

*Impacts of Canada's Underused Housing Tax on Border Communities*

**A Brief by Congressman Brian Higgins  
of New York's 26<sup>th</sup> Congressional District**

*Accompanying Testimony Provided on June 5, 2023  
To the House of Commons Standing Committee on International Trade*

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## A. Overview of Canada's Underused Housing Tax

In August 2021, the Government of Canada released the Budget 2021 document, which included the proposal for the Underused Housing Tax, a 1% tax on vacant or underused residential property.

“Budget 2021 announces the government’s intention to implement a national, annual 1 per cent tax on the value of non-resident, non-Canadian owned residential real estate that is considered to be vacant or underused, effective January 1, 2022.”<sup>1</sup>

In the budget document, the intent of the tax is clearly stated. “This will help to ensure that foreign, non-resident owners, who simply use Canada as a place to passively store their wealth in housing, pay their fair share.”<sup>2</sup>

However, Americans who own property in unique, binational border communities are unfairly caught in its net.

The tax was passed into law as a provision of Bill C-8, *Economic and Fiscal Update Implementation Act, 2021*, and received Royal Assent on June 9, 2022.

While certain exemptions are included in the legislation, and additional exemptions were drafted during the implementation process, certain border communities remain subject to the Underused Housing Tax. I write today to advocate for their exclusion.

## B. Congressman Higgins' Advocacy

I have raised concerns about the Underused Housing Tax affecting Americans, especially those in border communities, since May 2021, beginning with a letter to Canada's Ambassador to the United States, Hon. Kirsten Hillman. Since then, I have consistently advocated to both the United States government and Government of Canada to address concerns regarding the inclusion of Americans with properties in border communities. Below is a general overview of our work:

- *May 3, 2021*: Sent a letter to Ambassador Kirsten Hillman raising concerns about the tax.
- *August 9, 2021*: Sent a letter to U.S. Treasury Secretary Janet Yellen and United States Trade Representative Katherine Tai expressing concern that the proposed Underused Housing Tax violates the nondiscrimination provisions of a longstanding tax treaty and the United States-Mexico-Canada Agreement.
- *November 10, 2021*: Sent a letter to President Biden in advance of bilateral meetings with Prime Minister Trudeau, urging President Biden to address the UHT and advocate for excluding Americans in discussions with the Prime Minister.
- *February 3, 2022*: Met with Deputy United States Trade Representative, Ambassador Jayme White, in person to discuss what conversations USTR has had with the Government of Canada regarding the Underused Housing Tax, if the tax violates USMCA, and what USTR can do to advocate for those impacted by the tax.
- *February 3, 2022*: Spoke on the House Floor to raise awareness among my colleagues about the UHT.

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<sup>1</sup> Government of Canada. Department of Finance Canada. *Budget 2021*. <https://www.budget.canada.ca/2021/report-rapport/p4-en.html>

<sup>2</sup> *Ibid.*

- *March 30, 2022:* Raised the UHT with Ambassador Tai during the House Ways and Means Committee hearing regarding the Biden Administration’s 2022 Trade Agenda.
- *April 14, 2022:* Submitted a Question for the Record for Ambassador Tai after the 2022 Trade Agenda Hearing. Ambassador Tai responded, “We are closely tracking Canada’s Budget Bill and Underused Housing Tax legislation and have expressed our concern that this proposed tax would only be imposed on non-Canadian nationals, including American nationals. We will continue to urge Canada to be mindful of its USMCA obligations as it moves forward with this tax.”
- *May 4, 2022:* Sent a letter to Ambassador Tai urging discussion of the tax during her visit to Ottawa with Minister Ng on May 5-6. Ambassador Tai and Minister Ng agreed to collaborate on addressing these issues.<sup>3</sup>
- *June 8, 2022:* Raised the Underused Housing Tax during the Ways and Means Committee hearing on the Proposed Fiscal Year 2023 Budget with Secretary Yellen.
- *June 22, 2022:* Submitted a Question for the Record for Secretary Yellen after the Fiscal Year 2023 Budget hearing, asking what tools the United States has to address the UHT with Canada.
- *July 11, 2022:* Sent a letter to Hon. Chrystia Freeland requesting a meeting regarding the Underused Housing Tax. The meeting never occurred.
- *February 9, 2023:* Sent a letter to Secretary of State Antony Blinken requesting that the UHT be addressed in upcoming bilateral meetings. No such discussion was ever officially reported.
- *February 17, 2023:* Staff level meeting with USTR and the Ways and Means Trade Subcommittee staff, after consultation with Ways and Means Trade staff, regarding the possibility that the UHT violates USMCA.
- *March 1, 2023:* Phone conversation between Congressman Higgins and U.S. Ambassador to Canada David Cohen regarding the UHT, ending in agreement to work on this issue and routinely engage.
- *March 1, 2023:* Follow up staff level conversation with USTR and Ways and Means Trade Subcommittee staff regarding the UHT.
- *March 7, 2023:* Sent a letter to Ambassador Tai requesting the United States begin consultations with Canada under USMCA’s dispute settlement process regarding the UHT.
- *March 21, 2023:* Response from Amb. Tai re: UHT “I am concerned with the lack of transparency and the lack of guidance from the Canadian Revenue Agency to those who could be impacted by this tax, and I have raised this issue directly with my Canadian counterpart, Minister of International Trade, Export Promotion, Small Business, and Economic Development, Mary Ng. My staff is closely monitoring developments, and we will continue to work with our U.S. government interagency partners, including the State Department and U.S. Embassy in Ottawa, to engage Canada on this matter.”
- *March 24, 2023:* During the Ways and Means Committee 2023 Trade Agenda hearing, brought up the UHT with Ambassador Tai and thanked her for her work on the issue.
- *April 5, 2023:* Call with Ambassador Cohen to discuss recent developments with UHT.
- *May 24, 2023:* Met with the House of Commons Standing Committee on International Trade in Washington, D.C., where the UHT was discussed.
- *May 25, 2023:* 11 Members of Congress sent a bipartisan letter to Secretary Blinken requesting the State Department work with the Government of Canada to find a solution to exempt Americans from the UHT.

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<sup>3</sup> U.S. Department of State. U.S. Embassy & Consulates in Canada. (May 5, 2022.) *Readout of USTR Katherine Tai’s Meeting with Canadian Minister of International Trade Mary Ng.* <https://ca.usembassy.gov/ustr-tai-readout-from-meeting-with-minister-ng/>

- *June 5, 2023*: Testified before the House of Commons Standing Committee on International Trade regarding the impacts of the UHT.

Throughout, Congressman Higgins and staff were in communication with the Embassy of Canada and Finance Canada, voicing concerns about the inclusion of border communities.

### **C. Survey of Impacted Americans**

On February 8<sup>th</sup> 2023, my office created an online survey for Americans who own property in Canada to share how the Underused Housing Tax has impacted them. As of June 14, 2023, the survey has received 407 responses.

While each story is unique, there are several common themes. Families have owned these homes for generations, where they have made precious memories and traditions. It has been difficult and confusing to get information about exemptions, and how to file with the Canada Revenue Agency. Many were surprised by the tax, and only learned about it through their attorneys, accountants, or news reports. Even for those who are exempt, it is costly and time consuming to figure that out. After years of inconsistent border closures and policies, this is concerning and un-neighborly. As property owners, they point out they already contribute to the Canadian economy and pay property taxes and municipal services fees.

The demographics of the survey responses are:

- 95 different Congressional districts
- 28 different states
- Nearly 30% have owned property in Canada for over 50 years
- Nearly 40% have owned property in Canada for 20-49 years

A sample of survey responses may be found at the end of the report in the Appendix.

### **D. Potential Violations**

#### **a. United States – Mexico – Canada Agreement**

A bedrock principle of USMCA (or CUSMA) is the requirement for all parties to not discriminate against each other or provide preferential treatment solely to domestic companies or citizens, including with respect to matters of internal taxation. The Underused Housing Tax does not apply equally to Canadian and U.S. citizens and therefore violates these principles.

Provisions that enact this sentiment are found throughout the text of USMCA. One example is below:

#### **Article 15.3: National Treatment**

1. Each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers. 2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of the Party of which it forms a part.<sup>4</sup>

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<sup>4</sup> Executive Office of the President of the United States. Office of the United States Trade Representative. *United States – Mexico – Canada Agreement*. <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/15-Cross-Border-Trade-in-Services.pdf>

USMCA includes dispute settlement mechanisms should issues arise between parties to the agreement. I've requested the United States begin the first step in the Chapter 31 dispute settlement process, consultations between the United States and Canada, to examine whether the UHT violates the agreement.

#### **b. United States – Canada Income Tax Convention Tax Treaty of 1984**

A plain text reading of the United States – Canada Income Tax Convention, a tax treaty entered into force on August 16, 1984, indicates the UHT is in violation of the non-discrimination article as well.<sup>5</sup>

##### *Article XXV: Non-Discrimination*

1. Citizens of a Contracting State, who are residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected.

#### **E. Conclusion**

The unintended consequences of the Underused Housing Tax are harmful to the economy and culture of historic border communities.

These vibrant, thriving border communities are not places where millionaires and billionaires hide their wealth. They are binational neighborhoods where hardworking Americans and Canadians spend their summers together for generations in modest beach cottages. At a time when we should be encouraging a return to, and surpassing of, pre-pandemic border activity, it is a harmful action that will have negative multiplier effects.

Americans with properties in these communities should be exempted from the Underused Housing Tax.

I am sincerely grateful to the House of Commons Standing Committee on International Trade for their attention to this issue. Should you require further information, or have any questions, please do not hesitate to contact my office.

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<sup>5</sup> U.S. Department of Treasury. *United States – Canada Income Taxation Convention*. <https://www.irs.gov/pub/irs-trty/canada.pdf>

**F. Appendix – Survey Responses**

How many years have you owned this property in Canada?	Additional comment: Tell us how this new tax impacts you.	If you have tried to contact the Canadian Revenue Agency about an exemption for your property, what was your experience?
126 years -- has been owned by my family and now me since 1896.	Has a significant financial impact on keeping property in our family/transitioning to the next generation.	I have written to many political leaders in Canada but to no avail.
23	It may make the continuing ownership of this family gathering place unaffordable. Our family has been a member of this community for over 70 years. The loss of this home and community would be heartbreaking to our family.	Yes. They have no clue as to the reach of this tax or its possible exemptions.
4 (but in my family for 96 years)	Our cottage has heat so this will more than double our current taxes which may force us to sell a home that has been in my family for a century. We are NOT the stated target of this tax but the Canadian government has extended it far beyond its original purpose. We use our seasonal home throughout the year. It is NOT a "passive investment" that the Canadian government claims to be after.	Yes, but they don't answer the phone. Regardless, my postal code is not excluded because it is in a "population center". Where the property is located should have no bearing on who should be taxed. It should be entirely based on how the property is used.
50yrs	This is a punitive charge on a US citizen for owning a non winterized summer cottage in a rural summer residential colony that my wife and I bought, as a distressed cabin 50 years ago. We physically rebuilt this cottage for our family of three children, seven grandchildren, and a 100 year old great uncle. For fifty years, our family has spent every summer at this magical place which holds many wonderful memories of sailing, swimming, tennis, golf, and bonfires, just to mention a few. This is the place where our family now gathers since our children and grandchildren are living in different cities. Adding the extra 1% tax would be a hardship for us. We recently moved to a community in Florida where 30% of the residents are Canadian and they do not pay more than US citizens.	Canada Revenue says: "There are no guidelines yet for requesting an exemption". "But, we must apply for a Canadian tax ID number and file a Canadian tax return before April 30, 2023".

Family: 96 years. Me: 25 years	The unfair application of this law which intended to solve a problem with foreign owned housing investments in large urban areas, will make our seasonal family home much more expensive to maintain. We will make fewer home improvements each year, eat and shop locally less often, thus hurting the local economy. When a reassessment takes place, it may force more extreme measures.	Yes. They said the exemptions weren't defined yet. Now that the UHT site is posted, some still aren't. The CRA doesn't seem to care if the tax has unintended consequences.
32 years	\$8000 in addition to \$12000 taxes. We have been responsible summer residents full time for five months.	We need to apply for a tax number TIN and file a 7-page annual form. The law is meant to stop land speculation but has serious negative consequences for summer residences who consider Canada as a second home.
26	We love to support the local businesses in our area. We dine out regularly and purchase goods from local small businesses. The loss of this revenue that we would spend in that region is sad. We are retired living on a fixed income.	I wrote to the Minister of Finance.
Our family has owned this property for 83 years.	Unfairly and not in the true spirit of the law. This is our family summer house since 1940 and it is not a rental property and it is not underused.	We have and we have been advised to attend public hearings, which we have but without any support or positive resolution.
A family cottage, owned for 68 years	Our cottage has no heat, one closet, is definitely not suitable for year round use. The tax is punitive to our family who have been supportive members of the Ft Erie community for 68 years. This is our home for three months each year, it is not a haven for hiding money for tax purposes or speculation.	I have spent endless amounts of time contacting The CRA, and most of the agents have had little information at this time since it is so new.
75	It will more than double my property taxes.	getting information on this is almost impossible
81 years	We currently pay \$16,000 in property taxes. The 1% will be an additional \$10,340. This is a 39% increase!!!! We live on a very quiet street that has been defined "urban" under the regulation. Has anybody from the Ministry of Finance ever visited this beach community?	Hours spent on the telephone. The telephone representatives state they are not familiar with the process.
80	Arbitrary large added expense that is being misapplied to a family cottage	NO exemption offered

	owner. It may force my family to sell this 4th generation cottage.	
40	Our cottage has been in the family since 1983 and enjoyed by four generations of our family. we use it as much as we can - of course we were locked out of Canada during COVID - up to the 180 day limit imposed on us by Canada. It is hardly 'under-used' but is used regularly by our family with primary residences in the USA. It is modest dwelling in the woods with a furnace so we can use it in the winter. Because of the furnace, it appears that we will be subject to the 1% tax. Canadians have purchased vacation homes in the same neighborhood who use them far less than we do, yet they are exempt. All we have done for 40 years is maintain and add value to a property, pay property taxes, capital gains taxes when the property transferred between generations and sales taxes while receiving minimal public services in return on a private lane. We have employed many Canadian trades people and contractors on home improvement and other projects. We have been good neighbors and it does not seem fair to impose yet another impediment to cross-border life.	If it weren't so serious it would be comical. We called to apply for tax ID numbers and have started that process. I asked for information on the rules for exemptions and the CRA (Canada Revenue Agency) staff said they were not aware of the rules but would transfer me to a specialist on the UHT. As it turned out every 'specialist' I talked to had no information to share because, "the rules are not set yet'. There are no rules on a tax I may or may not owe for last year! ON the web site is a tool to enter your postal code to see if your property is exempt. I entered ours and the response was 'you may or may not be exempt - call this number to speak to a CRA agent'. I called and the agent used the tool exactly as I did and told me 'you may or may not be exempt'! When I explained that is why I called them they put me on hold and came back to inform me they have no idea what to tell me. There seems to be little advanced planning about how this tax is to be administered.
56 years	I consider it very un-neighborly.	I didn't know that was an option.
Me personally since 2012, but my grandparents purchased the property more than 80 years ago.	My family has supported the local economy since 1940. We pay significant property tax already and use almost no government services other than garbage pickup for 6 months of the year. We've cared for and improved the property all with local providers. Additional taxation is simply unwarranted.	Our Canadian attorney is handling that.
22 years	Hardship expense. Difficult getting all the necessary things like tax number in time for the deadline. My children are also on the deed so they each have to file.	No one could answer my questions. No one knew when the forms would be ready. Total confusion



68 years	This property has been in our family since 1956. My aunts and uncles were children here. The same is true for myself, my siblings, all 47 of my cousins, our children, and now our cousins' grandchildren. 6 generations of my family have grown in and loved this home. It is the cornerstone of my childhood and my most precious connection to my family. We are a very large family and exceptionally close thanks to our shared time in this family home over generations. It is our gathering place. If this tax is put into place, keeping and maintaining this home will become impossible. We will lose your connection to a place so dear to our family and to each other. It would be an irreplaceable loss.	Yes, we did contact about an exemption.
12	The home has been in the family for 4 generations since 1895. It's enough of a struggle to do needed repairs and maintenance during our summer visits without adding an additional tax burden. Of course we pay annual Digby county property tax. As an example we need to install a new fuel oil tank (per home insurer requirements) this summer at a cost close to or exceeding \$5000. We also need local tradesmen to work on the home and they are much more expensive than US tradesmen, when we can get them. I got an estimate last year to replace the roof at \$16,000. So, we spend a lot of our US dollars in Canada every summer.	Not yet.
Family has owned for 128 years	This is vacation property which has been occupied only in the summer since it was constructed by my great-grandfather in 1895. It is now owned by myself and my two sisters. We cannot afford to pay this tax and will have to sell the property--most likely to a Canadian who will also occupy it only seasonally.	When I contacted the Canadian Revenue Agency in late January they had no information about exemptions to the tax.
12 years	My family (Mostly in Michigan) has had cabins on the bay since the 1950's and there have been members of my family every summer in Canada since the 1940's. The paperwork and documentation required to file for an	

	<p>exemption is ridiculous. We have paid plenty of extra taxes already as non residents and I'm struggling to get forms filed for all family members who own shares in our cottages. If we are already exempt from paying due to location and residency why do we have to file all these forms?</p>	
14	<p>My next door neighbor in Canada has terminal cancer. Her husband has end stage liver disease. I am going up caring for her and will likely care for her son (16) when she dies. Both her sons need (19 and 16) need to learn how to drive bc they need to drive their parents to doctors appointments and their parents are no longer able to drive them places. I will be teaching the boys to drive starting April. The additional tax means that I may hav to sell and then I have no idea who will care for them. This isn't about property speculation. It's about my family</p>	<p>I thought we just checked a box</p>
16yrs	<p>I am a senior citizen on a fixed income who cannot afford further taxation. This vacation property has been owned by my family since 1962 and has never been in default on property taxes levied by the township of Pelee Island ever. I believe this enactment is in violation of North American free trade agreement (NAFTA) and other agreements. It is discriminatory and ill conceived.</p>	<p>Canada Revenue Agency is non responsive</p>
37 years, in the family for 105 years	<p>As a retired person on a fixed income, any increase of the tax rate will be very difficult to work into our budget. It could mean the end of a wonderful collaboration with our Canadian neighbors which included my Grandfather's time serving in the Canadian Armed Forces as an officer.</p>	<p>Canadian Revenue Agency could not even tell me if my property was exempt or not.</p>