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Tax Incentives Encourage Donations of Ecologically Sensitive Land

Protecting Ecologically Sensitive Lands in Canada

Canada's natural landscapes are fundamental to our national identity, our image abroad, and our quality of life. We share these lands with a huge variety of plants and animals that contribute to our quality of life, but that are important in their own right. Though only a small percentage of Canada is privately owned, a disproportionately large number of plant and animal species are dependent upon privately held lands to successfully complete their life cycles. In some cases this might mean a private wetland providing a stopover point on a long migration, whereas in others, a particular plant may only grow on private lands unprotected by parks or ecological reserves.

The co-occurrence of high species diversity and human settlements on the same lands is not an accident. Human settlements typically occur in warmer valley bottoms that enjoy longer growing seasons. This results in greater plant growth, which in turn attracts other organisms that eat or decompose those plants, as well as the parasites and predators of those organisms. Thus the same places that make good farmland also tend to be very rich and

diverse ecosystems. If we want to conserve biological diversity, it will be necessary to engage private landowners in stewardship and conservation. Fortunately there are now real incentives to encourage landowners to participate.

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Incentives for the Donation of Ecologically Sensitive Lands

The federal Ecological Gifts Program provides incentives for owners of ecologically sensitive land to protect nature and leave a legacy for future generations. Administered by Environment Canada, the Program is made possible by provisions of the *Income Tax Act*. It provides significant tax incentives to landowners who donate ecologically sensitive land, or a partial interest in ecologically sensitive land, to a

qualified recipient. Recipients can include government agencies and charitable organizations approved by Environment Canada. It is then the recipient's responsibility to ensure that the ecological gift is managed for biodiversity and environmental heritage in perpetuity.

In British Columbia, a conservation covenant granted under section 219 of the *Land Title Act* may be the subject of an ecological gift. Conservation covenants under this Act are interests in land that are registered on title. Section 219 covenants may be positive or negative in nature, so they can restrict or require activities that benefit the land. They are a useful conservation tool because they allow for the retention of land ownership, with permanent restrictions on how the land may be used or developed.

Since 1995 hundreds of Canadians have donated ecological gifts valued at more than \$65 million. More than one-third of these ecological gifts contain habitats of national or provincial importance; many include rare or threatened habitats that are home to species at risk.

Depending on the recipient, up to three certificates are required under the *Income Tax Act* for the certification of ecological gifts.

- The federal Minister of the Environment or a designate must certify that the land comprising the gift is ecologically sensitive.
- If the recipient is a registered charity, the Minister of the Environment or a designate must certify that the recipient of the ecological gift is approved to receive the gift.
- The Minister of the Environment must certify the fair market value of the land or covenant, easement, or servitude comprising the ecological gift.

As with other charitable gifts under the *Income Tax Act*, ecological gifts by individual donors are eligible for a non-refundable federal tax credit of 16 percent of the first \$200 of the fair market value of the gift and 29 percent of the balance.

The combined rate in BC is 20.6 percent for the first \$200 and 43.7 percent for the balance. Corporations may deduct from income an amount up to the fair market value of the ecological gift.

Ecological gifts have the following tax advantages.

- Unlike most other charitable gifts, there is no limit to the total value of the ecological gift donations eligible in a given year for the deduction or credit.
- Donors of ecological gifts receive a reduction in the taxable capital gain they earn in the disposition of their property if it is capital property. Unlike most other charitable gifts, the taxable portion of the capital gain is only 25 percent.
- Any unused portion of the donor's gifts may be carried forward for up to five years.
- A donor's capital gain can also be reduced by designating the amount

of the ecological gift to be a lower amount.

These last two advantages are not unique to gifts of ecological property. The reduced taxable capital gain applies to ecological gifts, donations of certain publicly traded securities, and certified cultural property.

One additional benefit for donors is that the Canada Customs and Revenue Agency (CCRA) may impose a tax on a municipality or registered charity that receives an ecological gift and then disposes of it or changes its use without the approval of the Minister of the Environment or the Minister's designate.

For more information on the Ecological Gifts Program, visit the Website at <http://www.cws-scf.ec.gc.ca/ecogifts/> or contact Blair Hammond, Regional Coordinator for the Pacific & Yukon Region of the Program. blair.hammond@ec.gc.ca

Benefits of Split-Receipting

Another recent change in tax rules involves the ability of donors to make a gift of land—or any other type of property—and receive something of value in return. In December 2002, CCRA issued proposed guidelines on “split-receipting” in relation to gifts under the *Income Tax Act*.¹

Split-receipting may be available where a donor gives a gift to a charity or other qualified donee and receives something of value or some other benefit in return. Under split-receipting, the donor receives a tax receipt for the value of the gift, minus the value of the benefit that was given in return.

Before the introduction of these guidelines, CCRA took the view that if the donor received something in return for making a donation, the gift was not a gift under the *Income Tax Act* and the donor did not qualify for a tax receipt. For the gift to qualify for tax benefits, the donor had to give the whole gift and receive nothing² in return. Under the proposed guidelines, the amount eligible for a tax receipt is the value of the property transferred to the recipient, less the amount of the benefit received by the donor.

Even though the guidelines are still in draft form and legislative and related policy amendments are not yet in place, CCRA has stated that donors and recipients may follow the guidelines, starting on the announcement date of December 20, 2002.

According to the proposed guidelines, split-receipting is generally allowed under the following circumstances:

- the transfer of property must be voluntary and the gift must have an ascertainable value;
- the recipient must be qualified to receive the gift;
- any advantage received or obtained by the donor must be identified and its value ascertainable; and

- the donor’s intent to enrich the recipient of the gift must be clear.

The existence of an advantage or benefit to the donor will not automatically disqualify the gift from being tax creditable or deductible as long as the value of the advantage or benefit does not exceed 80 percent of the fair market value of the transferred property. Even where the value of the advantage exceeds 80 percent of the fair market value, the gift may still qualify for a tax credit or deduction if the donor can establish, to the satisfaction of the federal Minister of National Revenue, that the transfer was intended as a gift.

Guiding Donors

Additional information about giving to nature through a personal legacy is available from *Green Legacies: A Donor’s Guide for BC*, a one-stop resource for legal, financial, and other professional advisors whose clients wish to create their personal nature legacies. The guide has information about gifts of land and partial interests in land, as well as other types of gifts. For information about the guide, visit the Website at www.stewardshipcentre.bc.ca/greenlegacies. ▲

- ¹ The proposed guidelines are contained in *Income Tax Technical News*, No. 26, at <http://www.ccr-aadrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf> and http://www.fin.gc.ca/toce/2002/02-107_1e.html.
- ² Tokens of appreciation for the donor’s gift did not disqualify the gift.

Ann Hillyer is an environmental lawyer with Hillyer Atkins in Victoria. She is co-author of *Giving it Away: Tax Implications of Gifts to Protect Private Land* and *Greening Your Title: A Guide to Best Practices for Conservation Covenants*. Both are available at www.wcel.org.

Blair Hammond is the Regional Coordinator for the Pacific & Yukon region of the Ecological Gifts Program of Environment Canada.