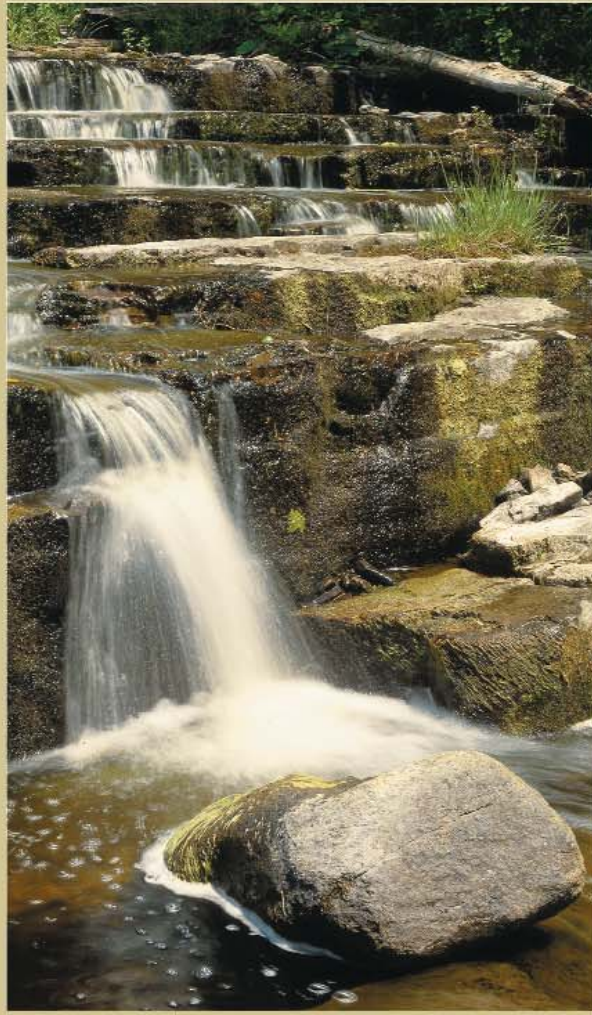


The ECOLOGICAL GIFTS PROGRAM



Environment Canada
Environnement Canada



Canada



For more information, please contact:

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CONFIRMATION THAT ECOGIFTS ARE ELIGIBLE FOR SPLIT-RECEIPTING

On December 20, 2002 and December 5, 2003, the Department of Finance released proposed amendments to the *Income Tax Act* that include provisions that allow for split-receipting. On December 24, 2002, the Canada Revenue Agency (CRA) (formerly the Canada Customs and Revenue Agency) published interpretational guidelines on split-receipting that are to be followed when determining whether a transfer of property results in the making of a gift for purposes of the *Income Tax Act*. The Guidelines may be used for donations made after December 20, 2002.

WHAT IS SPLIT-RECEIPTING?

Split-receipting refers to a situation where a donee (i.e. a recipient) may issue a tax receipt to a donor for an eligible amount of a gift, namely the difference in the total value of the gift and the value of any consideration¹ that the donor received in return for such gift.

DOES SPLIT-RECEIPTING APPLY TO GIFTS OF REAL PROPERTY UNDER THE ECOLOGICAL GIFTS PROGRAM?

Split-receipting is applicable to all eligible transfers of real property to qualified recipients under the Ecological Gifts Program. Environment Canada is thus referring potential ecogift donors, qualified recipients and their legal advisors to the proposed guidelines on split-receipting published by CRA in the *Income Tax Technical News No. 26*.²

WHAT CONSTITUTES A "QUALIFIED RECIPIENT" UNDER THE ECOLOGICAL GIFTS PROGRAM?

Qualified recipients (i.e. donees) are comprised of all levels of government as well as approved Canadian registered charities certified by the Minister of the Environment. Specifically, qualified recipients include:

- (a) Her Majesty in right of Canada or a province or a territory (i.e. territorial, provincial or federal departments or agencies) or a municipality in Canada; and
- (b) a registered charity - one of the main purposes of which is, in the opinion of the Minister of the Environment, the conservation and protection of Canada's environmental heritage, and that is so certified by that Minister.

Any type of qualified recipient is allowed to use split-receipting.

WHAT ARE THE KEY ELEMENTS OF THE PROPOSED GUIDELINES ON SPLIT-RECEIPTING?

The key elements to this interpretative approach are specifically set forth in the *Income Tax Technical News No. 26* published by CRA, and are briefly summarized as follows:

- (a) There must be a voluntary transfer of property to the donee with a clearly ascertainable value;
- (b) Any advantage³ received or obtained by the donor or a person not dealing at arm's length with the donor in respect of the transfer must be clearly identified and the donation value ascertainable. The donee must identify on the tax receipt the advantage and its amount;
- (c) There must be a clear donative intent to enrich the donee. It is proposed that the *Income Tax Act* be amended⁴ so that a transfer of property will not necessarily be disqualified from being a gift, provided that the amount of the advantage does not exceed 80% of the value of the property transferred to the donee. In exceptional circumstances where the amount of the advantage exceeds 80% of the value of the transferred property, the transfer may still nevertheless qualify as a gift under the proposed amendments, provided the donor is able to establish to the satisfaction of the Minister that there was an intention to make a gift; and
- (d) Generally, the proposed definition of an eligible amount of a gift⁵ will be the excess of the value of the property transferred to the donee over the amount of the advantage provided to the donor.

¹ A consideration is an "advantage" of significant value (i.e. a value exceeding the lesser of 10% of the value of the property transferred to the donee and \$75)

² Website: <http://www.cra-adrc.gc.ca/E/pub/tp/tnews-26/tnews-26-e.pdf>

³ As defined in proposed subsection 248 (31) *Income Tax Act*.

⁴ Proposed subsection 248 (32) *Income Tax Act*.

⁵ As defined in proposed subsection 248 (30) *Income Tax Act*.



Simple examples are provided to help better understand how the split-receipting provisions apply to ecogifts. The purpose of these examples is solely to indicate the determination of the eligible amount that can be receipted. There may be other income tax implications in connection with the making of a gift. In fact, the tax implications of any transaction depend upon the circumstances of the transaction as a whole and also on the taxpayer's individual circumstances. The tax implications of making an ecological gift, therefore, cannot be considered in isolation. All donors should obtain tax advice from a qualified professional advisor when considering making an ecogift donation to ensure that all legal and tax implications of the gift are clearly understood.

If you have any questions regarding split-receipting, please contact your legal advisor, or CRA directly at 1-613-957-8953.

National Secretariat
Ecological Gifts Program
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SIMPLE EXAMPLES

SPLIT-RECEIPTING ECOGIFT EXAMPLE 1: FEE SIMPLE DONATION

- A donor owns land with a fair market value of \$500,000 (as certified by the Minister of the Environment on the *Statement of Fair Market Value*).
 - The land qualifies as being ecologically sensitive.
 - The donee is a registered charity that fits in the definition of a qualified recipient for the Ecological Gifts Program (as certified on the *Certificate for the Donation of Ecologically Sensitive Land* or, in Quebec, on the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*).
 - The donor transfers the land to the qualified recipient and receives \$300,000 (cash) in return.
 - The eligible amount of the gift and the amount of the tax receipt is \$200,000 — the fair market value of the land (\$500,000) minus the value of the advantage received by the donor (\$300,000).
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SPLIT-RECEIPTING ECOGIFT EXAMPLE 2: PARTIAL INTEREST DONATION

- A donor owns land with a fair market value of \$500,000 (before the easement)
 - The donor grants an easement over the land to a nature conservation charity and receives \$80,000 (cash) in return.
 - The donee, being the nature conservation charity, fits the definition of a qualified recipient for the Ecological Gifts Program (as certified on the *Certificate for the Donation of Ecologically Sensitive Land* or, in Quebec, on the *Visa pour dons de terrains ou de servitudes ayant une valeur écologique*).
 - The easement qualifies as an ecological gift (land is ecologically sensitive, the donee is a qualified recipient, and the fair market value is certified).
 - The fair market value of the land after the easement has been put in place is \$300,000. The Minister of the Environment certifies that the fair market value of the easement is \$200,000 (on the *Statement of Fair Market Value*).
 - The eligible amount of the gift and the amount of the tax receipt is \$120,000 — the fair market value of the easement (\$200,000) minus the advantage received by the donor (\$80,000).
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