

Natural Legacies: *Your educational guide to conservation in BC*

Cross-Border Conservation Gifts: Fact Sheet for Potential Donors of Land or Conservation Easement

CROSS-BORDER CONSERVATION BASICS

Conservation-oriented U.S. taxpayers who own land in Canada can protect their property with a gift that is tax deductible against U.S. income and is not subject to Canadian capital gains taxes. These bi-national tax incentives can be particularly valuable in the context of estate-planning.

Landowners who want to transfer their Canadian property to their heirs have to be aware that nearly all such gifts, even through a bequest, will result in a capital gain and tax under Canadian law. Conservation can make it financially feasible to pass land to the next generation.

U.S. taxpayers can donate their Canadian property to a Canadian charity, but the gift will not be tax deductible against U.S. income. However, if you declare Canadian-source income on your U.S. tax return this could be a good strategy. Or a Canadian tax deduction might be very helpful if you are going to give other property to your heirs, thereby creating a Canadian tax liability.

However, if a U.S. income or estate tax deduction would be most desirable, you will want to consider a donation to American Friends of Canadian Conservation (American Friends). American Friends partners with Canadian conservation organizations, government agencies and First Nations to protect environmentally sensitive lands in Canada that are owned by U.S. taxpayers. Gifts to American Friends are eligible for U.S. income and estate tax benefits and can be made without incurring a Canadian capital gains tax.



Natural Legacies is a project of the Land Trust Alliance of BC with the financial support of The Vancouver Foundation, The McLean Foundation, and The Province of BC.

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WAYS TO GIVE A GIFT OF LAND

As a donor, you can choose the type of gift that best meets your the income, estate and gift tax objectives. The primary types of gifts are:

- **Gift of Land:** A simple donation of all or a portion of your land.
- **Gift of Conservation Easement:** A voluntary, legal agreement between landowner and a qualified conservation organization that restricts the future uses of land to accomplish a defined set of conservation purposes.
- **Bargain Sale:** A sale of land for less than full fair market value.
- **Testamentary Gift:** A donation of land or conservation easement (or cash or other assets) that is accomplished through your will.

TAX ISSUES AND OPPORTUNITIES ASSOCIATED WITH CROSS-BORDER CONSERVATION GIFTS

- **Canadian capital gains tax:** Under Canadian tax law, almost any “disposition” of appreciated property will create a capital gains tax liability – except for bequests to one’s spouse. Dispositions, as defined by the Canada Revenue Agency, include most donations of property.
 - Canadian capital gains tax on a conservation gift can be reduced or eliminated through a special “election” under the Canadian Income Tax Act.
- **U.S. tax deductions generated by gifts of fee title:** A gift to a Canadian charity will not produce a deduction against U.S.- source income. In contrast, gifts of Canadian land or a conservation covenant made to American Friends are tax deductible in the U.S., because it is a U.S. charity. The deduction may be carried forward and applied to income for up to five subsequent years.
- **U.S. tax deductions from a gift of a conservation easement:** The U.S. Internal Revenue Code (IRC) includes specific guidelines for “qualified conservation contributions.” As a U.S. 501(c)(3) charity, operating as a land trust with a conservation mission American Friends is a qualified donee, It is familiar with all the U.S. rules that determine if the value of the gift will be deductible against U.S. income.
- **U.S. tax deductions from a gift of a conservation easement to a Canadian charity:** A donation of a conservation easement to a Canadian charity by a US taxpayer may be deductible against Canadian-source income on a U.S. tax return. It is essential to follow the IRC guidelines for conservation contributions including for the recipient to be recognized by the IRS as a publicly-supported charity.



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- **IRS recognition of a Canadian land trust as a foreign Publicly-Supported Charity:** Canadian organizations wishing to accept conservation covenants from U.S. taxpayers should secure recognition as a publicly-supported charity. There can be serious U.S. estate or gift tax consequences for the donor if the Canadian organization doesn't obtain this status.
- **U.S. estate tax benefits:** It is possible to reduce U.S. estate tax liability through a charitable gift of land or conservation easement.
- **U.S. state and federal gift taxes:** Gifts of cash or real property interests exceeding certain values may trigger gift tax liability for the donor. Properly sequenced and managed conservation transactions avoid this tax.

UNIQUE ASPECTS OF CROSS-BORDER CONSERVATION DONATIONS

Although almost all the steps involved in protecting your Canadian property are similar to those required to complete a comparable donation in the U.S., there are a few that are unique to the cross-border process. Below you will find a list of those which are unique.

For gifts of both fee title and conservation easements:

- Obtain an appraisal of the donated property that meets both Canadian and U.S. appraisal requirements.
- Secure a "certificate of compliance for a non-resident disposition of land in Canada" from CRA.
- Apply to CRA for a reduction or elimination of Canadian capital gains tax on the gift through the election described above.
- File both a Canadian and U.S. income tax return and associated documents.
- Meet provincial requirements, if any, for ownership by a foreign entity, if the donee will be American Friends.

For conservation easements only:

- If a Canadian entity is going to be the donee, obtain IRS recognition of that organization as a publicly-supported charity.
- Ensure that conservation easement language satisfies Canadian and Provincial conservation easement and tax law, and U.S. tax law for qualified conservation contributions.

If you have any questions, please contact
American Friends of Canadian Conservation at:
www.conservecanada.org,
info@conservecanada.org, or call
519-241-4022



Note: This document is not intended to provide tax, legal, estate planning or other advice. It is essential that you obtain independent advice from professional advisors who understand tax and legal issues in both the US/Canada.



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