

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

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

Sample testamentary 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 a testamentary 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. 2003-58, page 262.

Section 664.—Charitable Remainder Trusts

Sample testamentary 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 a testamentary 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. 2003-58, page 262.

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

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

Sample testamentary 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 a testamentary 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. 2003-58, page 262.

Rev. Proc. 2003-58

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 a testamentary 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 a testamentary 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 for a term of years (see Rev. Proc. 2003-54);
- (c) 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);
- (d) 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);

- (e) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–57, superceding section 6 of Rev. Proc. 90–32);
- (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 a testamentary 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; and (.05) 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 the estate of a citizen or resident of the United States under § 2055(e)(2)(A) if the other requirements of § 2055(e)(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 a testamentary 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 TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TERM OF YEARS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–58 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Annuity Trust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *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 passing to this trust as finally determined for federal estate tax purposes. 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 of my death 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 estate 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.

2. *Deferral Provision.* The obligation to pay the annuity amount shall commence with the date of my death, but payment of the annuity amount may be deferred from this date until the end of the taxable year in which the trust is completely funded. Within a reasonable time after the end of the taxable year in which the trust is completely funded, the Trustee must pay to the Recipient (in the case of an underpayment) or receive from the Recipient (in the case of an overpayment) the difference between any annuity amounts actually paid, plus interest, and the annuity amounts payable, plus interest. The interest shall be computed for any period at the rate of interest, compounded annually, that the federal income tax regulations under § 664 of the Code prescribe for this computation.

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) and 2055(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) and 2055(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. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

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 TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TERM OF YEARS

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 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 no 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). Section 1.664-1(a)(4). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). Section 1.664-1(a)(5)(i). 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) *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.

.02 Annotations for Paragraph 1, 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 § 20.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs.
- (5) *Payment of annuity amount in installments.* Paragraph 1, 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). In addition, § 1.664-1(a)(5)(i) provides a special rule applicable to charitable remainder trusts created by testamentary transfer that may defer the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded. See section 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the annuity amount until the end of the taxable year in which the trust is completely funded.
- (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 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

- (1) *Deferral of requirement to pay annuity amount.* The deferral provision in paragraph 2 of the sample trust authorizes deferring the payment of the annuity amount until the end of the taxable year of the trust in which the trust is completely funded. Section 1.664-1(a)(5)(i) provides the operational rule for deferring payment of the annuity amount in this circumstance.
- (2) *Treatment of distributions.* For the proper treatment of distributions to a charitable remainder trust or to the recipient during the period of administration of an estate or settlement of a trust that is not a charitable remainder trust, see § 1.664-1(a)(5)(iii).

.04 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.

.05 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) and 2055(a) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C) and Rev. Rul. 77-385, 1977-2 C.B. 331. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.05 of this revenue procedure for an alternate provision in which a 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) and 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).

.06 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 an estate tax charitable deduction is 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.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY 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 1, 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 1, 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 an estate tax charitable deduction is 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) and 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 1, 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 passing to this trust as finally determined for federal estate tax purposes. 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) and 2055(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 of my death 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) and 2055(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) and 2055(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 estate 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) In paragraph 2, Deferral Provision, and paragraph 4, Distribution to Charity, of the sample trust, replace each reference to "the Recipient" with a reference to "the Recipient and the Charitable Recipient."
- (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. A 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) not a member of the recipient class; and (ii) 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 not be a member of the Recipient class.
 - (b) Replace the first sentence of paragraph 1, 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 passing to this trust as finally determined for federal estate tax purposes. 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 1, 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 of my death 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 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) and 2055(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) and 2055(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) and 2055(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) and 2055(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

The principal authors of this revenue procedure are Karlene M. Lesho and Stephanie N. Bland of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Karlene M. Lesho or Stephanie N. Bland at (202) 622-7830 (not a toll-free call).