

Section 170.—Charitable, etc., Contributions and Gifts

26 CFR 1.170A-6: Charitable contributions in trust.

Sample inter vivos CRAT for a term of years.

This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with a term of years annuity period. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-54, page 236.

Section 664.—Charitable Remainder Trusts

Sample inter vivos CRAT for a term of years.

This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with a term of years annuity period. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-54, page 236.

Section 2055.—Transfers for Public, Charitable, and Religious Uses

26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.

Sample inter vivos CRAT for a term of years.

This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with a term of years annuity period. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-54, page 236.

Section 2522.—Charitable and Similar Gifts

26 CFR 20.2522(c)-3: Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

Sample inter vivos CRAT for a term of years.

This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with a term of years annuity period. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-54, page 236.

Rev. Proc. 2003-54

SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements of § 664(d)(1) of the Internal Revenue Code for an inter vivos charitable remainder annuity trust (CRAT) providing for annuity payments for a term of years followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of CRATs. The Service is updating the previously issued samples and issuing new samples for additional types of CRATs; annotations and alternate sample provisions are included as further guidance. In addition to the sample trust instrument included in this revenue procedure for an inter vivos CRAT providing for annuity payments for a term of years, samples are provided in separate revenue procedures for:

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-53, superceding Rev. Proc. 89-21, 1989-1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superceding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (c) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superceding section 5 of Rev. Proc. 90-32);
- (d) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-57, superceding section 6 of Rev. Proc. 90-32);
- (e) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-58);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-59, superceding section 7 of Rev. Proc. 90-32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-60, superceding section 8 of Rev. Proc. 90-32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for an inter vivos CRAT that is created by an individual who is a citizen or resident of the United States and that provides for a term of years annuity period. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) the apportionment of the annuity amount among members of a named class in the discretion of the trustee; (.04) a qualified contingency; (.05) the restriction of the charitable remainderman to a public charity; (.06) a retained right to substitute the charitable remainderman; and (.07) a power of appointment to designate the charitable remainderman.

For transfers to a qualifying CRAT, as defined in § 664(d)(1), the remainder interest will be deductible by a citizen or resident of the United States under §§ 170(f)(2)(A), 2055(e)(2)(A), and 2522(c)(2)(A) for income, estate, and gift tax purposes, respectively, if the other requirements of §§ 170(f)(2)(A), 2055(e)(2)(A), and 2522(c)(2)(A) (that is, the requirements not relating to the provisions of the governing instrument) are also met. The Service will recognize a trust as a qualified CRAT meeting all of the requirements of § 664(d)(1) if the trust operates in a manner consistent with the terms of the trust instrument, if the trust is a valid trust under applicable local law, and if the trust instrument: (i) is substantially similar to the sample in section 4 of this revenue procedure; or (ii) properly integrates one or more alternate provisions from section 6 of this revenue procedure into a document substantially similar to the sample in section 4 of this revenue procedure. A trust instrument that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure, or provisions necessary to establish a valid trust under applicable local law that are not inconsistent with the applicable federal tax requirements), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternate provision from section 6 of this revenue procedure is properly integrated), will not necessarily be disqualified, but neither will that trust be assured of qualification under the

provisions of this revenue procedure. The Service generally will not issue a letter ruling on whether an inter vivos trust created by an individual and having a term of years annuity period qualifies as a CRAT. The Service, however, generally will issue letter rulings on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a CRAT.

SECTION 4. SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TERM OF YEARS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–54 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”), hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Charitable Remainder Annuity Trust.

1. *Funding of Trust.* The Donor hereby transfers and irrevocably assigns, on the above date, to the Trustee the property described in Schedule A, and the Trustee accepts the property and agrees to hold, manage, and distribute the property under the terms set forth in this trust instrument.

2. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] (hereinafter “the Recipient”) an annuity amount equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). The annuity period is a term of [a number not more than 20] years. The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the day preceding the [ordinal number corresponding to the length of the annuity period] anniversary of that date. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Recipient (in the case of an undervaluation) or receive from the Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

4. *Distribution to Charity.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the provisions above) to [designated remainderman] (hereinafter “the Charitable Organization”). If the Charitable Organization is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution.

6. *Prohibited Transactions.* The Trustee shall not engage in any act of self-dealing within the meaning of § 4941(d) of the Code, as modified by § 4947(a)(2)(A) of the Code, and shall not make any taxable expenditures within the meaning of § 4945(d) of the Code, as modified by § 4947(a)(2)(A) of the Code.

7. *Taxable Year.* The taxable year of the trust shall be the calendar year.

8. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder annuity trust under § 664(d)(1) of the Code and the corresponding regulations.

9. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder annuity trust within the meaning of § 664(d)(1) of the Code.

10. *Investment of Trust Assets.* Nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TERM OF YEARS

.01 Annotations for Introductory Paragraph and Paragraph 1, Funding of Trust, of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664–1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664–1(a)(4). Solely for

purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor's spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the annuity amount. Section 1.664-1(a)(4). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.

- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current "qualified appraisal" from a "qualified appraiser," as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Income tax deductibility limitations.* The amount of the charitable deduction for income tax purposes is affected by a number of factors, including the type of property contributed to the trust, the type of charity receiving the property, whether the remainder interest is paid outright to charity or held in further trust, and the donor's adjusted gross income (with certain adjustments). See § 170 (b) and (e); § 1.170A-8; Rev. Rul. 80-38, 1980-1 C.B. 56; and Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.05 of this revenue procedure for an alternate provision that restricts the charitable remainderman to a public charity (as defined therein).
- (4) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee's duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder. Note that certain powers given to certain persons serving as the trustee may cause the trustee to be treated as the owner of the trust under subpart E and thus disqualify the trust as a charitable remainder trust. See § 1.664-1(a)(4). See section 6.03 of this revenue procedure for an alternate provision providing for the apportionment of the annuity amount among members of a named class in the discretion of the trustee.
- (5) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor may be an individual or a husband and wife. Appropriate adjustments should be made to the introductory paragraph if a husband and wife are the donors. Terms such as "grantor" or "settlor" may be substituted for "donor."

.02 Annotations for Paragraph 2, Payment of Annuity Amount, of the Sample Trust.

- (1) *Permissible term.* The period for which the annuity amount is payable must not exceed 20 years. Section 1.664-2(a)(5)(i). Thus, for example, the annuity period of a CRAT for a term of 20 years will end on the day preceding the twentieth anniversary of the date the trust was created.
- (2) *Permissible recipients.* For a CRAT having a term of years annuity period, the annuity amount must generally be paid to a named person or persons (within the meaning of § 7701(a)(1)). If the annuity amount is to be paid to an individual or individuals, all the individuals must be living at the time of the creation of the trust. The annuity amount may be payable to the estate or heirs of a named recipient who dies prior to the expiration of the term of years. See Rev. Rul. 74-39, 1974-1 C.B. 156. The annuity amount may be payable to members of a named class and, because the annuity period is for a term of years, all of the members of the class need not be living or ascertainable at the creation of the trust. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (3) *Multiple noncharitable recipients.* Generally, if the annuity amount is payable to more than one person, the trust instrument should describe the interest of each person. See section 6.03 of this revenue procedure for an alternate provision providing for the apportionment of the annuity amount among members of a named class in the discretion of the trustee.
- (4) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D). See §§ 1.7520-3(b) and 25.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs.
- (5) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (6) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a).

- (7) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotation for Paragraph 3, Proration of Annuity Amount, of the Sample Trust.

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.

.04 Annotations for Paragraph 4, Distribution to Charity, of the Sample Trust.

- (1) *Minimum value of remainder.* As noted in section 5.02(4) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in § 170(c) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C). Any named charitable remainderman also must be an organization described in § 2522(a) to qualify for the gift tax charitable deduction and an organization described in § 2055(a) to qualify for the estate tax charitable deduction. See Rev. Rul. 77-385, 1977-2 C.B. 331. If it is determined a deduction under § 2055(a) will not be necessary in any event, all references to § 2055(a) in the trust instrument may be deleted. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c), 2055(a), and 2522(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. The gift of the remainder interest will be incomplete for gift tax purposes if, for example: (i) the donor retains the power to substitute the charitable remainderman; or (ii) the trust instrument provides the trustee with the power to designate the charitable remainderman and the donor is not prohibited from serving as trustee. See § 25.2511-2(c). Note, however, that an income tax charitable deduction is available even if the donor has the authority to substitute the charitable remainderman or the trustee has the authority to designate the charitable remainderman. Rev. Rul. 68-417, 1968-2 C.B. 103; Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.06 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.07 of this revenue procedure for an alternate provision in which the recipient is granted a power of appointment to designate the charitable remainderman.
- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c), 2522(a), and, if needed, 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

.05 Annotations for Paragraph 6, Prohibited Transactions, of the Sample Trust.

- (1) *Payment of the annuity amount.* Payment of the annuity amount to the recipient is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A), are required if the trust provides for payment of part of an annuity amount to an organization described in § 170(c) and gift and estate tax charitable deductions are sought for this interest. See § 4947(b)(3). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (3) *Trust to continue in existence for benefit of charity.* The governing instrument requirements of § 508(e) must be included in the trust instrument if, after the termination of the annuity period: (i) the trust instrument provides that the trust shall continue in existence for the benefit of the charitable remainderman and, as a result, the trust will become subject to the provisions of § 4947(a)(1); and (ii) the trust will be treated as a private foundation within the meaning of § 509(a), as modified by § 4947(a)(1). Except as provided in paragraph 6 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the annuity period when the trust continues in existence for the benefit of the charitable remainderman. Note that when the trust provides for the trust corpus to be retained, in whole or in part, in trust for the charitable remainderman, the higher deductibility limitations in § 170(b)(1)(A) for the income tax charitable deduction will not be available (even if the charitable remainderman is restricted to a public charity) because the contribution of the trust corpus is made “for the use of” rather than “to” the charitable remainderman. See § 1.170A-8(b).

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TERM OF YEARS

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664–2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*
 - (a) Replace the first sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] (hereinafter “the Recipient”) an annuity amount equal to [the stated dollar amount].
 - (b) Delete the last sentence of paragraph 2, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

.02 Payment of Part of the Annuity to an Organization Described in § 170(c).

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If a gift tax charitable deduction and, if needed, an estate tax charitable deduction are sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipient and to the charitable organization described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).
- (2) *Instructions for use.*
 - (a) Replace paragraph 2, Payment of Annuity Amount, of the sample trust with the following paragraph:
Payment of Annuity Amount. The annuity amount is equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the noncharitable recipient] percent of the annuity amount to [permissible recipient] (hereinafter “the Recipient”) and [the percentage of the annuity amount payable to the charitable recipient] percent of the annuity amount to [an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code] (hereinafter “the Charitable Recipient”). The annuity period is a term of [not more than 20] years. The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the day preceding the [ordinal number corresponding to the length of the annuity period] anniversary of that date. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.
 - (b) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical:
(other than any amount due the Recipient and the Charitable Recipient under the provisions above).
 - (c) Add the following sentence after the first and only sentence in paragraph 6, Prohibited Transactions, of the sample trust:
The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Apportionment of the Annuity Amount among Members of a Named Class in the Discretion of the Trustee.

- (1) *Explanation.* A trust is not a CRAT if any person has the power to alter the amount to be paid to any named person other than an organization described in § 170(c) if the power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E were applicable to the trust. Section 1.664-2(a)(3)(ii). See Rev. Rul. 77-73, 1977-1 C.B. 175. For example, the donor would not be treated as the owner of any portion of a trust if the power is exercisable solely by an independent trustee or trustees, provided no person has the power to add beneficiaries to the class except to provide for after-born or after-adopted children. Section 674(c). Trustees are independent for purposes of § 674(c) if none of them is the donor or the donor's spouse and if no more than half of them are related or subordinate parties who are subservient to the wishes of the donor. However, an independent trustee's discretionary power, exercisable solely by that trustee, to allocate the annuity amount among the members of a class would cause the trustee to be treated as the owner of all or a portion of the trust under § 678(a) if the trustee is a member of the class, if the trustee may apply trust income or corpus to satisfy the trustee's own legal obligation, or if the trustee actually exercises the power to satisfy a support obligation owed by the trustee. Therefore, if any trustee is given the discretionary power exercisable solely by that trustee to allocate the annuity amount among members of a class, the trust instrument must provide that such trustee must be: (i) independent; (ii) not a member of the recipient class; and (iii) prohibited from applying any part of the annuity payment in satisfaction of the trustee's own legal obligation.
- (2) *Instructions for use.*
 - (a) Add the following sentence to the sample trust:

Any trustee who is authorized in the trustee's sole discretion to allocate the annuity amount among members of a Recipient class must be independent within the meaning of section 674(c) of the Code and must not be a member of the Recipient class.
 - (b) Replace the first sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following three sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to a member or members of a class of persons comprised of [*designated members of class*] (hereinafter "the Recipient") an annuity amount equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). The Trustee may pay the annuity amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, may from time to time deem advisable. The Trustee may not, however, apply the payment for the Trustee's own benefit, or in satisfaction of any support or other legal obligation of the Trustee.

.04 Qualified Contingency.

- (1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the expiration of the term of years. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instruction for use.* Replace the second and third sentences of paragraph 2, Payment of Annuity Amount, of the sample trust with the following two sentences, respectively:

The annuity period is a term of [*not more than 20*] years, unless earlier terminated by the occurrence of [*qualified contingency*]. The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the day preceding the [*ordinal number corresponding to the length of the annuity period*] anniversary of that date or, if earlier, the date on which occurs the [*qualified contingency*].

.05 Restricting the Charitable Remainderman to a Public Charity.

- (1) *Explanation.* The amount of the donor's income tax charitable deduction is more limited for gifts to certain private foundations than for other charitable organizations. Specifically, charitable organizations described in § 170(c) include private foundations that are not described in § 170(b)(1)(E). See § 170(b) and Rev. Rul. 79-368, 1979-2 C.B. 109. To avoid these more restrictive limitations, a donor of an inter vivos CRAT may wish to restrict the charitable remainderman to an organization that is described in § 170(b)(1)(A) as well as §§ 170(c), 2055(a), and 2522(a) (referred to herein as a "public charity").
- (2) *Instruction for use.* To restrict the charitable remainderman to a public charity, each and every time the phrase "an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code" appears in the sample trust, replace it with the phrase "an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code."

.06 Retaining the Right to Substitute the Charitable Remainderman.

- (1) *Explanation.* The donor may retain the right to substitute another charitable remainderman for the charitable remainderman named in the trust instrument. See Rev. Rul. 76–8, 1976–1 C.B. 179. Note, however, that the retention of this right will cause the gift of the remainder interest to be incomplete for gift tax purposes. See § 25.2511–2(c) and Rev. Rul. 77–275, 1977–2 C.B. 346.
- (2) *Instruction for use.* Insert the following sentence between the first and last sentences of paragraph 4, Distribution to Charity, of the sample trust:

The Donor reserves the right to designate, at any time and from time to time, in lieu of the Charitable Organization identified above, one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman, and shall make any such designation by giving written notice to the Trustee.

.07 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76–7, 1976–1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:
Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the provisions above) to one or more charitable organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

DRAFTING INFORMATION

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