

*Although our borders create limits on where and what we do, land conservation options can cross these borders and interconnect just like nature.*

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**W**e work and live in close proximity to the United States and have strong links with our American neighbours. U.S. residents travel, work, and often own property across the ecologically invisible boundary between our two countries.

U.S. residents owning land in Canada may want to ensure that the natural or cultural features of their property remains protected into the future. You may wish to support Canadian conservation organizations directly. A donation made to a Canadian charity or equivalent U.S. 501 (c) (3) organization is only one of the many ways to achieve conservation goals and obtain tax advantages.

Each person's goals and situation are unique, and the tax systems of Canada and the United States are different. Thus, this pamphlet provides a general introduction to some of the tax planning opportunities for residents of the United States who wish to donate their

Canadian land or other personal property.



- Western Grebe

### **Taxes and Transfer Options**

U.S. residents who donate Canadian land to a U.S. 501(c) (3) land trust may qualify for a U.S. income tax deduction under the U.S. Internal Revenue Code. Similarly, U.S. residents with income from Canadian sources (e.g. employment, land rentals, sales, etc.) can donate Canadian land to a Canadian charity and receive a Canadian tax credit. However, this credit is usable only against the Canadian income tax payable on this income.

A more typical situation arises when a U.S. resident, with no Canadian income, wants to donate Canadian land to a Canadian charity and receive appropriate tax recognition. Generally there is no U.S. or Canadian tax benefit in this situation. One solution is to donate the property to a U.S. organization and receive the U.S. tax deduction. This can then be followed by a transfer from the American group to a Canadian one, with appropriate "conservation purpose" restrictions. We can help prospective land donors investigate this option with American partner organizations.

Rather than donate the property, a landowner may register a conservation covenant (known in the U.S. as conservation easements) on the land. With this method, a landowner agrees to conserve land, yet still retains the use and ownership of it. The covenant's restrictions bind current and all future landowners and are upheld by the

conservation organization which holds the agreement. Unlike donating land, donating a covenant on Canadian property through a U.S. organization is difficult because only Canadian organizations qualify in B.C. to hold such covenants. Nonetheless, common law easements, leases or other creative arrangements may be available to U.S. donors.

U.S. residents who donate cash or other personal property to U.S. 501(c)(3) organizations or to Canadian charities receive similar tax treatment as described for land donations. Some U.S. groups extend their operations into Canada, so they could make expenditures here to carry out a donor's expressed interest for Canadian donations made in the U.S.

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Regardless of how a donation of land or a conservation covenant is structured, if the property has been owned for a while

by one owner, it will likely have an increase in value (appreciation or capital gain). This may result in associated taxes for the donor in either the U.S. or Canada, or in both countries. Fortunately, there are mechanisms in place to reduce such taxes and for reciprocal credits or deductions to avoid most, if not all, of this double taxation.

Under Canada's *Income Tax Act*, special tax recognition may be given to cross-border commuters and to organizations like the United Nations, universities, or other U.S. groups to which the Canadian government has made a recent donation, or organizations which provide assurances that they will use Canadian property in the public interest (e.g. The Nature Conservancy in the U.S.). These provisions may provide advantages for some donors making certain transactions.

### Other Considerations & Next Steps

There may be certain other considerations in a cross-border donation. For example, non-residents in Canada may not qualify for lower property tax categories on lands they own. Furthermore, some organizations can hold lands only within a defined area (e.g. a U.S. state), and thus may be restricted in the ways in which they can help donors. We can help you work through these situations.

Given the complicated nature of the subject, this pamphlet is intended simply as an introduction to cross-border donations. Decisions about your land and financial affairs should ultimately be made only after careful consideration and professional advice.

If you would like to find out more about donations and their tax treatment, please feel free to contact us. We would be pleased to help you and your advisors design a conservation plan that makes the most sense for you.

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To find out more, contact your local land trust or LTABC

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# U.S. Donations for Conservation



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- wetlands, BC

## in Canada

