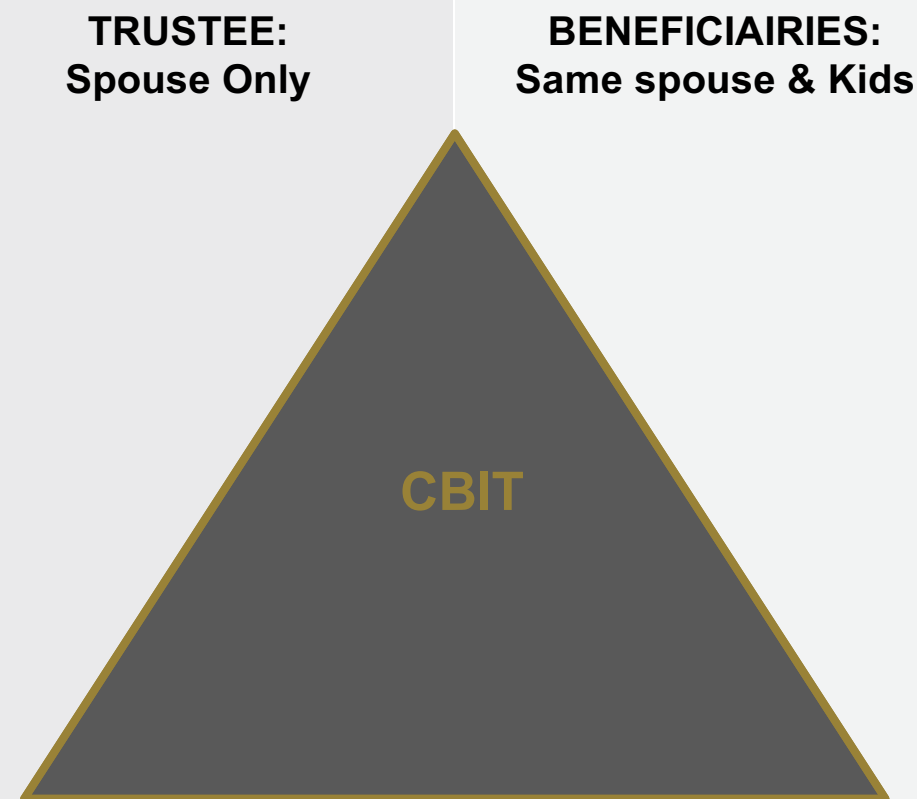
TRUSTEE: YOU

BENEFICIARIES: YOU



CROSS BORDER IRREVOCABLE TRUST (“CBIT”)

- Avoids probate & incapacity issues
- Avoids U.S. estate tax
- 21 year deemed disposition rule
- Preserves foreign tax credits (on sale/death)
- Provides creditor protection



CORPORATIONS

- Avoids probate & incapacity issues
- Avoids US Estate Tax
- Provides creditor protection
- Shareholder benefit rule
- LLC – **DOUBLE TAXATION PROBLEM**



U.S.
CORP.
100%

CND
CORP.
100%



US CAPITAL GAINS TAX SUMMARY BY OWNERSHIP STRUCTURE

TRUSTS	LIMITED PARTNERSHIPS	PERSONALLY	CORPORATIONS *(US OR CDN)	LLC – DOUBLE TAXATION
			IRS – 21%	IRS – 15 to 20%
IRS – 15 to 20%*	IRS – 15 to 20%*	IRS – 15 to 20%*	FL – 5,5%	CRA – 26%
			Total Tax Liability: 26,5%	Total Tax Liability: 41% to 46%*
*US Federal Rates			*+ Canadian Dividend Tax and US withholding considerations	

CANADIANS RENTING US REAL ESTATE

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME

TREATED AS FIXED, DETERMINABLE, ANNUAL OR PERIODIC (FDAP) INCOME

- Subject to 30% withholding

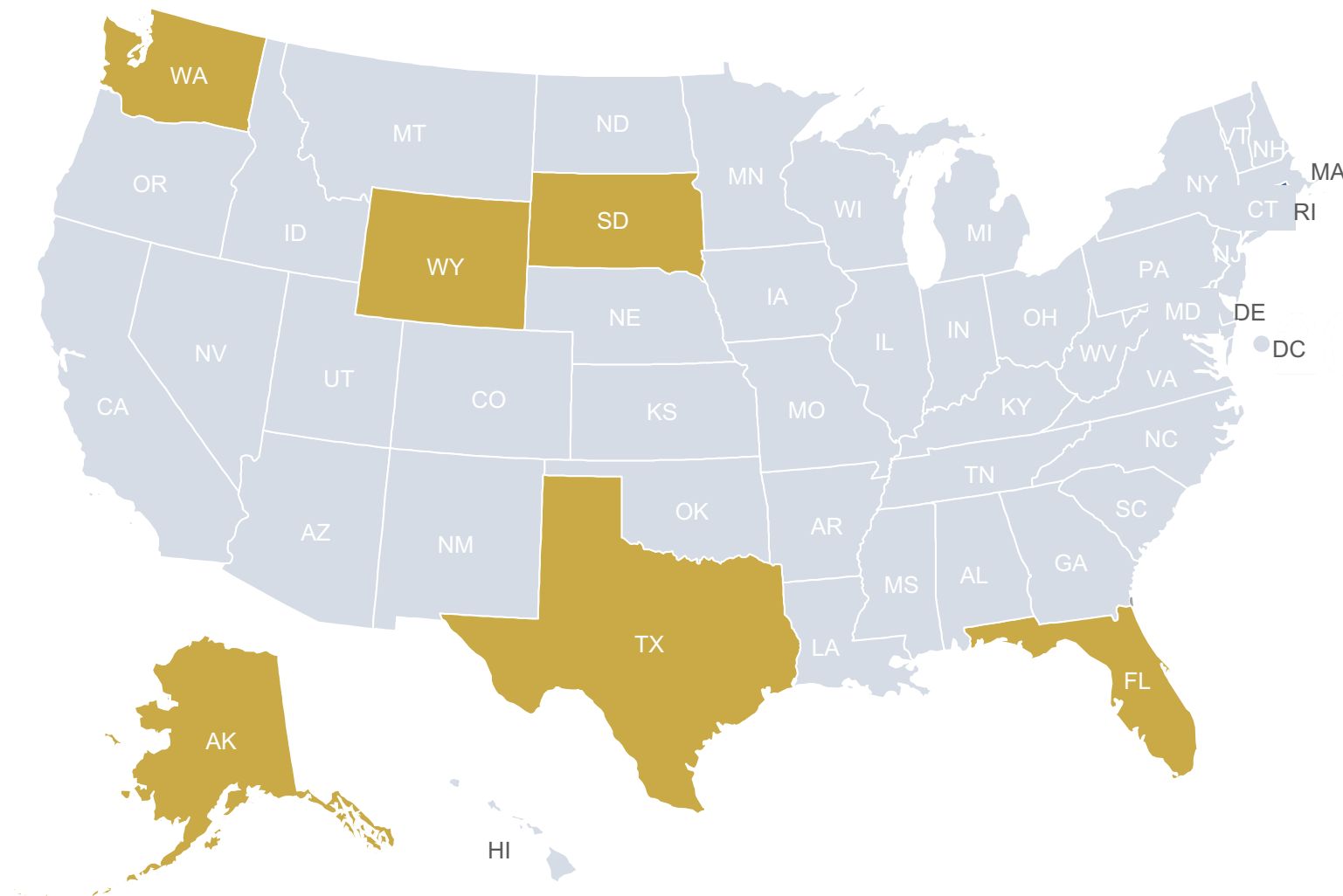
AVOID 30% WITHHOLDING BY MAKING ECI ELECTION

- Treat rental income as “effectively connected income” by filing W8-BEN ECI
- File a US tax return (Form 1040NR) and pay tax at US income tax rates

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME

SUBJECT TO STATE INCOME TAX

- Several States do not levy income tax on individuals: Florida, Texas, Washington, Wyoming, South Dakota, and Alaska



US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME



MUST DECLARE INCOME AND PAY TAX IN CANADA

- Canada-US Tax Treaty: can claim Foreign Tax Credits in Canada for US tax paid



FILE FORM T-1135

- Must declare ownership of US rental real estate with a cost in excess of \$100,000 CAD



PERSONAL USE OF US REAL ESTATE OWED BY A CORPORATION:

- Taxable benefit under the shareholders' benefit rule

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME



DEPRECIATION IS AUTOMATICALLY RECAPTURED ON THE SALE OF US RENTAL REAL ESTATE

- Depreciation is mandatory



DEPRECIATION IS MANDATORY IN THE UNITED STATES!

- 27.5 year formula

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME



Must file US tax return (Form 1040NR) to report the sale



Requires an Individual Tax Identification Number (ITIN)



Rate depends whether the sale is by an individual, a corporation, a partnership, etc.

*Subject to State income tax

US AND CANADIAN TAX COMPLIANCE ON RENTAL INCOME

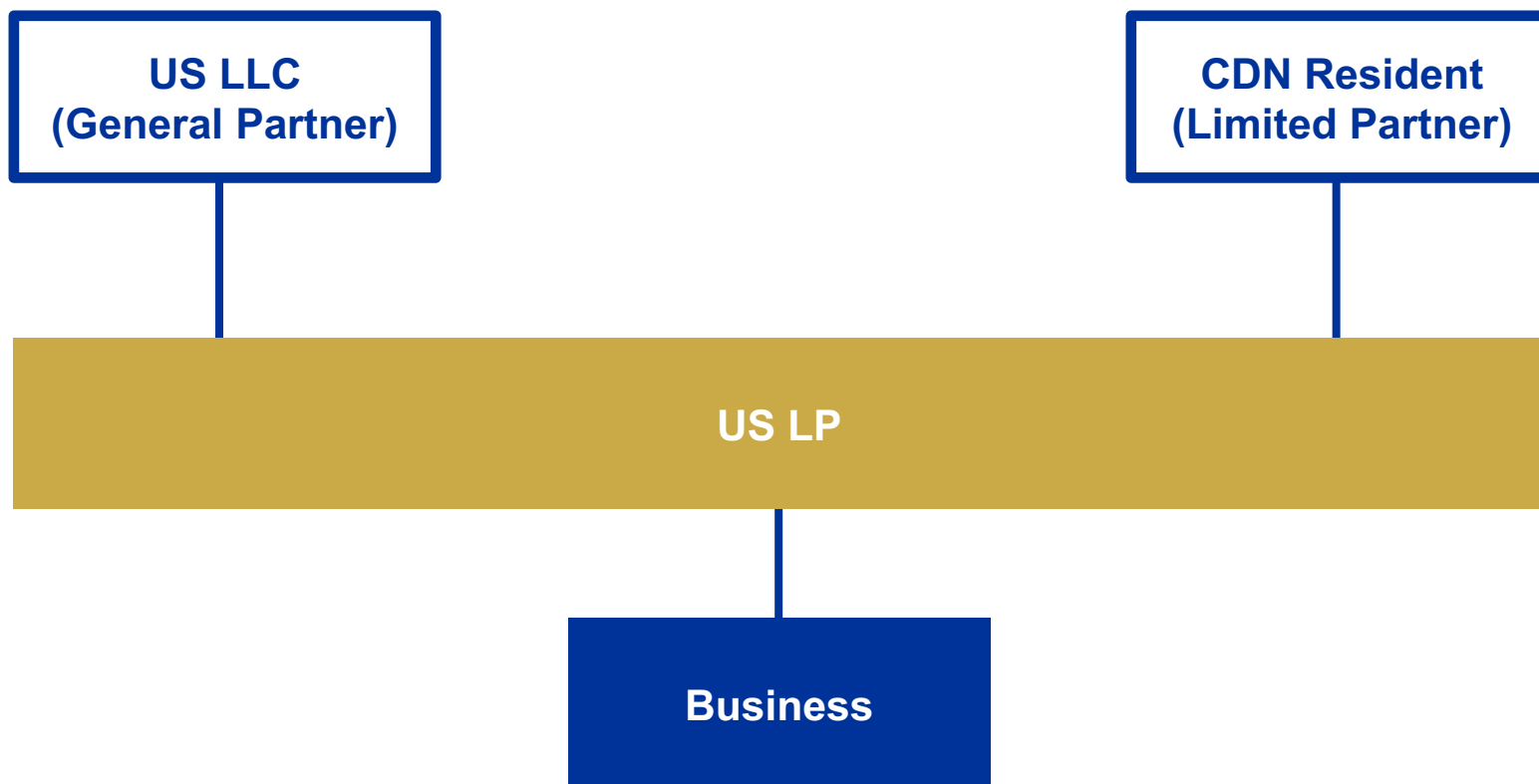


CANADIANS

- Must report US income on Canadian tax returns & pay tax
- Possible claim for tax credit paid in the US, unless mismatch
- Tax on currency exchange GAINS
- FIRPTA withholding depending on the ownership structure

CONVERSION OF LIMITED LIABILITY COMPANY (LLC) TO LIMITED PARTNERSHIP (LP)

Sole Member of LLC



CANADIANS SELLING US REAL ESTATE

US & CANADIAN TAX COMPLIANCE

NON-RESIDENT SELLING US REAL ESTATE

- **Must** file a US tax return in the year of sale
- Requires an Individual Tax Identification Number (ITIN)

CANADIANS:

- **Must** report US sale on Canadian tax returns & pay tax on capital gains
- Possible claim for tax credit paid in the US, unless **mismatch**
- Tax on currency gains

US CAPITAL GAINS TAX

- Rate depends whether seller is an individual, corporation, or pass-through entity

CANADIANS SELLING US REAL ESTATE

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

IF EXCEPTION DOES NOT APPLY:

- Application for a FIRPTA withholding certificate
- Possibility to reduce the withholding to 10%

EXCEPTION TO WITHHOLDING

- Property is sold for \$300,000 USD or less; **and**
- The buyer signs an affidavit

NON-RESIDENT SELLING US PROPERTY: MANDATORY 15% WITHHOLDING ON **GROSS SALE PROCEEDS** & REMITTED TO IRS WITHIN 20 DAYS OF CLOSING

- **Buyer** is responsible for the withholding

SELLING?



Closing Costs \$\$

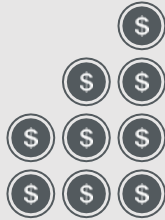


Capital Gains Tax: **US – CDN***

F.W.

FIRPTA Withholding

RENTING?



Income Tax: **US – CDN**



Depreciation



Liability

REFINANCING?



Capital Gains

F.W.

FIRPTA Withholding **0\$**



“Life Style”

* Tax on the exchange rate



US ESTATE TAX FOR CANADIANS

US ESTATE TAX FOR CANADIANS



Does it apply to
Canadians owning
US assets?



US situs assets



Worldwide estate

US ESTATE TAX FOR CANADIANS



Does it apply to
Canadians owning
US assets?

Are your US assets > \$60,000
USD?

Is the value of your worldwide
estate >
\$12,920,000 USD



US situs assets

What is in?

What is out?



Worldwide estate

Everything counts!

Specific rules
(joint tenancy, life insurance
policies, etc.)

US ESTATE TAX FOR CANADIANS

If you hold U.S. assets, we recommend that you consult one of our cross border experts to discuss solutions and strategies for U.S. estate tax, probate and other cross-border tax and estate planning issues.

*In order to calculate your exposure, use the calculator below. Please note that the calculator reflects the changes to U.S. estate tax effective January 1, 2023. The calculator is updated annually to reflect annual adjustments to the exemption amount.

levysalis.com/calculators/

	\$100,000	\$1,000,000
	US Taxable Estate Value	Worldwide Taxable Estate Value
Year		2023
Estimated Taxable Amount		\$100,000
Estimated Tax Marginal Rate		30 %
Estimated Estate Tax Amount		\$23,800
Unified Credit Amount		\$511,380
Estimated Estate Tax		\$0

US ESTATE TAX FOR CANADIANS

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levysalis.com/calculators/

	\$950,000	\$20,000,000
	US Taxable Estate Value	Worldwide Taxable Estate Value
Year		2023
Estimated Taxable Amount		\$950,000
Estimated Tax Marginal Rate		39 %
Estimated Estate Tax Amount		\$326,300
Unified Credit Amount		\$242,906
Estimated Estate Tax		\$83,395

“ INVESTMENT PROPERTIES ”

Scenario:

I have been following the US real estate market for a while. I think I can realize a nice gain if I buy a property in the US and rent it out for a number of years. Also, the rental proceeds will be a nice income supplement.

How do I structure this kind of business venture?
How will the income be taxed? How do I limit my liability?



IMMIGRATION QUESTIONS

000

IMMIGRATION QUESTIONS

180

IMMIGRATION QUESTIONS

180

IMMIGRATION QUESTIONS



180

*DAYS IN A
ROLLING YEAR*

IMMIGRATION QUESTIONS



180

*DAYS IN A
ROLLING YEAR*

WHAT IF I WANT
TO STAY PAST
180 DAYS?

IMMIGRATION QUESTIONS



180

*DAYS IN A
ROLLING YEAR*

WHAT IF I WANT
TO STAY PAST
180 DAYS?

**POSSIBLE TO
APPLY TO DO
SO BY FILING**

IMMIGRATION QUESTIONS



180

***DAYS IN A
ROLLING YEAR***

POSSIBLE TO
APPLY TO DO
SO BY FILING

Form I-539

IMMIGRATION QUESTIONS

Form I-539



180
*DAYS IN A
ROLLING YEAR*

**MUST FILE BEFORE
180 DAYS ARE UP**

42

IMMIGRATION QUESTIONS



180
*DAYS IN A
ROLLING YEAR*

MUST FILE BEFORE
180 DAYS ARE UP

NO AUTOMATIC
APPROVAL

182 DAYS
IN THE
CALENDAR
YEAR



00

Day

NO ACTION
REQUIRED

*A typical Snowbird who spends more than 122 days in the US for at least 3 years in a row is likely to meet the SPT.

Therefore, 120 days is used as a guideline for filing Form 8840.

182 DAYS
IN THE
CALENDAR
YEAR



120

Days

FORM 8840

45

182 DAYS
IN THE
CALENDAR
YEAR



182

Days

Form 1040NR, Treaty based
positions + Canadian
Health Insurance Concerns!

SPENDING TIME IN THE UNITED STATES

SUBSTANTIAL PRESENCE TEST (SPT)

Canadian snowbirds must navigate the complex rules surrounding the number of days they are allowed to spend in the US. The Levy Salis LLP team frequently guides clients through the variety of issues related to this question so they can make informed decisions about the amount of time they spend stateside.

DAYS SPENT IN THE U.S.*:

YEAR OF 2022

YEAR OF 2021

YEAR OF 2020

47

VISIT [LEVYSALIS.COM/CALCULATORS/](https://levysalis.com/calculators/) TO SEE IF YOU MEET THE SUBSTANTIAL PRESENCE TEST


*THE NUMBER OF DAYS SHOULD INCLUDE ALL DAYS SPENT IN THE US FROM JANUARY 1 TO DECEMBER 31 OF EACH YEAR.

OUR PROCESS

ANALYZE

RECOMMEND

IMPLEMENT



Q



A

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