

# RESOLVING AN ESTATE: A DONATION OF RAILCARS



Donation of 64 freight railcars registered in the United States and Canada.

## In brief

*When most donors discuss philanthropy with their advisors, they focus on determining the best way to structure their giving, whether a private foundation or a DAF is more suitable for their goals, or lay out the plans for their philanthropic legacy. They are less likely to be needing a plan for managing the donation of freight railcars.*

*Donating complex or illiquid assets (such as non-publicly traded stock, LLC interest, private equity, insurance policies, real estate, or art) is a great way to support charitable causes donors care about, potentially increasing the amount going to charity. Often when an asset is sold and the subsequent cash is donated, the amount going to charity is less than had the asset been donated at the outset. In this case, the charity is likely to receive the full value of the asset, instead of the asset minus capital gains taxes.*

## Background

The tax consulting firm managing the donor's estate, engaged CAF America and CAF Canada to assess the potential of donating railcars to support the donor's preferred charitable causes. CAF America and its subsidiary, CAF Canada are well-equipped to manage the donation of complex assets, including the capacity to offer tax-deductible giving solutions in both the United States and Canada. This unconventional gift included 64 railcars from the two countries.

## The Donor

The donor, an estate with four trustees, was represented by the tax consulting firm, which served as the liaison with CAF America and CAF Canada.

## The Outcome

This donation of complex assets—while most unusual—was successfully processed within less than a year. In close collaboration with the tax consulting firm representing the estate, CAF America and CAF Canada expertly managed the donation and sale of the railcars, making the funds available to be disbursed to the donor's preferred causes.



## The Challenges

### The Railcars

The donation of complex assets can be complicated, especially when there are limited or no precedents and the assets are subject to strict regulations. When donating artwork, for example, the IRS has very specific rules and even has a team dedicated to answering questions about how to appraise artwork. Perhaps unsurprisingly, this is not the case for railcars. Art auctions and the donation of artwork are common occurrences and there is a robust structure in place for finding a buyer for artwork. Part of the concerns CAF America and CAF Canada have faced with accepting the donation of railcars was the lack of a similar well-established infrastructure.

Freight railcars are also subject to various degrees of regulation. In the US, the industry overall remains largely deregulated since the Staggers Rail Act of 1980 was, however, railcars that transport hazardous materials are often subject to strict requirements. Rules and regulations issued by both the US Department of Transportation and the US Environmental Protection Agency could be applicable, depending on the cargo. In Canada, freight railcars are subject to regulations issued by Transport Canada and the Canadian Transportation Agency. Both US and Canadian regulations may be applicable as many companies in the freight sector operate in both countries, often having their cars crossing the border.

### A Tale of Two Countries

With 62 railcars in the US and 2 in Canada, the donation was twice as complicated from a legal and practical standpoint. Both the Internal Revenue Service (IRS) and the Canadian Revenue Agency (CRA) have jurisdiction, and the board of directors, staff, and legal counsel of CAF America and CAF Canada had a role in the process.

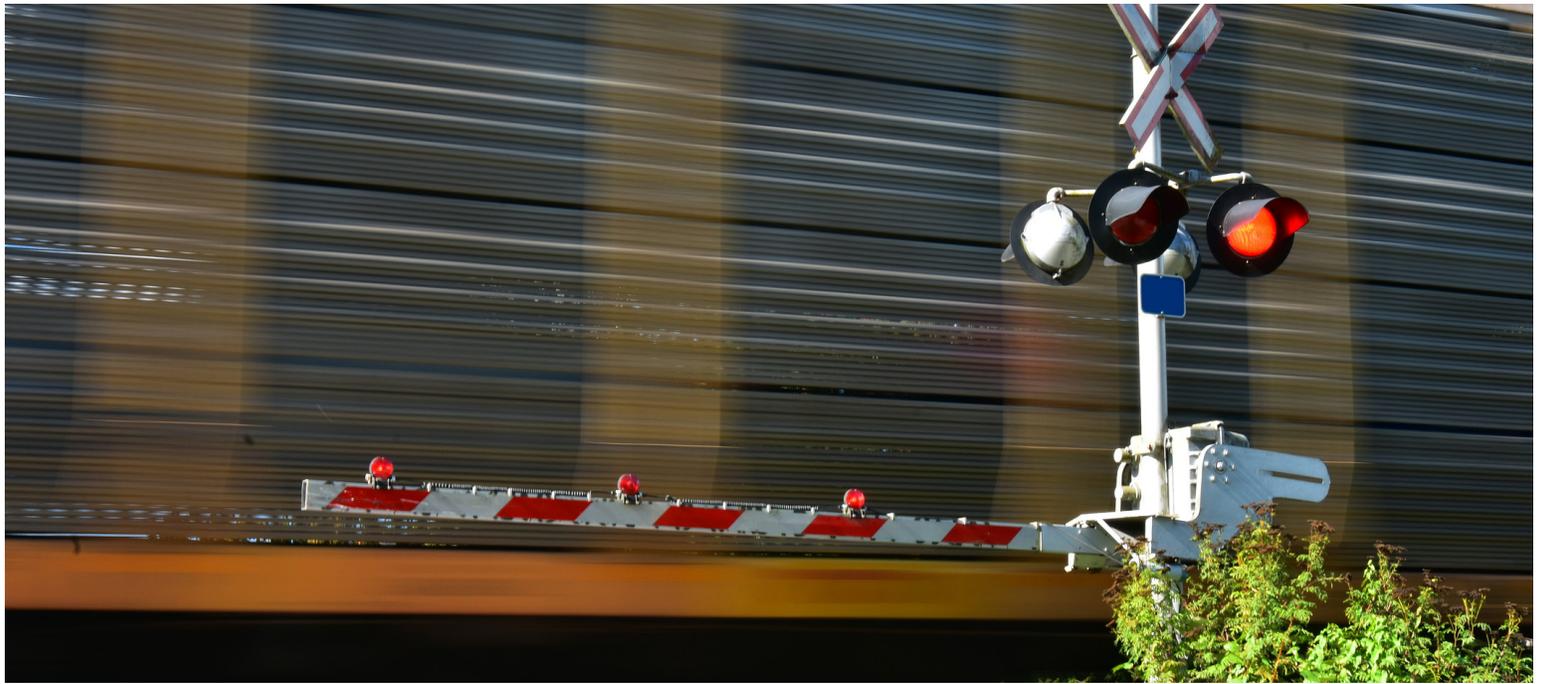
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### Valuation and Sale

According to both the IRS and the CRA, the assets must be appraised and the FMV must be determined before donating the property. While the requirements for determining FMV vary depending on the type of asset, in general, the donor is expected to work with the charity accepting the donation to find a qualified appraiser who will determine the FMV of the asset. In this case, CAF America and CAF Canada worked with the estate, the tax consulting firm managing the donor's estate, and a broker to find a qualified appraiser.



Once the FMV was determined, the next step was to identify a single buyer in order to mitigate the potential complications of selling the cars in different batches to different buyers. To ensure that the transaction followed industry standards and was transparent, the broker prepared to facilitate the same on a public auction.

The sale, however, would not be final until the railcars were donated to CAF America and CAF Canada, which would then sell the cars to the buyer. To minimize risk and the duration of CAF America and CAF Canada ownership, the donation and the subsequent sale of the railcars was planned to occur on the same day.

### Risks

For the ownership of the railcars to be as brief as possible, CAF America and CAF Canada needed to (1) have the final details of the donation ready for both organizations, (2) present these details to both organization's boards of directors on the same day with legal counsel available for both, (3) once approved by the boards, complete the sale of the railcars, and (4) notify the estate and the tax consulting firm managing the estate. The process was logistically complex involving a large number of parties and presented a high risk.

As leaders in compliance, it was CAF America and CAF Canada's responsibility to conduct due diligence on all parties involved. This included a detailed Know Your Customer (KYC) protocols-based review of the donor and estate, the broker and appraiser, and the ultimate buyer. Our due diligence protocol is built to include checking the source of money, verifying identities, checking names against sanctions lists maintained by the Office of Foreign Assets Control (OFAC), and ensuring compliance with the Federal Corrupt Practices Act (FCPA) given that the donation involved assets in Canada as well as the United States. Had there been more than one buyer, this would have greatly increased the complexity required for conducting this due diligence.

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## Key Success Factors

### Flexibility

CAF America and CAF Canada are experts in handling complex asset donations as each organization can accept tax-effective donations in their respective jurisdiction and has in place and maintains the necessary policies and procedures to ensure regulatory compliance, mitigate possible risks, and protect donors' reputation in the process. Additionally, CAF America and CAF Canada have a proven track record working with donors' trusted wealth advisors, estate planners, and other professionals in the finance industry.

As Donor Advised Funds (DAFs) sponsoring organizations, donors making complex asset donations using a DAF at CAF America and CAF Canada benefit from the inherent flexibilities offered by DAFs:

- Tax receipt at FMV of the asset
- Federal deduction of 30% of donor's AGI
- Advise gifts to multiple charities from a single DAF
- Ability to maintain anonymity

### Expertise

With decades of combined experience managing domestic and cross-border giving in the US and Canada, CAF America and CAF Canada have the expertise to handle complex asset donations under the jurisdictions of both the IRS and the CRA. To maintain full compliance with anti-money laundering and counter terrorism financing legislation, CAF America and CAF Canada conducted due diligence on all parties involved, while also ensuring the sale of the railcars was conducted in line with industry standards and was fully transparent.

### About CAF America

Since 1992, CAF America's core mission has been to enable cross-border giving by US donors to validated charities and charitable projects across the world. Through donor-advised giving and our industry-leading organizational validation protocols, we enable our donors to make strategic, cost-effective, and tax-advantaged gifts while reducing the risk, reputation exposure, and administrative burden associated with cross-border giving.

### About CAF Canada

Charities Aid Foundation of Canada (CAF Canada) is a registered Canadian charity working to expand the culture of giving by making it easy, reliable, and effective for Canadians to fund charitable projects both internationally and domestically. Our mission is to help donors make strategic and focused philanthropic decisions which have a lasting, positive impact on the individuals and communities they support—throughout the world.

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To learn more about how CAF America and CAF Canada can assist you or your client in the donation of complex assets, contact us at [info@cafamerica.org](mailto:info@cafamerica.org) or [info@cafcanada.ca](mailto:info@cafcanada.ca).