

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2007-57, page 87.

This notice describes a transaction in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income. The notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of regulations section 1.6011-4(b)(2) and sections 6111 and 6112 of the Code.

Notice 2007-58, page 88.

This notice solicits comments on potential revisions to the definitions of financial services income, active financing income, and financial services entities as currently set forth in regulations section 1.904-4(e), issued under section 904(d) of the Code. The Treasury Department and the IRS are considering the appropriateness of revising these provisions in light of statutory changes made as part of the American Jobs Creation Act of 2004 to sections 864(f) and 904(d).

Rev. Proc. 2007-45, page 89.

Sample inter vivos charitable lead annuity trust (CLAT).

This procedure contains sample forms for inter vivos grantor and nongrantor charitable lead annuity trusts. The procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts.

Rev. Proc. 2007-46, page 102.

Sample testamentary charitable lead annuity trust (CLAT). This procedure contains a sample form, annotations, and alternate provisions for a testamentary charitable lead annuity trust.

Rev. Proc. 2007-47, page 108.

This procedure sets forth conditions under which a research agreement does not result in private business use under section 141(b) of the Code. Rev. Proc. 97-14 modified and superseded.

Rev. Proc. 2007-48, page 110.

Safe harbor method of accounting for rotatable spare parts. This procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and provides procedures for taxpayers to obtain automatic consent to change to the safe harbor method of accounting. Rev. Proc. 2002-9 modified and amplified.

Announcement 2007-62, page 115.

This announcement alerts the public to the fact that proposed revisions to Form 1118, *Foreign Tax Credit — Corporations*, are being posted on the IRS website and solicits comments thereon. The revisions of Form 1118 were necessitated by statutory changes made to section 904 of the Code as part of the American Jobs Creation Act of 2004 relating to the number of separate foreign tax credit limitation categories and the effect of overall domestic losses.

EXEMPT ORGANIZATIONS

Announcement 2007-64, page 125.

The IRS has revoked its determination that South Carolina Benevolent Society, Inc., of Columbia, SC; Home Buyers Assistance Foundation, Inc., of Woodstock, GA; Angel Wings Cat Rescue and Sanctuary of Kingston, KY; and Brian Lees Sports Spectrum of Grand Rapids, MI, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

(Continued on the next page)

Finding Lists begin on page ii.



ESTATE TAX

Rev. Proc. 2007-45, page 89.

Sample inter vivos charitable lead annuity trust (CLAT).

This procedure contains sample forms for inter vivos grantor and nongrantor charitable lead annuity trusts. The procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts.

Rev. Proc. 2007-46, page 102.

Sample testamentary charitable lead annuity trust (CLAT).

This procedure contains a sample form, annotations, and alternate provisions for a testamentary charitable lead annuity trust.

GIFT TAX

Rev. Proc. 2007-45, page 89.

Sample inter vivos charitable lead annuity trust (CLAT).

This procedure contains sample forms for inter vivos grantor and nongrantor charitable lead annuity trusts. The procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts.

ADMINISTRATIVE

Notice 2007-57, page 87.

This notice describes a transaction in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income. The notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of regulations section 1.6011-4(b)(2) and sections 6111 and 6112 of the Code.

Rev. Proc. 2007-47, page 108.

This procedure sets forth conditions under which a research agreement does not result in private business use under section 141(b) of the Code. Rev. Proc. 97-14 modified and superseded.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 167.—Depreciation

A revenue procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and allows taxpayers to obtain the automatic consent of the Commissioner to change to the safe harbor method of accounting. See Rev. Proc. 2007-48, page 110.

Section 168.—Accelerated Cost Recovery System

A revenue procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and allows taxpayers to obtain the automatic consent of the Commissioner to change to the safe harbor method of accounting. See Rev. Proc. 2007-48, page 110.

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

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

Sample inter vivos charitable lead annuity trusts. This revenue procedure contains sample declarations of trust for nongrantor and grantor charitable lead annuity trusts. This revenue procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts. See Rev. Proc. 2007-45, page 89.

Section 446.—General Rule for Methods of Accounting

A revenue procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and allows taxpayers to obtain the automatic consent of the Commissioner to

change to the safe harbor method of accounting. See Rev. Proc. 2007-48, page 110.

Section 481.—Adjustments Required by Changes in Method of Accounting

A revenue procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and allows taxpayers to obtain the automatic consent of the Commissioner to change to the safe harbor method of accounting. See Rev. Proc. 2007-48, page 110.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-1: Unlimited deduction for amounts paid for a charitable purpose.

Sample inter vivos charitable lead annuity trusts. This revenue procedure contains sample declarations of trust for nongrantor and grantor charitable lead annuity trusts. This revenue procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts. See Rev. Proc. 2007-45, page 89.

26 CFR 1.642(c)-1: Unlimited deduction for amounts paid for a charitable purpose.

Sample testamentary charitable lead annuity trust. This revenue procedure contains a sample declaration of trust for a testamentary charitable lead annuity trust. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2007-46, page 102.

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

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

Sample inter vivos charitable lead annuity trusts. This revenue procedure contains sample declarations of trust for nongrantor and grantor charitable lead annuity trusts. This revenue procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts. See Rev. Proc. 2007-45, page 89.

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

Sample testamentary charitable lead annuity trust. This revenue procedure contains a sample declaration of trust for a testamentary charitable lead annuity trust. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2007-46, page 102.

Section 2522.—Charitable and Similar Gifts

26 CFR 25.2522(c)-3: Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

Sample inter vivos charitable lead annuity trusts. This revenue procedure contains sample declarations of trust for nongrantor and grantor charitable lead annuity trusts. This revenue procedure also contains annotations to the sample trusts and alternate provisions that may be integrated into the sample trusts. See Rev. Proc. 2007-45, page 89.

Part III. Administrative, Procedural, and Miscellaneous

Loss Importation Transaction

Notice 2007-57

The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. This notice also alerts persons involved with these transactions to certain responsibilities that may arise from their involvement with these transactions.

FACTS

In one variation of the loss importation transaction, a U.S. taxpayer (Taxpayer) is a shareholder of an S corporation (S Corporation). S Corporation acquires control of a foreign entity (Foreign Entity) by purchasing from a foreign shareholder stock of Foreign Entity meeting the requirements of § 1504(a)(2). When S Corporation purchases the Foreign Entity stock, Foreign Entity is classified as a corporation for U.S. tax purposes under § 301.7701-2(b)(2) and § 301.7701-3(b)(2)(i)(B) of the Procedure and Administration Regulations, and is a controlled foreign corporation (CFC) within the meaning of § 957(a).

Foreign Entity enters into substantially offsetting positions in foreign currency. Next, Foreign Entity disposes of or closes out some positions in the foreign currency for a gain while retaining the offsetting loss positions. Foreign Entity is not itself subject to U.S. taxation on the gains from the offsetting options. Foreign Entity may use the proceeds from these dispositions or closings out to enter into new positions in foreign currency. By entering into the new positions in foreign currency, Foreign Entity can effectively preserve the retained

loss positions in the foreign currency and virtually eliminate further economic risk.

After realizing gains from disposing of or closing out some of the offsetting positions, Foreign Entity elects to be disregarded as an entity separate from its owner for U.S. tax purposes. Based on the effective date of this election, Foreign Entity is not a CFC for an uninterrupted period of 30 days during Foreign Entity's taxable year, and S Corporation is not required to include any of Foreign Entity's subpart F income in its gross income. See § 951(a). The gains are not otherwise subject to U.S. taxation. See, e.g., §§ 881 and 882. The election results in the distribution of all of Foreign Entity's assets and liabilities to its shareholder in a deemed liquidation of Foreign Entity. See Treas. Reg. § 301.7701-3(g)(1)(iii). After the election, some or all of the loss positions in the foreign currency are allowed to expire, are disposed of, or are closed out, and some or all of the gain positions are allowed to expire, are disposed of, or are closed out, resulting in an aggregate net loss. S Corporation passes Taxpayer's *pro rata* share of the loss through to Taxpayer. Taxpayer purports to have sufficient basis in its S Corporation stock or in its indebtedness to S Corporation to enable Taxpayer to claim the loss.

Variations exist in the types of entities and forms of loss importation used in the transaction described above. For example, in one variation of the transaction, a C corporation may be used instead of an S corporation; or a foreign entity with more than one owner may elect to be classified for U.S. tax purposes as a partnership, rather than as an entity disregarded as separate from its owner. Further, the importation of the loss may be accomplished by other methods, such as a corporate reorganization described in § 368(a) or a transfer to which § 351 applies. Variations also exist in how the offsetting positions may be used in the transaction described above. For example, taxpayers may use positions with respect to property other than foreign currency.

DISCUSSION

The transactions described in this notice are designed so that taxpayers may claim

losses without taking into account the corresponding gains attributable to the offsetting positions in foreign currency or other property. In the loss importation transaction described above, taxpayers are attempting to exploit the entity classification rules and § 951(a) in order to claim losses without taking into account the corresponding gains attributable to the offsetting positions in foreign currency. The Service may challenge these transactions by, for example, disallowing the loss or allocating the loss to the CFC. The Service may assert one or a combination of arguments including, but not limited to, arguments under §§ 165, 269, 482, and 988. In addition, the Service may assert that the transaction fails one or more judicial doctrines, such as the economic substance doctrine.

Transactions that are the same as, or substantially similar to, the transactions described in this notice are identified as "listed transactions" for purposes of §§ 1.6011-4(b)(2) and §§ 6111 and 6112 effective June 20, 2007, the date this notice was released to the public. Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the transactions described in this notice may already be subject to the requirements of § 6011, § 6111, § 6112, or the regulations thereunder.

Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to the penalty under § 6707A which applies to returns and statements due after October 22, 2004. Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to an extended period of limitations under § 6501(c)(10). Persons required to disclose or register these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of investors under § 6112 who fail to do so (or who fail to provide such lists when requested by the Service) may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on persons involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662 or § 6662A.

The Service and Treasury recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transactions described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

DRAFTING INFORMATION

The principal author of this notice is Megan Stoner of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Stoner at (202) 622-3070 (not a toll-free call).

Request for Comments Regarding Financial Services Income Under Section 904(d)

Notice 2007-58

The Internal Revenue Service (IRS) and the Treasury Department are studying the appropriateness of updating Treasury Regulation § 1.904-4(e) in light of recent statutory changes. This notice invites public comments relating to the definitions of financial services income, active financing income or financial services entities under that regulation.

BACKGROUND

Section 404 of the American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA) generally reduced the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code (the Code) from eight to two, effective for taxable years beginning after December 31, 2006. As a result, income which would have been assigned to the separate category for financial services income had such income been earned in a taxable year beginning before January 1, 2007, is now treated as general category income. However, this applies only in the case of a member of a financial services group or any other person predominantly

engaged in the active conduct of a banking, insurance, financing, or similar business. Section 904(d)(2)(C)(i). Treasury Regulation § 1.904-4(e)(3)(i) currently provides that a person is considered to be predominantly engaged in the active financing business for any year if for that year at least 80 percent of its gross income is active financing income, as defined in Treasury Regulation § 1.904-4(e)(2).

Section 401 of the AJCA modifies present-law interest expense allocation rules under section 864 of the Code to provide taxpayers with a one-time election under new section 864(f) to allocate and apportion interest expense of the domestic members of a worldwide affiliated group (as defined in new section 864(f)(1)(C)) on a worldwide-group basis. Taxpayers are allowed to apply present-law financial institution group rules to treat certain financial institutions as a separate affiliated group for purposes of interest allocation under the worldwide fungibility approach. In the alternative, section 401 of the AJCA also provides a one-time election under section 864(f)(5) to expand the present-law financial institution group to include "financial corporations." A financial corporation, as defined in new section 864(f)(5)(B), is any corporation if at least 80 percent of its gross income is financial services income, as described in section 904(d)(2)(D)(ii) of the Code and the regulations thereunder, derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. This provision is effective for taxable years beginning after December 31, 2008.

The IRS and the Treasury Department believe that it is appropriate to review the provisions relating to financial services income and entities in Treasury Regulation § 1.904-4(e) in light of the amendments to the foreign tax credit rules in the AJCA.

REQUEST FOR COMMENTS

The IRS and the Treasury Department request comments specifically on whether any items currently listed as active financing income under Treasury Regulation § 1.904-4(e)(2)(i) are over-inclusive or

under-inclusive and whether any of the listed items should be clarified as applying only to transactions involving customers. More generally, comments are welcome as to whether any other provisions of Treasury Regulation § 1.904-4(e) relating to the definitions of financial services income, active financing income or financial services entities should be modified to take into consideration recent statutory changes or any changes in the nature of financial services that have taken place since this regulation was originally published.

Comments should be submitted on or before September 10, 2007, and should include a reference to Notice 2007-58. Send submissions to CC:PA:LPD:PR (Notice 2007-58), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered **Monday through Friday** between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2007-58), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically, via the following e-mail address: Notice.comments@irscounsel.treas.gov. Please include "Notice 2007-58" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this announcement is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Jeffrey L. Parry at (202) 622-3850 (not a toll-free call).

Rev. Proc. 2007-45

SECTION 1. PURPOSE

This revenue procedure contains annotated sample declarations of trust and alternate provisions that meet the requirements for an inter vivos charitable lead annuity trust (CLAT) providing for annuity payments payable to one or more charitable beneficiaries for the annuity period followed by the distribution of trust assets to one or more noncharitable remaindermen.

SECTION 2. BACKGROUND

The Internal Revenue Service (Service) is issuing sample forms for CLATs; annotations and alternate sample provisions are included as further guidance. In addition to the sample trust instruments for inter vivos CLATs that are included in this revenue procedure, a sample is provided in a separate revenue procedure for a testamentary CLAT (see Rev. Proc. 2007-46, 2007-29 I.R.B. 102).

SECTION 3. SCOPE

A CLAT is an irrevocable split-interest trust that provides for a specified amount to be paid to one or more charitable beneficiaries during the term of the trust. The principal remaining in the trust at the end of the term is paid over to, or held in a continuing trust for, a noncharitable beneficiary or beneficiaries identified in the trust. If the terms of a CLAT created during the donor's life satisfy the applicable statutory and regulatory requirements, a gift of the charitable lead annuity interest will qualify for the gift tax charitable deduction under § 2522(c)(2)(B) and/or the estate tax charitable deduction under § 2055(e)(2)(B). In certain cases, the gift of the annuity interest may also qualify for the income tax charitable deduction under § 170(a). The value of the remainder interest is a taxable gift by the donor at the time of the donor's contribution to the trust.

There are two types of inter vivos CLATs: a "nongrantor CLAT" and a "grantor CLAT." The income tax consequences are different for each.

A nongrantor CLAT is subject to the provisions of part I, subchapter J of chapter 1 of subtitle A of the Internal Revenue Code (Code). Under the provisions of part I of subchapter J, a nongrantor CLAT is allowed a deduction under § 642(c)(1) in determining its taxable income for any amount of gross income paid for purposes specified in § 170(c). Generally, the donor is not entitled to any income tax charitable deduction.

Section 4 of this revenue procedure provides a sample declaration of trust for a nongrantor CLAT with a term of years annuity period that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) an annuity period for the life of an individual; (.02) retention of the right to substitute the charitable lead beneficiary; (.03) apportionment of the annuity amount in the discretion of the trustee; (.04) the annuity amount as a specific dollar amount; and (.05) designation of an alternate charitable beneficiary in the trust instrument. If a trust is substantially similar to the sample trust in section 4 of this revenue procedure or properly integrates one or more alternate provisions from section 6 into a document substantially similar to the sample trust in section 4, is a valid trust under applicable local law, and operates in a manner consistent with the terms of the instrument, and if all other deductibility requirements are satisfied, the value of the charitable lead interest will be deductible under § 2522(c)(2)(B) and/or § 2055(e)(2)(B) and payments of the annuity amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by § 642(c)(1). In addition, a nongrantor CLAT will qualify for the safe harbor created under this revenue procedure if the trust satisfies all of the requirements set forth in the preceding sentence, except that it defines the annuity amount as an increasing amount for which the value is ascertainable at the creation of the trust and/or provides for a different disposition of trust assets upon the termination of the annuity period.

A CLAT is a grantor CLAT if the donor, who is a citizen or resident of the United States, is treated as the owner of the entire CLAT under subpart E, part I of subchapter J, chapter 1, subtitle A. The value of the charitable lead annuity interest in a grantor CLAT may be deductible by the donor under § 170(a) for the year in which the donor made the contribution to the trust, provided that the other requirements of § 170(f)(2)(B) and the regulations thereunder are satisfied. During the term of the grantor CLAT, all trust income and capital gains are taxed to the donor and the donor is entitled to no further charitable deduction for income tax purposes as the charitable annuity payments are made to charitable organizations each year.

Section 7 of this revenue procedure provides a sample declaration of trust for a grantor CLAT that is created by an individual who is a citizen or resident of the United States. Section 8 of this revenue procedure provides annotations to the provisions of the sample trust. Section 9 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) an annuity period for the life of an individual; (.02) retention of the right to substitute the charitable lead beneficiary; (.03) apportionment of the annuity amount in the discretion of the trustee; (.04) the annuity amount as a specific dollar amount; (.05) designation of an alternate charitable beneficiary in the trust instrument; and (.06) restriction of the charitable beneficiary to a public charity. If a trust is substantially similar

to the sample trust in section 7 of this revenue procedure or properly integrates one or more alternate provisions from section 9 into a document substantially similar to the sample trust in section 7, is a valid trust under applicable local law, and operates in a manner consistent with the terms of the instrument, and if all other requirements for deductibility are satisfied, the value of the charitable lead annuity interest will be deductible under §§ 170(a), 2522(c)(2)(B) and/or 2055(e)(2)(B). In addition, a grantor CLAT will qualify for the safe harbor created under this revenue procedure if the trust satisfies all of the requirements set forth in the preceding sentence, except that it: (i) reflects the choice of a different power or provision sufficient to make the donor the owner of the entire CLAT under subpart E, part I, subchapter J, chapter 1, subtitle A, provided that the power or provision selected is consistent with the requirements of a CLAT; (ii) defines the annuity amount as an increasing amount for which the value is ascertainable at the creation of the trust; and/or (iii) provides for a different disposition of trust assets upon the termination of the annuity period.

Except as provided above, a trust that contains substantive provisions in addition to those provided in section 4 or section 7 of this revenue procedure (other than properly integrated alternate provisions from section 6 or section 9, respectively, 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 or section 7 of this revenue procedure (unless an alternate provision from section 6 or section 9, respectively, of this revenue procedure is properly integrated), will not necessarily be ineligible for the relevant charitable deduction(s), but neither will that trust (or contributions to it) be assured of qualification for the appropriate charitable deductions. The Service generally will not issue a letter ruling on whether an inter vivos CLAT created by an individual qualifies for income, estate, and/or gift tax charitable deductions. The Service, however, generally will issue letter rulings relating to the tax consequences of the inclusion in a CLAT of substantive trust provisions other than those contained in sections 4, 6, 7, and 9 of this revenue procedure.

SECTION 4. SAMPLE INTER VIVOS NONGRANTOR CHARITABLE LEAD ANNUITY TRUST

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable lead annuity trust within the meaning of Rev. Proc. 2007–45, hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Nongrantor Charitable Lead Annuity Trust. All references to “section” or “§” in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. § 1, *et seq.*

1. *Funding of Trust.* The Donor hereby transfers and irrevocably assigns to the Trustee on the above date 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 [designated charitable recipient] an annuity amount equal to [number representing the annual annuity percentage to be paid to the designated charitable recipient] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. If [designated charitable recipient] is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion. The term “the Charitable Organization” shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of [number of years of annuity period] 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 Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (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 in 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 Upon Termination of Annuity Period.* 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 to the Charitable Organization under the provisions above) to [remainder beneficiary].

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), as modified by § 4947(a)(2), and shall not make any taxable expenditures within the meaning of § 4945(d), as modified by § 4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under § 4944, as modified by

§§ 4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3).

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 requirements for the charitable deductions available to a charitable lead annuity trust or for contributions to a charitable lead annuity trust.

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 annuity interest passing to the Charitable Organization is a guaranteed annuity interest under §§ 2055(e)(2)(B) and 2522(c)(2)(B) and the regulations thereunder and that payments of the annuity amount to the Charitable Organization will be deductible from the gross income of the trust to the extent provided by § 642(c)(1) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, 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.

11. *Retained Powers and Interests.* Notwithstanding any other provision of this trust instrument to the contrary, no person shall hold any power or possess any interest that would cause the Donor to be treated as the owner of any portion of the trust under the provisions of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code.

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS NONGRANTOR CHARITABLE LEAD ANNUITY TRUST

.01 Annotations for Introductory Paragraph and Paragraph 1, Funding of Trust, of the Sample Trust in Section 4.

- (1) *Types of charitable lead trusts.* An inter vivos charitable lead trust may be established as either a grantor charitable lead trust or a nongrantor charitable lead trust. The sample trust in section 4 is an example of a nongrantor charitable lead trust. The sample trust in section 7 is an example of a grantor charitable lead trust.
- (2) *Income taxation of nongrantor charitable lead trusts.* A nongrantor CLAT is a complex trust that is taxable as a separate entity under the provisions of subchapter J of the Code. The trustee of the trust must apply for a tax identification number for the trust.
- (3) *Deduction under § 642(c)(1) available for amounts paid for a charitable purpose.* Under § 642(c)(1), a nongrantor CLAT is allowed a deduction in computing its taxable income for any amount of gross income, without limitation, that under the terms of the trust instrument is paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)) during the taxable year. This deduction is in lieu of the charitable deduction allowed by § 170. Section 642(c)(1) and § 1.642(c)-1(a). An amount paid to a corporation, trust, or community chest, fund, or foundation otherwise described in § 170(c)(2) shall be considered paid for a purpose described in § 170(c) even though the corporation, trust, or community chest, fund, or foundation is not created or organized in the United States, any state, the District of Columbia, or any possession of the United States. Section 1.642(c)-1(a)(2). With regard to amounts of income paid to the charitable beneficiary after the close of the taxable year in which the income was received (but on or before the last day of the next succeeding taxable year), the trustee of a nongrantor CLAT may elect to take the charitable deduction for that payment for the year in which the income was received, rather than for the year in which the payment was made. Section 642(c)(1). The election is made by filing a statement with the income tax return for the taxable year in which the charitable contribution is treated as paid. See § 1.642(c)-1(b).
- (4) *Charitable lead beneficiary requirements.* A deduction is allowed under § 642(c)(1) for any amount of the gross income of a nongrantor CLAT that is paid for a purpose specified in § 170(c). Note that the class of permissible charitable recipients for obtaining a deduction under § 642(c)(1) differs from the class of permissible charitable recipients for obtaining a deduction under § 170(a). Compare § 170(c) and § 1.642(c)-1(a)(2).
- (5) *Unrelated business taxable income.* Under § 681, a nongrantor charitable lead trust's deduction under § 642(c)(1) is disallowed in any year to the extent that the deduction is allocable to the trust's unrelated business taxable income, as defined in § 512, for that taxable year. See § 1.681(a)-2. However, a partial deduction is allowed under § 512(b)(11) for amounts allocable to unrelated business taxable income. Section 512(b)(11). See § 512(b)(12) and § 1.681(a)-2(a).
- (6) *Computation of estate and gift tax charitable deductions.* In general, the estate and gift tax charitable deductions available under §§ 2055(e)(2)(B) and 2522(c)(2)(B) with respect to contributions to a CLAT are equal to the present value of the annuity interest. Section 7520 requires that an annuity interest must be valued using tables published by the Service. The method for valuing a charitable lead annuity interest is set forth in the regulations. See §§ 20.7520-2 and 25.7520-2.
- (7) *Trustee provisions.* The trust instrument may name alternate or successor trustees and/or may include a process for the appointment of unnamed alternate or successor trustees. In addition, the trust instrument may contain certain administrative provisions relating to the trustee's duties and powers.

- (8) *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 in Section 4.

- (1) *Guaranteed annuity.* To qualify for the applicable estate and gift tax charitable deductions, a nongrantor CLAT must provide for the payment of a guaranteed annuity amount at least annually to a qualified charitable organization for each year during the annuity period. See §§ 2055(e)(2)(B) and 2522(c)(2)(B). A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for one or more measuring lives. See section 5.02(4) for a discussion of the permissible term of a nongrantor CLAT. An amount is determinable if the exact amount that must be paid under the conditions specified in the instrument of transfer may be ascertained at the time of the transfer to the trust. Sections 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a). A charitable interest expressed as the right to receive an annual payment from a trust equal to the lesser of a sum certain or a fixed percentage of the trust assets (determined annually) is not a guaranteed annuity interest. See §§ 20.2055-2(e)(2)(vi)(b) and 25.2522(c)-3(c)(2)(vi)(b). In addition, a charitable lead annuity interest is not a guaranteed annuity interest if the trustee has the discretion to commute and prepay the charitable interest prior to the termination of the annuity period. Rev. Rul. 88-27, 1988-1 C.B. 331. If a charitable interest in the form of a guaranteed annuity interest is in trust and the present value of the charitable interest on the date of gift exceeds 60 percent of the aggregate value of all amounts in the trust, the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits the acquisition and retention of assets that would give rise to a tax under § 4943 or 4944, as modified by §§ 4947(a)(2) and 4947(b)(3). Sections 20.2055-2(e)(2)(vi)(e) and 25.2522(c)-3(c)(2)(vi)(e). These prohibitions are contained in the sample trust in section 4. See section 5.06 for a further discussion of the 60 percent test. See section 6.04 for an alternate provision that provides for an annuity amount stated as a specific dollar amount.
- (2) *Payment requirements.* CLATs are not subject to any minimum or maximum payout requirements. The governing instrument of a CLAT must provide for the payment to a charitable organization of a fixed dollar amount or a fixed percentage of the initial net fair market value of the assets transferred to the trust. Alternatively, the governing instrument of a CLAT may provide for an annuity amount that is initially stated as a fixed dollar or fixed percentage amount but increases during the annuity period, provided that the value of the annuity amount is ascertainable at the time the trust is funded. The annuity payments may be made in cash or in kind. If the trustee distributes appreciated property in satisfaction of the required annuity payment, the trust will realize capital gain on the assets distributed to satisfy part or all of the annuity payment and the trust will be allowed a § 642(c)(1) deduction for the realized capital gains. Rev. Rul. 83-75, 1983-1 C.B. 114.
- (3) *Rule against perpetuities.* An interest payable for a specified term of years may qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. However, any such savings clause must utilize a period of vesting of not more than 21 years after the deaths of the measuring lives who are selected to maximize, rather than limit, the term of the trust. Sections 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a).
- (4) *Permissible term.* Paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 provides for payment of the annuity amount for a specified term of years. Alternatively, the trust instrument may provide for payment of the annuity amount for the life or lives of one or more measuring lives or for the life or lives of one or more measuring lives plus a term of years. Rev. Rul. 85-49, 1985-1 C.B. 330. Only one or more of the following individuals may be used as measuring lives: the donor, the donor’s spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. Each person used as a measuring life for the annuity period must be living on the date assets are transferred to the trust. Sections 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a). See section 6.01 for an alternate provision that provides for an annuity period based on the life of an individual.
- (5) *Permissible recipients.* A CLAT must have one or more charitable lead beneficiaries. The failure to designate a specific charitable beneficiary will not preclude the donor from receiving a charitable deduction if the trust instrument provides for the selection by the trustee of a charitable beneficiary described in §§ 170(c), 2055(a), and 2522(a). Rev. Rul. 78-101, 1978-1 C.B. 301. If it is determined that a deduction under § 2055(a) will not be necessary in any event, all references to § 2055(a) in the trust instrument may be deleted. Note, that if the donor is serving as trustee of the trust, the trustee’s power to select the charitable beneficiaries will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending on the date of the donor’s death) to be included in the donor’s gross estate. See §§ 2035(a), 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c). Further note that if the charitable beneficiary is a private foundation and the donor is an officer or director of the private foundation or possesses certain decision making authority in the private foundation, some or all of the trust property may be included in the donor’s gross estate. See § 2036(a)(2). See section 6.02 for an alternate provision that provides for a donor’s retained right to substitute the charitable beneficiary.

See section 6.03 for an alternate provision that provides the trustee with the power to apportion the annuity amount among charitable beneficiaries.

- (6) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 specifies that the annuity amount is to be paid in equal quarterly installments at the end of each calendar quarter. Alternatively, the trust instrument may specify that the annuity amount is to be paid in annual or other equal or unequal installments throughout the year. See §§ 20.2055–2(e)(2)(vi)(a) and 25.2522(c)–3(c)(2)(vi)(a). The amount of the charitable deduction will be affected by the frequency of the 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 §§ 25.2512–5 and 20.2031–7.
- (7) *Excess income.* Trust income in excess of the amount required to pay the annuity may be retained by the trust or distributed currently to the charitable beneficiary. The sample trust in section 4 provides for the retention of excess income by the trust. If, instead, the governing instrument of a nongrantor charitable lead trust provides for the payment of excess income to or for the use of the charitable beneficiary, no additional estate or gift tax charitable deductions are available for the excess amounts of income distributed to the charitable beneficiary. See §§ 20.2055–2(e)(2)(vi)(d) and 25.2522(c)–3(c)(2)(vi)(d). However, the trust is entitled to a charitable income tax deduction under § 642(c)(1) for any amounts of excess income paid to the charitable beneficiary. See Situation 2 of Rev. Rul. 88–82, 1988–2 C.B. 336, for the gift tax consequences of the payment of excess income to a noncharitable beneficiary. See section 5.06 for the private foundation rules applicable to charitable lead trusts.
- (8) *Payment of part of annuity for private purposes.* In general, no part of a charitable lead annuity interest may be payable for a private purpose before the expiration of all charitable lead annuity interests. However, there are two exceptions to this rule. The first exception arises when the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust’s governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. The second exception arises when, under the trust’s governing instrument, the amount that may be paid for a private purpose is payable only from a group of assets that is devoted exclusively to private purposes and to which § 4947(a)(2) is inapplicable by reason of § 4947(a)(2)(B). Note that an amount is not deemed to have been paid for a private purpose if it was paid for full and adequate consideration in money or money’s worth. Sections 20.2055–2(e)(2)(vi)(f) and 25.2522(c)–3(c)(2)(vi)(f). See section 5.06 for the private foundation rules applicable to charitable lead trusts.

.03 Annotation for Paragraph 3, Proration of Annuity Amount, of the Sample Trust in Section 4.

- (1) *Prorating the annuity amount.* Paragraph 3, Proration of Annuity Amount, of the sample trust in section 4 provides for the proration of the annuity amount in any short taxable year, including the last year of the annuity period.

.04 Annotation for Paragraph 4, Distribution Upon Termination of Annuity Period, of the Sample Trust in Section 4.

- (1) *Generation-skipping transfer tax.* If a CLAT has or may have a skip person, as defined in § 2613(a), as a remainder beneficiary, the transfer to the trust will be subject to the generation-skipping transfer (GST) tax. Under § 2651(f)(3), a charitable organization is deemed to be in the same generation as the donor to a charitable lead trust. Therefore, the GST potential of a charitable lead trust is dependent upon whether any noncharitable beneficiary is a skip person. GST tax liability is determined by multiplying the taxable amount by the applicable rate. The applicable rate is the inclusion ratio multiplied by the maximum federal estate tax rate. Section 2641(a). The rules for determining the inclusion ratio for a CLAT are set forth in § 2642(e), and confirm that the inclusion ratio is determined at the termination of the annuity period, rather than on the funding of the trust.

.05 Annotation for Paragraph 5, Additional Contributions, of the Sample Trust in Section 4.

- (1) *Additions to the trust.* For purposes of qualification under this revenue procedure, the trust instrument must contain a provision that prohibits additional contributions. A CLAT that permits additional contributions will not qualify for safe harbor treatment under this revenue procedure.

.06 Annotation for Paragraph 6, Prohibited Transactions, of the Sample Trust in Section 4.

- (1) *Prohibitions against certain investments and excess business holdings.* Prohibitions against retaining any excess business holdings within the meaning of § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3), and against investments that jeopardize the exempt purpose of the trust within the meaning of § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3), are generally required. The sample trust in section 4 contains prohibitions against §§ 4943 and 4944 transactions. If the present value of the charitable interest does not exceed 60 percent of the aggregate value of all amounts in the trust, the trust instrument does not provide for the payment of any of the income interest to a noncharitable beneficiary, and the trust instrument

does not provide for the payment of excess income to a noncharitable beneficiary, the references to §§ 4943 and 4944 may be removed from the trust instrument. Section 4947(b)(3) and §§ 53.4947-2(b)(1)(i), 20.2055-2(e)(2)(vi)(e), and 25.2522(c)-3(c)(2)(vi)(e). See section 5.02(7) for a discussion of the payment of excess trust income to a noncharitable beneficiary. See section 5.02(8) for a discussion of the payment of part of the annuity for a private purpose.

.07 Annotation for paragraph 7, Taxable Year, of the Sample Trust in Section 4.

- (1) *Calendar year.* The taxable year of a charitable lead trust must be a calendar year. Section 644(a).

.08 Annotation for paragraph 10, Investment of Trust Assets, of the Sample Trust in Section 4.

- (1) *Capital gains.* Gains from the sale or exchange of capital assets may be allocated to the income or the principal of the trust. If the governing instrument is silent, capital gains are allocated in accordance with local law. Even if gains are allocated to principal, they will be deductible under § 642(c)(1) if they are paid to the charitable beneficiary as part of a charitable annuity payment. Rev. Rul. 83-75, 1983-1 C.B. 114.

.09 Annotation for paragraph 11, Retained Powers and Interests, of the Sample Trust in Section 4.

- (1) *Trust not a grantor trust.* Paragraph 11, Retained Powers and Interests, of the sample trust in section 4 prohibits any person from holding any power or possessing any interest that would cause the donor to be treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1, subtitle A of the Code. This prohibition should be included only in nongrantor charitable lead trusts. See section 7 for a sample grantor charitable lead annuity trust.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS NONGRANTOR CHARITABLE LEAD ANNUITY TRUST

.01 Annuity Period for the Life of One Individual.

- (1) *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a nongrantor CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries if there is a less than 15 percent probability at the time of the contribution to the trust that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in § 20.2031-7. Sections 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a).
- (2) *Instruction for use.* Replace the fifth and sixth sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. 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 date of death of [*designated measuring life*].

.02 Retention of the Right to Substitute the Charitable Lead Beneficiary.

- (1) *Explanation.* The donor to a nongrantor CLAT may retain the right to substitute another charitable beneficiary for the charitable beneficiary named in the trust instrument. Note, however, that the retention of this right will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending upon the date of the donor's death) to be included in the donor's gross estate. See §§ 2035(a), 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c).
- (2) *Instruction for use.* Replace the third sentence of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

Notwithstanding the preceding sentence, the Donor reserves the right to designate as the charitable annuity recipient, at any time and from time to time, in lieu of [*designated charitable recipient*], one or more organizations described in §§ 170(c), 2055(a), and 2522(a) and shall make any such designation by giving written notice to the Trustee. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient.

.03 Apportionment of the Annuity Amount in the Discretion of the Trustee.

(1) *Explanation.* The donor or the trustee of a nongrantor charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries. See § 674(b)(4). A power to apportion the annuity amount among a class of qualifying charitable beneficiaries that is retained by the donor or the donor's spouse will not cause the donor to be treated as the owner of the trust for income tax purposes. Section 674(b)(4). Note, however, that a retained power of apportionment by the donor, but not the donor's spouse, will cause the gift of the annuity interest to be incomplete for gift tax purposes and will cause some or all of the trust property to be included in the donor's gross estate. See §§ 2035(a), 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c).

(2) *Instruction for use.* Replace the first three sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§ 170(c), 2055(a), and 2522(a) (hereinafter, collectively "the Charitable Organization") an annuity amount equal to [number representing the annual annuity percentage to be paid to the Charitable Organization] percent of the initial net fair market value of all property transferred to the trust, valued as of 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, from time to time may deem advisable.

.04 Annuity Amount as a Specific Dollar Amount.

(1) *Explanation.* As an alternative to stating the annuity amount as a percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may instead be stated as a specific dollar amount.

(2) *Instructions for use.*

(a) Replace the first sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following sentence:

In each taxable year of the trust during the annuity period, the Trustee shall pay to [designated charitable recipient] an annuity amount equal to [the stated dollar amount].

(b) Delete the last sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 concerning the incorrect valuation of trust assets.

.05 Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

(1) *Explanation.* The sample trust in section 4 provides that in the event the charitable beneficiary designated in the trust instrument is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries.

(2) *Instruction for use.* Replace the second sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

If [designated charitable recipient] is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [designated substitute charitable recipient]. If neither [designated charitable recipient] nor [designated substitute charitable recipient] is an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion.

SECTION 7. SAMPLE INTER VIVOS GRANTOR CHARITABLE LEAD ANNUITY TRUST

On this _____ day of _____, 20____, I, _____ (hereinafter "the Donor"), desiring to establish a charitable lead annuity trust within the meaning of Rev. Proc. 2007-45 hereby enter into this trust agreement with _____ as the initial trustee (hereinafter "the Trustee"). This trust shall be known as the _____ Grantor Charitable Lead Annuity Trust. All references to "section" or "§" in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. § 1, *et seq.*

1. *Funding of Trust.* The Donor hereby transfers and irrevocably assigns to the Trustee on the above date, 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 [designated charitable recipient] an annuity amount equal to [number representing the annual annuity percentage to be paid to the designated charitable recipient] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. If [designated charitable recipient] is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any

payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of *[number of years of annuity period]* 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 Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (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 in 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 Upon Termination of Annuity Period.* 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 to the Charitable Organization under the provisions above) to *[remainder beneficiary]*.

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), as modified by § 4947(a)(2), and shall not make any taxable expenditures within the meaning of § 4945(d), as modified by § 4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3).

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 requirements for the charitable deductions available for contributions to a charitable lead annuity trust.

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 annuity interest passing to the Charitable Organization is a guaranteed annuity interest under §§ 170(f)(2)(B), 2055(e)(2)(B), and 2522(c)(2)(B) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, 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.

11. *Retained Powers and Interests.* During the Donor's life, *[individual other than the donor, the trustee, or a disqualified person as defined in § 4946(a)(1)]* shall have the right, exercisable only in a nonfiduciary capacity and without the consent or approval of any person acting in a fiduciary capacity, to acquire any property held in the trust by substituting other property of equivalent value.

SECTION 8. ANNOTATIONS REGARDING SAMPLE INTER VIVOS GRANTOR CHARITABLE LEAD ANNUITY TRUST

.01 Annotations for Introductory Paragraph and Paragraph 1, Funding of Trust, of the Sample Trust in Section 7.

- (1) *Types of charitable lead trusts.* An inter vivos charitable lead trust may be established as either a grantor charitable lead trust or a nongrantor charitable lead trust. The sample trust in section 7 is an example of a grantor charitable lead trust. The sample trust in section 4 is an example of a nongrantor charitable lead trust. In order for the donor to a charitable lead trust to claim an income tax charitable deduction under § 170(a) in the year of the donor's contribution to the trust for the present value of the annuity interest passing to charity, the trust must be structured as a grantor charitable lead trust. See § 170(f)(2)(B). The rules governing grantor charitable lead trusts are similar to those relating to nongrantor charitable lead trusts. The most significant difference is the income tax treatment of the trust income. A charitable lead trust is a grantor charitable lead trust if the donor to the trust is treated as the owner of the entire trust for income tax purposes. See section 8.09 for a discussion of the types of powers that may be used to create a grantor charitable lead trust.
- (2) *Income taxation of grantor charitable lead trusts.* The donor to a grantor charitable lead annuity trust may claim a federal income tax charitable deduction under § 170(a) in the year that assets are irrevocably transferred to the trust. During the charitable lead annuity period, the donor is taxed on all income earned by the trust and does not receive any charitable

deduction under § 170 for the annuity payments to the charitable beneficiary as they are made. In addition, the trust does not receive a charitable deduction under § 642(c)(1). See § 1.671-4 for the income tax reporting requirements for a grantor charitable lead annuity trust.

- (3) *Income tax deductibility limitations.* The donor to a grantor charitable lead trust may claim an income tax charitable deduction under § 170(a) equal to the present value of all future payments that are to be made to the charitable beneficiary. Section 1.170A-6(c). However, a contribution of a charitable income interest in property for which a deduction is allowable under § 170(a) is considered to be made “for the use of” rather than “to” a charitable organization. Section 1.170A-8(a)(2). Because the charitable lead interest of a grantor charitable lead trust is considered to be made “for the use of” the charitable beneficiary, the income tax charitable deduction available to an individual taxpayer is generally limited as set forth in § 170(b)(1)(B) to 30 percent of the taxpayer’s contribution base as defined in § 170(b)(1)(G). However, if the property contributed to the CLAT is capital gain property as defined in § 170(b)(1)(C)(iv) and the charitable beneficiary (including any alternate charitable beneficiaries named in the trust instrument or selected by the trustee) is not limited to an organization described in § 170(b)(1)(A) (a “public charity”), the individual taxpayer’s income tax charitable deduction generally is limited as set forth in § 170(b)(1)(D) to 20 percent of the taxpayer’s contribution base. Section 170(b)(1)(D). See §§ 1.170A-8(c) and (d). In addition, the amount of a charitable contribution of certain types of property may be reduced under § 170(e). See § 1.170A-4. See section 9.06 for an alternate provision that restricts the charitable beneficiary to a public charity.
- (4) *Charitable lead beneficiary requirements.* A deduction is allowed under § 170(a) for contributions to a grantor CLAT only if the charitable lead beneficiary is an organization described in § 170(c). Note that the class of permissible charitable recipients for obtaining a deduction under § 170(a) differs from the class of permissible charitable recipients for obtaining a deduction under § 642(c)(1). Compare § 170(c) with § 1.642(c)-(1)(a)(2).
- (5) *Computation of charitable deduction.* In general, the income, estate, and gift tax charitable deductions available under §§ 170(a), 2055(e)(2)(B), and 2522(c)(2)(B) with respect to contributions to a CLAT are equal to the present value of the annuity interest. Section 7520 generally requires that an annuity interest must be valued using tables published by the Service. The method for valuing a charitable lead annuity interest is set forth in the regulations. See §§ 1.7520-2, 20.7520-2, and 25.7520-2. If, however, the circumstances surrounding the transfer to a charitable lead trust suggest that the charitable beneficiary might not receive the beneficial enjoyment of the annuity interest, an income tax deduction will be allowed only for the minimum possible amount that the charity will receive. Section 1.170A-6(c)(3)(iii). If at any time the donor ceases to be treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, the donor shall be considered to have received an amount of income equal to the amount of any deduction the donor received under § 170(a) for the contribution to the trust, reduced by the discounted value (as of the date of the contribution to the trust) of all amounts of income earned by the trust and taxable to the donor before the time that the donor ceased to be treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1, subtitle A of the Code. Section 170(f)(2)(B).
- (6) *Trustee provisions.* The trust instrument may name alternate or successor trustees and/or may include a process for the appointment of unnamed alternate or successor trustees. In addition, the trust instrument may contain certain other administrative provisions relating to the trustee’s duties and powers.
- (7) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor to a charitable lead annuity trust 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 in Section 7.

- (1) *Guaranteed annuity.* To qualify for the applicable charitable deductions, a grantor CLAT must provide for the payment of a guaranteed annuity amount at least annually to a qualified charitable organization for each year during the annuity period. See §§ 170(c), 2055(e)(2)(B), and 2522(c)(2)(B). A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for one or more measuring lives. See section 8.02(4) for a discussion of the permissible term of a grantor CLAT. An amount is determinable if the exact amount that must be paid under the conditions specified in the instrument of transfer may be ascertained at the time of the transfer to the trust. Sections 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a), and 25.2522(c)-3(c)(2)(vi)(a). A charitable interest expressed as the right to receive an annual payment from a trust equal to the lesser of a sum certain or a fixed percentage of the trust assets (determined annually), is not a guaranteed annuity interest. See §§ 1.170A-6(c)(2)(i)(B), 20.2055-2(e)(2)(vi)(b), and 25.2522(c)-3(c)(2)(vi)(b). In addition, a charitable lead annuity interest is not a guaranteed annuity interest if the trustee has the discretion to commute and prepay the charitable interest prior to the termination of the annuity period. Rev. Rul. 88-27, 1988-1 C.B. 331. If a charitable interest in the form of a guaranteed annuity interest is in trust and the present value of the charitable interest on the date of gift exceeds 60 percent of the aggregate value of all amounts in the trust, the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits the acquisition and retention of assets that would give rise to a tax under § 4943 or 4944, as modified by §§ 4947(a)(2) and 4947(b)(3). Sections 1.170A-6(c)(2)(i)(D), 20.2055-2(e)(2)(vi)(e), and 25.2522(c)-3(c)(2)(vi)(e).

These prohibitions are contained in the sample trust in section 7. See section 8.06 for a further discussion of the 60 percent test. See section 9.04 for an alternate provision that provides for an annuity amount stated as a specific dollar amount.

- (2) *Payment requirements.* CLATs are not subject to any minimum or maximum payout requirements. The governing instrument of a CLAT must provide for the payment to a charitable organization of a fixed dollar amount or a fixed percentage of the initial net fair market value of the assets transferred to the trust. Alternatively, the governing instrument of a CLAT may provide for an annuity amount that is initially stated as a fixed dollar or fixed percentage amount but increases during the annuity period, provided that the value of the annuity amount is ascertainable at the time the trust is funded. The annuity payments may be made in cash or in kind. If the trustee distributes appreciated property in satisfaction of the required annuity payment, the donor will realize capital gain on the assets distributed to satisfy part or all of the annuity payment.
- (3) *Rule against perpetuities.* An interest payable for a specified term of years may qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. However, any such savings clause must utilize a period of vesting of not more than 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. Sections 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a), and 25.2522(c)-3(c)(2)(vi)(a).
- (4) *Permissible term.* Paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 provides for payment of the annuity amount for a specified term of years. Alternatively, the trust instrument may provide for payment of the annuity amount for the life or lives of one or more measuring lives or for the life or lives of one or more measuring lives plus a term of years. Rev. Rul. 85-49, 1985-1 C.B. 330. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. Each person used as a measuring life for the annuity period must be living on the date assets are transferred to the trust. Sections 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a). See section 9.01 for an alternate provision that provides for an annuity period based on the life of an individual.
- (5) *Permissible recipients.* A CLAT must have one or more charitable lead beneficiaries. The failure to designate a specific charitable beneficiary will not preclude the donor from receiving a charitable deduction if the trust instrument provides for the selection by the trustee of a charitable beneficiary described in §§ 170(c), 2055(a), and 2522(a). Rev. Rul. 78-101, 1978-1 C.B. 301. If it is determined that a deduction under § 2055(a) will not be necessary in any event, all references to § 2055(a) in the trust instrument may be deleted. Note, that if the donor is serving as trustee of the trust, the trustee's power to select the charitable beneficiaries will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending on the date of the donor's death) to be included in the donor's gross estate. See §§ 2035(a), 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c). Further note that if the charitable beneficiary is a private foundation and the donor is an officer or director of the private foundation or possesses certain decision making authority in the private foundation, some or all of the trust property may be included in the donor's gross estate. See § 2036(a)(2). See section 8.01(3) for a discussion of the income tax deductibility limitations. See section 9.02 for an alternate provision that provides for a donor's retained right to substitute the charitable beneficiary. See section 9.03 for an alternate provision that provides the trustee with the power to apportion the annuity amount among charitable beneficiaries. See section 9.06 for an alternate provision that limits the charitable beneficiary to a public charity.
- (6) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 specifies that the annuity amount is to be paid in equal quarterly installments at the end of each calendar quarter. Alternatively, the trust instrument may specify that the annuity amount is to be paid in annual or other equal or unequal installments throughout the year. See §§ 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a), and 25.2522(c)-3(c)(2)(vi)(a). The amount of the charitable deduction will be affected by the frequency of the 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 §§ 1.170A-6, 25.2512-5, and 20.2031-7.
- (7) *Excess income.* Trust income in excess of the amount required to pay the annuity may be retained by the trust or distributed to the charitable beneficiary. The sample trust in section 7 provides for the retention of excess income by the trust. If, instead, the governing instrument of a grantor charitable lead trust provides for the payment of excess income to or for the use of the charitable beneficiary, the donor will receive an income tax charitable deduction each year for amounts paid to a charitable beneficiary to the extent that such amounts exceed the guaranteed annuity amount. Section 1.170A-6(d)(2)(ii). However, the donor is not entitled to any additional estate or gift tax charitable deductions for the excess amounts of income distributed to the charitable beneficiary. See §§ 20.2055-2(e)(2)(vi)(d) and 25.2522(c)-3(c)(2)(vi)(d). See Situation 2 of Rev. Rul. 88-82, 1988-2 C.B. 336, for the gift tax consequences of the payment of excess income to a noncharitable beneficiary. See section 8.06 for the private foundation rules applicable to charitable lead trusts.
- (8) *Payment of part of annuity for private purposes.* In general, no part of a charitable lead annuity interest may be payable for a private purpose before the expiration of all charitable lead annuity interests. However, there are two exceptions to this rule. The first exception arises when the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. The second exception arises when, under the trust's governing instrument, the

amount that may be paid for a private purpose is payable only from a group of assets that is devoted exclusively to private purposes and to which § 4947(a)(2) is inapplicable by reason of § 4947(a)(2)(B). Note that an amount is not deemed to have been paid for a private purpose if it was paid for full and adequate consideration in money or money's worth. Sections 1.170A-6(c)(2)(i)(E), 20.2055-2(e)(2)(vi)(f), and 25.2522(c)-3(c)(2)(vi)(f). See section 8.06 for the private foundation rules applicable to charitable lead trusts.

.03 Annotation for Paragraph 3, Proration of Annuity Amount, of the Sample Trust in Section 7.

- (1) *Prorating the annuity amount.* Paragraph 3, Proration of Annuity Amount, of the sample trust in section 7 provides for the proration of the annuity amount in any short taxable year, including the last year of the annuity period.

.04 Annotation for Paragraph 4, Distribution Upon Termination of Annuity Period, of the Sample Trust in Section 7.

- (1) *Generation-skipping transfer tax.* If a CLAT has or may have a skip person, as defined in § 2613(a), as a remainder beneficiary, the transfer to the trust will be subject to the generation-skipping transfer (GST) tax. Under § 2651(f)(3), a charitable organization is deemed to be in the same generation as the donor of a charitable lead trust. Therefore, the GST potential of a charitable lead trust is dependent upon whether any noncharitable beneficiary is a skip person. GST tax liability is determined by multiplying the taxable amount by the applicable rate. The applicable rate is the inclusion ratio multiplied by the maximum federal estate tax rate. Section 2641(a). The rules for determining the inclusion ratio for a CLAT are set forth in § 2642(e) and confirm that the inclusion ratio is determined at the termination of the annuity period, rather than on the funding of the trust.

.05 Annotation for Paragraph 5, Additional Contributions, of the Sample Trust in Section 7.

- (1) *Additions to the trust.* For purposes of qualification under this revenue procedure, the trust instrument must contain a provision that prohibits additional contributions. A charitable lead trust that permits additional contributions will not qualify for safe harbor treatment under this revenue procedure.

.06 Annotation for Paragraph 6, Prohibited Transactions, of the Sample Trust in Section 7.

- (1) *Prohibitions against certain investments and excess business holdings.* Prohibitions against retaining any excess business holdings within the meaning of § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3), and against investments that jeopardize the exempt purpose of the trust within the meaning of § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3) are generally required. The sample trust in section 7 contains prohibitions against §§ 4943 and 4944 transactions. If the present value of the charitable interest does not exceed 60 percent of the aggregate value of all amounts in the trust, the trust instrument does not provide for the payment of any of the income interest to a noncharitable beneficiary, and the trust instrument does not provide for the payment of excess income to a noncharitable beneficiary, the references to §§ 4943 and 4944 may be removed from the trust instrument. Sections 4947(b)(3), 53.4947-2(b)(1)(i), 1.170A-6(c)(2)(i)(D), 20.2055-2(e)(2)(vi)(e), and 25.2522(c)-3(c)(2)(vi)(e). See section 8.02(7) for a discussion of the payment of excess trust income to a noncharitable beneficiary. See section 8.02(8) for a discussion of the payment of part of the annuity for a private purpose.

.07 Annotation for paragraph 7, Taxable Year, of the Sample Trust in Section 7.

- (1) *Calendar year.* The taxable year of a charitable lead trust must be a calendar year. Section 644(a).

.08 Annotation for paragraph 10, Investment of Trust Assets, of the Sample Trust in Section 7.

- (1) *Capital gains.* Gains from the sale or exchange of capital assets may be allocated to the income or the principal of the trust. If the governing instrument is silent, capital gains are allocated in accordance with local law.

.09 Annotation for Paragraph 11, Retained Powers and Interests, of the Sample Trust in Section 7.

- (1) *Power to substitute trust assets.* The donor to a CLAT may claim an income tax charitable deduction under § 170(a) if the donor is treated as the owner of the entire CLAT under the provisions of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code. Paragraph 11, Retained Powers and Interests, of the sample trust in section 7 creates a grantor CLAT through the use of a power to substitute trust assets under § 675(4) that is held by a person other than the donor, the trustee, or a disqualified person as defined in § 4946(a)(1), and is exercisable only in a nonfiduciary capacity. The circumstances surrounding the administration of a CLAT will determine whether a § 675(4) substitution power is exercised in a fiduciary

or nonfiduciary capacity. This is a question of fact. Note, that the exercise of a § 675(4) power may result in an act of self-dealing under § 4941.

- (2) *Other powers or provisions to create a grantor trust.* As noted above, the sample trust in section 7 includes a § 675(4) power that is held by someone other than donor, the trustee, or a disqualified person as defined in § 4946(a)(1), and that may be exercised only in a nonfiduciary capacity. The CLAT instrument may instead incorporate a power or provision, other than the one provided in sample trust in section 7, that will cause the donor to be treated as the owner of the entire CLAT under the provisions of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code. See § 671 *et seq.* However, practitioners should exercise caution when choosing a particular power or provision because certain methods of creating a grantor trust may have unforeseen tax consequences.

SECTION 9. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS GRANTOR CHARITABLE LEAD ANNUITY TRUST

.01 Annuity Period for the Life of One Individual.

- (1) *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a grantor CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries if there is a less than 15 percent probability at the time of the contribution to the trust that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in § 20.2031-7. Sections 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a), and 25.2522(c)-3(c)(2)(vi)(a).
- (2) *Instruction for use.* Replace the fifth and sixth sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. 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 date of death of [*designated measuring life*].

.02 Retention of the Right to Substitute the Charitable Lead Beneficiary.

- (1) *Explanation.* The donor to a grantor CLAT may retain the right to substitute another charitable beneficiary for the charitable beneficiary named in the trust instrument and still claim a deduction under § 170(a) in the year of the transfer to the CLAT. Note, however, that the retention of this right will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending on the date of the donor's death) to be included in the donor's gross estate. See §§ 2035, 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c). See section 8.01(3) for a discussion of the income tax deductibility limitations applicable to contributions to a grantor CLAT.
- (2) *Instruction for use.* Replace the third sentence of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

Notwithstanding the preceding sentence, the Donor reserves the right to designate as the charitable annuity recipient, at any time and from time to time, in lieu of [*designated charitable recipient named above*], one or more organizations described in §§ 170(c), 2055(a), and 2522(a) and shall make any such designation by giving written notice to the Trustee. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient.

.03 Apportionment of the Annuity Amount in the Discretion of the Trustee.

- (1) *Explanation.* The donor or the trustee of a grantor charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries. Note that a retained power of apportionment by the donor will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property to be included in the donor's gross estate. See §§ 2035(a), 2036(a)(2), and 2038(a)(1) and § 25.2511-2(c).
- (2) *Instruction for use.* Replace the first three sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§ 170(c), 2055(a), and 2522(a) (hereinafter, collectively "the Charitable Organization") an annuity amount equal to [*number representing the annual annuity percentage to be paid to the Charitable Organization*] percent of the initial net fair market value of all property transferred to the trust, valued as of 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, from time to time may deem advisable.

.04 Annuity Amount as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a 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.
- (2) *Instructions for use.*
 - (a) Replace the first sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following sentence:

In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*the stated dollar amount*].
 - (b) Delete the last sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 concerning the incorrect valuation of trust assets.

.05 Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

- (1) *Explanation.* The sample trust in section 7 provides that if the charitable beneficiary designated in the trust instrument is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries. See section 8.01(3) for a discussion of the income tax deductibility limitations applicable to contributions to a grantor CLAT.
- (2) *Instruction for use.* Replace the second sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

If [*designated charitable recipient*] is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [*designated substitute charitable recipient*]. If neither [*designated charitable recipient*] nor [*designated substitute charitable recipient*] is an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion.

.06 Restriction of the Charitable Beneficiary to a Public Charity.

- (1) *Explanation.* Because the charitable lead interest of a grantor charitable lead trust is considered to be made "for the use of" the charitable beneficiary, the income tax charitable deduction available to an individual taxpayer is generally limited as set forth in § 170(b)(1)(B) to 30 percent of the taxpayer's contribution base as defined in § 170(b)(1)(G). However, if the property contributed to the CLAT is capital gain property as defined in § 170(b)(1)(C)(iv) and the charitable beneficiary (including any alternate charitable beneficiaries named in the trust instrument or selected by the trustee) is not limited to a public charity, the individual taxpayer's income tax charitable deduction generally is limited as set forth in § 170(b)(1)(D) to 20 percent of the taxpayer's contribution base. Section 170(b)(1)(D). See §§ 1.170A-8(c) and (d). In addition, the amount of a charitable contribution of certain types of property may be reduced under § 170(e). See § 1.170A-4.
- (2) *Instructions for use.* To restrict the charitable beneficiary 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."

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie N. Bland of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Stephanie N. Bland at (202) 622-3090 or (202) 622-7830 (not a toll-free call).

Rev. Proc. 2007-46

SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements for a testamentary charitable lead annuity trust (CLAT) providing for annuity payments payable to one or more charitable beneficiaries for the annuity period followed by the distribution of trust assets to one or more noncharitable remaindermen.

SECTION 2. BACKGROUND

The Internal Revenue Service (Service) is issuing sample forms for CLATs; annotations and alternate sample provisions are included as further guidance. In addition to the sample trust instrument for a testamentary CLAT that is included in this revenue procedure, samples are provided in a separate revenue procedure for grantor and nongrantor inter vivos CLATs (see Rev. Proc. 2007-45, 2007-29 I.R.B. 89).

SECTION 3. SCOPE

A CLAT is an irrevocable split-interest trust that provides for a specified amount to be paid to one or more charitable beneficiaries during the term of the trust. The principal remaining in the trust at the end of the term is paid over to, or held in a continuing trust for, a noncharitable beneficiary or beneficiaries identified in the trust. If the terms of a CLAT created on the decedent's death satisfy the applicable statutory and regulatory requirements, the value of the charitable lead annuity interest will be deductible by the decedent's estate under § 2055(e)(2)(B) and payments of the annuity amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by § 642(c)(1).

A testamentary CLAT is subject to the provisions of part I, subchapter J of chapter 1 of subtitle A of the Internal Revenue Code (Code). Under the provisions of part I of subchapter J, a CLAT is allowed a deduction under § 642(c)(1) in determining its taxable income for any amount of gross income paid for purposes specified in § 170(c).

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CLAT with a term of years annuity period that is created by a decedent who was a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) an annuity period for the life of an individual; (.02) apportionment of the annuity amount in the discretion of the trustee; (.03) the annuity amount as a specific dollar amount; and (.04) designation of an alternate charitable beneficiary in the trust instrument. If a trust is substantially similar to the sample trust in section 4 of this revenue procedure or properly integrates one or more alternate provisions from section 6 into a document substantially similar to the sample trust in section 4, is a valid trust under applicable local law, and operates in a manner consistent with the terms of the instrument, and if all other deductibility requirements are satisfied, the value of the charitable lead interest will be deductible by the decedent's estate under § 2055(e)(2)(B) and payments of the annuity amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by § 642(c)(1). In addition, a testamentary CLAT will qualify for the safe harbor created under this revenue procedure if the trust satisfies all of the requirements set forth in the preceding sentence, except that it defines the annuity amount as an increasing amount for which the value is ascertainable at the creation of the trust and/or provides for a different disposition of trust assets upon the termination of the annuity period.

Except as provided above, a trust 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 ineligible for the relevant charitable deduction(s), but neither will that trust (or contributions to it) be assured of qualification for the appropriate charitable deductions. The Service generally will not issue a letter ruling on whether a testamentary CLAT qualifies for income and estate tax charitable deductions. The Service, however, generally will issue letter rulings relating to the tax consequences of the inclusion in a CLAT of substantive trust provisions other than those contained in sections 4 and 6 of this revenue procedure.

SECTION 4. SAMPLE TESTAMENTARY CHARITABLE LEAD ANNUITY TRUST

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 lead annuity trust, within the meaning of Rev. Proc. 2007-46. This trust shall be known as the

_____ Charitable Lead Annuity Trust, and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”). All references to “section” or “§” in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. § 1, *et seq.*

1. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*number representing the annual annuity percentage to be paid to the designated charitable recipient*] percent of the initial net fair market value of all property passing to this trust, as finally determined for federal estate tax purposes. If [*designated charitable recipient*] is not an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c) and 2055(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion. The term “the Charitable Organization” shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of [*number of years of annuity period*] 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 Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (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 Charitable Organization the difference between any annuity amounts actually paid and the annuity amounts payable, plus interest. The interest for any period shall be computed at the § 7520 rate of interest in effect for the date of my death. All interest shall be compounded annually.

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 in 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 Upon Termination of Annuity Period.* 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 to the Charitable Organization under the provisions above) to [*remainder beneficiary*].

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), as modified by § 4947(a)(2), and shall not make any taxable expenditures within the meaning of § 4945(d), as modified by § 4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3).

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 requirements for the charitable deductions available to a charitable lead annuity trust or for contributions to a charitable lead annuity trust.

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 annuity interest passing to the Charitable Organization is a guaranteed annuity interest under § 2055(e)(2)(B) and the regulations thereunder and that payments of the annuity amount to the Charitable Organization will be deductible from the gross income of the trust to the extent provided by § 642(c)(1) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, 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 LEAD ANNUITY TRUST

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Income taxation of testamentary charitable lead trusts.* A testamentary CLAT is a complex trust that is taxable as a separate entity under the provisions of subchapter J of the Code. The trustee of the trust must apply for a tax identification number for the trust.
- (2) *Deduction under § 642(c)(1) available for amounts paid for a charitable purpose.* Under § 642(c)(1), a testamentary CLAT is allowed a deduction in computing its taxable income for any amount of gross income, without limitation, that under the terms of the trust instrument is paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)) during the taxable year. Section 642(c)(1) and § 1.642(c)-1(a). An amount paid to a corporation, trust, or community chest, fund, or foundation otherwise described in § 170(c)(2) shall be considered paid for a purpose described in § 170(c) even though the corporation, trust, or community chest, fund, or foundation is not created or organized in the United States, any state, the District of Columbia, or any possession of the United States. Section 1.642(c)-1(a)(2). With regard to amounts of income paid to the charitable beneficiary after the close of the taxable year in which the income was received (but on or before the last day of the next succeeding taxable year), the trustee of a testamentary CLAT may elect to take the charitable deduction for that payment for the year in which the income was received, rather than for the year in which the payment was made. Section 642(c)(1). The election is made by filing a statement with the income tax return for the taxable year in which the charitable contribution is treated as paid. See § 1.642(c)-1(b).
- (3) *Charitable lead beneficiary requirements.* A deduction is allowed under § 642(c)(1) for any amount of the gross income of a testamentary CLAT that is paid for a purpose specified in § 170(c). Note that the class of permissible charitable recipients for obtaining a deduction under § 642(c)(1) differs from the class of permissible charitable recipients for obtaining a deduction under § 170(a). Compare § 170(c) and § 1.642(c)-1(a)(2).
- (4) *Unrelated business taxable income.* Under § 681, a testamentary charitable lead trust's deduction under § 642(c)(1) is disallowed in any year to the extent that the deduction is allocable to the trust's unrelated business taxable income, as defined in § 512, for that taxable year. See § 1.681(a)-2. However, a partial deduction is allowed under § 512(b)(11) for amounts allocable to unrelated business taxable income. Section 512(b)(11). See § 512(b)(12) and § 1.681(a)-2(a).
- (5) *Computation of estate tax charitable deduction.* In general, the estate tax charitable deduction available under § 2055(e)(2)(B) with respect to contributions to a CLAT is equal to the present value of the annuity interest. Section 7520 requires that an annuity interest must be valued using tables published by the Service. The method for valuing a charitable lead annuity interest is set forth in the regulations. See § 20.7520-2. If estate or other death taxes are paid from the assets used to fund a testamentary CLAT, the amount deductible under § 2055 is the amount that passes to charity, reduced by the amount of estate or death taxes paid. Section 2055(c).
- (6) *Trustee provisions.* The trust instrument may name alternate or successor trustees and/or may include a process for the appointment of unnamed alternate or successor trustees. In addition, the trust instrument may contain certain administrative provisions relating to the trustee's duties and powers.

.02 Annotations for Paragraph 1, Payment of Annuity Amount, of the Sample Trust.

- (1) *Guaranteed annuity.* To qualify for an estate tax charitable deduction, a CLAT must provide for the payment of a guaranteed annuity amount at least annually to a qualified charitable organization for each year during the annuity period. See § 2055(e)(2)(B). A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for one or more measuring lives. See section 5.02(4) for a discussion of the permissible term of a testamentary CLAT. An amount is determinable if the exact amount that must be paid under the conditions specified in the instrument of transfer may be ascertained as of the appropriate valuation date. Section 20.2055-2(e)(2)(vi)(a). A charitable interest expressed as the right to receive an annual payment from a trust equal to the lesser of a sum certain or a fixed percentage of the trust assets (determined annually) is not a guaranteed annuity interest. See § 20.2055-2(e)(2)(vi)(b). In addition, a charitable lead annuity interest is not a guaranteed annuity interest if the trustee has the discretion to commute and prepay the charitable interest prior to the termination of the annuity period. Rev. Rul. 88-27, 1988-1 C.B. 331. If a charitable interest in the form of a guaranteed annuity interest is in trust and the present value of the charitable interest on the appropriate valuation date exceeds 60 percent of the aggregate value of all amounts in the trust, the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits the acquisition and retention of assets that would give rise to a tax under § 4943 or 4944, as modified by §§ 4947(a)(2) and 4947(b)(3). Section 20.2055-2(e)(2)(vi)(e). These prohibitions are contained in the sample trust in section 4. See section 5.07 for a further discussion of the 60 percent test. See section 6.03 for an alternate provision that provides for an annuity amount stated as a specific dollar amount.

- (2) *Payment requirements.* CLATs are not subject to any minimum or maximum payout requirements. The governing instrument of a CLAT must provide for the payment to a charitable organization of a fixed dollar amount or a fixed percentage of the initial net fair market value of the assets transferred to the trust. Alternatively, the governing instrument of a CLAT may provide for an annuity amount that is initially stated as a fixed dollar or fixed percentage amount but increases during the annuity period, provided that the value of the annuity amount is ascertainable at the time of the decedent's death. The annuity payments may be made in cash or in kind. If the trustee distributes appreciated property in satisfaction of the required annuity payment, the trust will realize capital gain on the assets distributed to satisfy part or all of the annuity payment and the trust will be allowed a § 642(c)(1) deduction for the realized capital gains. Rev. Rul. 83-75, 1983-1 C.B. 114. See section 5.03 for a discussion of the deferral of the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded.
- (3) *Rule against perpetuities.* An interest payable for a specified term of years may qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. However, any such savings clause must utilize a period of vesting of not more than 21 years after the deaths of the measuring lives who are selected to maximize, rather than limit, the term of the trust. Section 20.2055-2(e)(2)(vi)(a).
- (4) *Permissible term.* Paragraph 1, Payment of Annuity Amount, of the sample trust provides for payment of the annuity amount for a specified term of years. Alternatively, the trust instrument may provide for payment of the annuity amount for the life or lives of one or more measuring lives or for the life or lives of one or more measuring lives plus a term of years. Rev. Rul. 85-49, 1985-1 C.B. 330. Only one or more of the following individuals may be used as measuring lives: the decedent's spouse and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170 or 2055), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. Each person used as a measuring life for the annuity period must be living on the decedent's date of death. Section 20.2055-2(e)(2)(vi)(a). See section 6.01 for an alternate provision that provides for an annuity period based on the life of an individual.
- (5) *Permissible recipients.* A CLAT must have one or more charitable lead beneficiaries. The failure to designate a specific charitable beneficiary will not preclude the decedent's estate from receiving a charitable deduction if the trust instrument provides for the selection by the trustee of a charitable beneficiary described in §§ 170(c) and 2055(a). Rev. Rul. 78-101, 1978-1 C.B. 301. See section 6.02 for an alternate provision that provides the trustee with the power to apportion the annuity amount among charitable beneficiaries.
- (6) *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 calendar quarter. Alternatively, the trust instrument may specify that the annuity amount is to be paid in annual or other equal or unequal installments throughout the year. See § 20.2055-2(e)(2)(vi)(a). The amount of the charitable deduction will be affected by the frequency of the 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 § 20.2031-7.
- (7) *Excess income.* Trust income in excess of the amount required to pay the annuity may be retained by the trust or distributed currently to the charitable beneficiary. The sample trust in section 4 provides for the retention of excess income by the trust. If, instead, the governing instrument provides for the payment of excess income to or for the use of the charitable beneficiary, no additional estate tax charitable deduction is available for the excess amounts of income distributed to the charitable beneficiary. See § 20.2055-2(e)(2)(vi)(d). However, the trust is entitled to a charitable income tax deduction under § 642(c)(1) for any amounts of excess income paid to the charitable beneficiary. See Situation 2 of Rev. Rul. 88-82, 1988-2 C.B. 336, for the transfer tax consequences of the payment of excess income to a noncharitable beneficiary. See section 5.07 for the private foundation rules applicable to charitable lead trusts.
- (8) *Payment of part of annuity for private purposes.* In general, no part of a charitable lead annuity interest may be payable for a private purpose before the expiration of all charitable lead annuity interests. However, there are two exceptions to this rule. The first exception arises when the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. The second exception arises when, under the trust's governing instrument, the amount that may be paid for a private purpose is payable only from a group of assets that is devoted exclusively to private purposes and to which § 4947(a)(2) is inapplicable by reason of § 4947(a)(2)(B). Note that an amount is not deemed to have been paid for a private purpose if it was paid for full and adequate consideration in money or money's worth. Section 20.2055-2(e)(2)(vi)(f). See section 5.07 for the private foundation rules applicable to charitable lead trusts.

.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 the trustee to defer the payment of the annuity amount until the end of the taxable year of the trust in which the trust is completely funded.
- (2) *Interest on annuity payments.* The deferral provision in paragraph 2 of the sample trust provides for the payment of interest, compounded annually, with respect to any underpayment of the annuity amount during the period of estate administration.

The sample trust requires that interest be computed at the § 7520 rate in effect on the date of the decedent's death. To the extent that interest payable under state law exceeds the applicable § 7520 rate, the payment of interest at the rate prescribed by state law will be deemed to satisfy the interest payment requirement set forth in the trust instrument.

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

- (1) *Prorating the annuity amount.* Paragraph 3, Proration of Annuity Amount, of the sample trust provides for the proration of the annuity amount in any short taxable year, including the last year of the annuity period.

.05 Annotation for Paragraph 4, Distribution Upon Termination of Annuity Period, of the Sample Trust.

- (1) *Generation-skipping transfer tax.* If a CLAT has or may have a skip person, as defined in § 2613(a), as a remainder beneficiary, the transfer to the trust will be subject to the generation-skipping transfer (GST) tax. Under § 2651(f)(3), a charitable organization is deemed to be in the same generation as the decedent/donor of a charitable lead trust. Therefore, the GST potential of a charitable lead trust is dependent upon whether any noncharitable beneficiary is a skip person. GST tax liability is determined by multiplying the taxable amount by the applicable rate. The applicable rate is the inclusion ratio multiplied by the maximum federal estate tax rate. Section 2641(a). The rules for determining the inclusion ratio for a CLAT are set forth in § 2642(e) and confirm that the inclusion ratio is determined at the termination of the annuity period, rather than on the funding of the trust.

.06 Annotation for Paragraph 5, Additional Contributions, of the Sample Trust.

- (1) *Additions to the trust.* For purposes of qualification under this revenue procedure, the trust instrument must contain a provision that prohibits additional contributions. A CLAT that permits additional contributions will not qualify for safe harbor treatment under this revenue procedure.

.07 Annotation for Paragraph 6, Prohibited Transactions, of the Sample Trust.

- (1) *Prohibitions against certain investments and excess business holdings.* Prohibitions against retaining any excess business holdings within the meaning of § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3), and against investments that jeopardize the exempt purpose of the trust within the meaning of § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3), are generally required. The sample trust in section 4 contains prohibitions against §§ 4943 and 4944 transactions. If the present value of the charitable interest does not exceed 60 percent of the aggregate value of all amounts in the trust, the trust instrument does not provide for the payment of any of the income interest to a noncharitable beneficiary, and the trust instrument does not provide for the payment of excess income to a noncharitable beneficiary, the references to §§ 4943 and 4944 may be removed from the trust instrument. Section 4947(b)(3) and §§ 53.4947-2(b)(1)(i) and 20.2055-2(e)(2)(vi)(e). See section 5.02(7) for a discussion of the payment of excess trust income to a noncharitable beneficiary. See section 5.02(8) for a discussion of the payment of part of the annuity for a private purpose.

.08 Annotation for paragraph 7, Taxable Year, of the Sample Trust.

- (1) *Calendar year.* The taxable year of a charitable lead trust must be a calendar year. Section 644(a).

.09 Annotation for paragraph 10, Investment of Trust Assets, of the Sample Trust.

- (1) *Capital gains.* Gains from the sale or exchange of capital assets may be allocated to the income or the principal of the trust. If the governing instrument is silent, capital gains are allocated in accordance with local law. Even if gains are allocated to principal, they will be deductible under § 642(c)(1) if they are paid to the charitable beneficiary as part of a charitable annuity payment. Rev. Rul. 83-75, 1983-1 C.B. 114.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE LEAD ANNUITY TRUST

.01 Annuity Period for the Life of One Individual.

- (1) *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a testamentary CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the decedent's spouse and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170 or 2055), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal

ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries, if on decedent's date of death there is a less than 15 percent probability that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in § 20.2031-7. Section 20.2055-2(e)(2)(vi)(a).

- (2) *Instruction for use.* Replace the fifth and sixth sentences of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. 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 date of death of [*designated measuring life*].

.02 Apportionment of the Annuity Amount in the Discretion of the Trustee.

- (1) *Explanation.* The trustee of a testamentary charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries.
- (2) *Instruction for use.* Replace the first three sentences of paragraph 1, Payment of Annuity Amount, of the sample trust with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§ 170(c) and 2055(a) (hereinafter, collectively “the Charitable Organization”) an annuity amount equal to [*number representing the annual annuity percentage to be paid to the Charitable Organization*] percent of the initial net fair market value of all property passing to this trust, as finally determined for federal 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, from time to time may deem advisable.

.03 Annuity Amount as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may instead be stated as a specific dollar amount.
- (2) *Instructions for use.*
- (a) Replace the first sentence in 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 [*designated charitable recipient*] an annuity amount equal to [*the stated dollar amount*].
- (b) Delete the last sentence in paragraph 1, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

.04 Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

- (1) *Explanation.* The sample trust provides that in the event the charitable beneficiary designated in the trust instrument is not an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§ 170(c) and 2055(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries.
- (2) *Instruction for use.* Replace the second sentence in paragraph 1, Payment of Annuity Amount, of the sample trust with the following two sentences:

If [*designated charitable recipient*] is not an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [*designated substitute charitable recipient*]. If neither [*designated charitable recipient*] nor [*designated substitute charitable recipient*] is an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c) and 2055(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie N. Bland of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Stephanie N. Bland at (202) 622-3090 or (202) 622-7830 (not a toll-free call).

Rev. Proc. 2007-47

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986 (the Code). This revenue procedure also addresses whether a research agreement causes the modified private business use test in § 145(a)(2)(B) of the Code to be met for qualified 501(c)(3) bonds. This revenue procedure modifies and supersedes Rev. Proc. 97-14, 1997-1 C.B. 634.

SECTION 2. BACKGROUND

.01 Private Business Use.

(1) Under § 103(a) of the Code, gross income does not include interest on any State or local bond. Under § 103(b)(1), however, § 103(a) does not apply to a private activity bond, unless it is a qualified bond under § 141(e). Section 141(a)(1) defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1), an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A), private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 150(a)(2) provides that the term “governmental unit” does not include the United States or any agency or instrumentality thereof. Section 145(a) also applies the private business use test of § 141(b)(1) to qualified 501(c)(3) bonds, with certain modifications.

(2) Section 1.141-3(b)(1) of the Income Tax Regulations provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private busi-

ness user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

(3) Section 1.141-3(b)(6)(i) provides generally that an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all the facts and circumstances.

(4) Section 1.141-3(b)(6)(ii) provides generally that a research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for Federal income tax purposes.

(5) Section 1.141-1(b) provides that the term “governmental person” means a State or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. Section 1.141-1(b) further provides that governmental person does not include the United States or any agency or instrumentality thereof. Section 1.141-1(b) further provides that “nongovernmental person” means a person other than a governmental person.

(6) Section 1.145-2 provides that §§ 1.141-0 through 1.141-15 apply to qualified 501(c)(3) bonds under § 145(a) of the Code with certain modifications and exceptions.

(7) Section 1.145-2(b)(1) provides that, in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the Code, references to governmental persons include § 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a).

.02 Federal Government rights under the Bayh-Dole Act.

(1) The Patent and Trademark Law Amendments Act of 1980, as amended, 35 U.S.C. § 200 *et seq.* (2006) (the “Bayh-Dole Act”), generally applies to any contract, grant, or cooperative agreement with any Federal agency for the performance of research funded by the Federal Government.

(2) The policies and objectives of the Bayh-Dole Act include promoting the utilization of inventions arising from federally supported research and development

programs, encouraging maximum participation of small business firms in federally supported research and development efforts, promoting collaboration between commercial concerns and nonprofit organizations, ensuring that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise, and promoting the commercialization and public availability of inventions made in the United States by United States industry and labor.

(3) Under the Bayh-Dole Act, the Federal Government and sponsoring Federal agencies receive certain rights to inventions that result from federally funded research activities performed by non-sponsoring parties pursuant to contracts, grants, or cooperative research agreements with the sponsoring Federal agencies. The rights granted to the Federal Government and its agencies under the Bayh-Dole Act generally include, among others, nonexclusive, nontransferable, irrevocable, paid-up licenses to use the products of federally sponsored research and certain so-called “march-in rights” over licensing under limited circumstances. Here, the term “march-in rights” refers to certain rights granted to the sponsoring Federal agencies under the Bayh-Dole Act, 35 U.S.C. § 203 (2006), to take certain actions, including granting licenses to third parties to ensure public benefits from the dissemination and use of the results of federally sponsored research in circumstances in which the original contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the product of that research. The general purpose of these rights is to ensure the expenditure of Federal research funds in accordance with the policies and objectives of the Bayh-Dole Act.

SECTION 3. DEFINITIONS

.01 *Basic research*, for purposes of § 141 of the Code, means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. For example, product testing supporting the trade or business of a specific nongovernmental person is not treated as basic research.

.02 *Qualified user* means any State or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. The term also includes a § 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the Code. The term does not include the United States or any agency or instrumentality thereof.

.03 *Sponsor* means any person, other than a qualified user, that supports or sponsors research under a contract.

SECTION 4. CHANGES

This revenue procedure modifies and supersedes Rev. Proc. 97-14 by making changes that are described generally as follows:

.01 Section 6.03 of this revenue procedure modifies the operating guidelines on cooperative research agreements to include agreements regarding industry or federally sponsored research with either a single sponsor or multiple sponsors.

.02 Section 6.04 of this revenue procedure provides special rules for applying the revised operating guidelines under section 6.03 of this revenue procedure to federally sponsored research. These special rules provide that the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause research agreements to fail to meet the requirements of section 6.03, upon satisfaction of the requirements of section 6.04 of this revenue procedure. Thus, under the stated conditions, such rights themselves will not result in private business use by the Federal Government or its agencies of property used in research performed under research agreements. These special rules do not address the use by third parties that actually receive more than non-exclusive, royalty-free licenses as the result of the exercise by a sponsoring Federal agency of its rights under the Bayh-Dole Act, such as its march-in rights.

SECTION 5. SCOPE

This revenue procedure applies when, under a research agreement, a sponsor uses property financed with proceeds of an issue of State or local bonds subject to § 141 or § 145(a)(2)(B) of the Code.

SECTION 6. OPERATING GUIDELINES FOR RESEARCH AGREEMENTS

.01 *In general.* If a research agreement is described in either section 6.02 or 6.03 of this revenue procedure, the research agreement itself does not result in private business use. In applying the operating guidelines under section 6.03 of this revenue procedure to federally sponsored research, the special rules under section 6.04 of this revenue procedure (regarding the effect of the rights of the Federal Government and its agencies under the Bayh-Dole Act) apply.

.02 *Corporate-sponsored research.* A research agreement relating to property used for basic research supported or sponsored by a sponsor is described in this section 6.02 if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), and the price paid for that use must be determined at the time the license or other resulting technology is available for use. Although the recipient need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price that would be paid by any non-sponsoring party for those same rights.

.03 *Industry or federally-sponsored research agreements.* A research agreement relating to property used pursuant to an industry or federally-sponsored research arrangement is described in this section 6.03 if the following requirements are met, taking into account the special rules set forth in section 6.04 of this revenue procedure in the case of federally sponsored research —

(1) A single sponsor agrees, or multiple sponsors agree, to fund governmentally performed basic research;

(2) The qualified user determines the research to be performed and the manner in which it is to be performed (for example, selection of the personnel to perform the research);

(3) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and

(4) The sponsor or sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

.04 *Federal Government rights under the Bayh-Dole Act.* In applying the operating guidelines on industry and federally-sponsored research agreements under section 6.03 of this revenue procedure to federally sponsored research, the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section 6.03, provided that the requirements of sections 6.03(2), and (3) are met, and the license granted to any party other than the qualified user to use the product of the research is no more than a nonexclusive, royalty-free license. Thus, to illustrate, the existence of march-in rights or other special rights of the Federal Government or the sponsoring Federal agency mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section 6.03 of this revenue procedure, provided that the qualified user determines the subject and manner of the research in accordance with section 6.03(2), the qualified user retains exclusive title to any patent or other product of the research in accordance with section 6.03(3), and the nature of any license granted to the Federal Government or the sponsoring Federal agency (or to any third party nongovernmental person) to use the product of the research is no more than a nonexclusive, royalty-free license.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-14 is modified and superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for any research agreement entered into, materially modified, or extended on or after June 26, 2007. In addition, an issuer may apply this revenue procedure to any research agreement entered into prior to June 26, 2007.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Vicky Tsilas and Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Johanna Som de Cerff at (202) 622-3980 (not a toll-free call).

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*

(Also Part I, §§ 167, 168, 446, 481; 1.446-1, 1.481-1.)

Rev. Proc. 2007-48

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting to treat rotatable spare parts as depreciable assets in accordance with Rev. Rul. 2003-37, 2003-1 C.B. 717, and provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting.

SECTION 2. BACKGROUND

.01 In both *Hewlett-Packard Co. v. United States*, 71 F.3d 398 (Fed. Cir. 1995), *rev'g Apollo Computer, Inc. v. United States*, 32 Fed. Cl. 334 (1994), and *Honeywell, Inc. v. Commissioner*, T.C. Memo. 1992-453, *aff'd per curiam*, 27 F.3d 571 (8th Cir. 1994), the courts held that the taxpayers properly treated their pools of rotatable spare parts as depreciable assets, rather than as inventory. The taxpayers in *Hewlett-Packard* and *Honeywell* were engaged in the trade or business of manufacturing computers and computer parts, and also in the business of repairing and servicing computers purchased or leased by their customers. Most of the taxpayers' computer maintenance operations were conducted pursuant to standardized maintenance agreements that obligated the taxpayers to provide all parts and labor, product upgrades, preventive maintenance, and telephone assistance necessary to keep a customer's computer

operational for the duration of the contract (usually one year) in exchange for a predetermined fee. In conducting their computer maintenance operations, the taxpayers sent repair technicians to a customer's location to diagnose and repair the customer's computer. The taxpayers' repair technicians used a supply of rotatable spare parts to diagnose problems in a customer's equipment, and then would exchange a working part for any malfunctioning part. The malfunctioning part removed from the customer's equipment would then be repaired and placed in the taxpayers' rotatable spare parts pools for continued use in the maintenance operation. The taxpayers followed this practice of exchanging their rotatable spare parts for malfunctioning parts in a customer's computer to avoid rendering a customer's computer inoperative while the original part was being repaired.

The parts in the taxpayers' rotatable spare parts pools were obtained from the taxpayers' manufacturing facilities. However, the taxpayers operated their computer maintenance operations separate from their manufacturing operations and at all times the rotatable spare parts were physically segregated from the taxpayers' regular manufacturing inventories.

.02 In Rev. Rul. 2003-37, the Internal Revenue Service announced that it will follow the judgments in *Hewlett-Packard* and *Honeywell*, and that a taxpayer may treat rotatable spare parts as depreciable assets, provided the taxpayer's facts are substantially similar to the facts in those cases.

.03 The Service and Department of the Treasury are aware that the treatment of rotatable spare parts as depreciable assets has continued to be the subject of controversy in situations when a taxpayer, as part of its maintenance operations, sells rotatable spare parts from the taxpayer's pool of rotatable spare parts that are treated as depreciable assets. For reasons of administrative convenience, and to reduce further controversy, if a taxpayer within the scope of this revenue procedure maintains one or more pools of rotatable spare parts that it treats as depreciable assets and sells rotatable spare parts from these pools, the Service will not challenge the taxpayer's treatment of the pools of rotatable spare parts as depreciable assets for a particular taxable year if, for that year, the taxpayer uses

the method of accounting provided in section 4 of this revenue procedure.

.04 Section 167(a) of the Internal Revenue Code provides a depreciation allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Depreciation allowances under § 168 are determined using either: (1) the general depreciation system (GDS) in § 168(a); or (2) the alternative depreciation system (ADS) in § 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention. For purposes of either GDS or ADS, the applicable recovery period is determined by reference to class life or by statute.

.05 Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785, sets forth the class lives of depreciable tangible property that are necessary to determine the recovery period of that property under § 168. The revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4 that consist of specific assets used in all business activities; and (2) asset classes 01.1 through 80.0 that consist of assets used in specific business activities.

.06 Pursuant to § 167(c), the basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property generally is the adjusted basis provided in § 1011 for the purpose of determining the gain on the sale or other disposition of such property. See also § 1.168(b)-1(a)(3) and (a)(4) of the Income Tax Regulations for the definitions of unadjusted depreciable basis and adjusted depreciable basis, respectively, for purposes of § 168.

.07 Under § 446(b), the Commissioner has broad authority to determine whether a method of accounting clearly reflects income. Section 1.446-1(c)(2)(ii) provides that the Commissioner may authorize a taxpayer to adopt or change to a permissible method of accounting although the method is not specifically permitted if, in the opinion of the Commissioner, that method clearly reflects income.

.08 Section 446(e) and § 1.446-1(e)(2)(i) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to obtain the Commissioner's consent to effect the change in method of accounting and to prevent amounts from being duplicated or omitted. The terms and conditions the Commissioner may prescribe include the year of change, whether the change is to be made with a § 481(a) adjustment or on a cut-off basis, and the § 481(a) adjustment period.

.09 Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432), provides procedures by which a taxpayer may obtain automatic consent to change to a method of accounting described in the Appendix of Rev. Proc. 2002-9.

.10 Section 481(a) requires adjustments necessary to prevent amounts from being duplicated or omitted by reason of a change in method of accounting.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that —

(1) repairs customer-owned (or customer-leased) equipment under warranty or maintenance agreements that are provided to the customer for either no charge or a predetermined fee that does not change during the term of the agreement (regardless of the taxpayer's costs to comply with the agreement);

(2) is obligated under the warranty or maintenance agreements to repair the customer's equipment (including all parts and labor related to the repair) for either no charge or a nominal service fee that is unrelated to the actual cost of parts and labor provided;

(3) maintains a pool or pools of spare parts that are used primarily in the taxpayer's maintenance operation of repairing customer-owned (or customer-leased) equipment under warranty or maintenance

agreements, exchanges the spare parts for defective parts in the customer-owned (or customer-leased) equipment, and generally repairs and reuses the defective parts in its pool of spare parts (the "rotatable spare parts"); and

(4) has a depreciable interest in the rotatable spare parts and has placed in service the rotatable spare parts after 1986.

SECTION 4. SAFE HARBOR METHOD OF ACCOUNTING FOR ROTABLE SPARE PARTS

.01 *In General.* This section 4 describes a safe harbor method of accounting for rotatable spare parts. A taxpayer is eligible to use the safe harbor method of accounting in any taxable year in which the taxpayer —

(a) is within the scope of section 3 of this revenue procedure; and

(b) has gross sales (less returns) of rotatable spare parts from the taxpayer's maintenance operation that do not exceed 10 percent of the taxpayer's total gross revenues (less returns) from its maintenance operation for the taxable year.

.02 *Description of Safe Harbor Method of Accounting.* A taxpayer using the safe harbor method of accounting for rotatable spare parts must —

(1) capitalize the cost of the rotatable spare parts under § 263(a) and depreciate these parts under § 168 in accordance with section 4.03 of this revenue procedure;

(2) establish one or more pools for the rotatable spare parts in accordance with section 4.04 of this revenue procedure;

(3) identify the disposed rotatable spare parts in accordance with section 4.05 of this revenue procedure; and

(4) determine the depreciable basis of the rotatable spare parts for depreciation purposes in accordance with § 167(c), § 1011, and § 1.168(b)-1(a)(3) and (a)(4).

.03 *Depreciation Allowable.*

(1) *In general.* For purposes of determining the depreciation allowable for the rotatable spare parts under the safe harbor method of accounting described in section 4.02 of this revenue procedure, the applicable depreciation method for the rotatable spare parts is determined under § 168(b)(1) or (2), as applicable, unless either (a) the taxpayer made a timely valid election under § 168(b)(5) to use the straight line method of depreciation for the class of

property (as set forth in § 168(e)) in which the rotatable spare parts are included, or (b) the rotatable spare parts are required to be depreciated under the alternative depreciation system in § 168(g). Rotatable spare parts required to be depreciated under the alternative depreciation system include rotatable spare parts in a class of property (as set forth in § 168(e)) for which the taxpayer made a timely valid election under § 168(g)(7). In addition, the applicable recovery period for the rotatable spare parts is determined under § 168(c) or 168(g), as applicable, by including the rotatable spare parts in the following asset class of Rev. Proc. 87-56:

(a) the asset class in Rev. Proc. 87-56 applicable to the taxpayer's manufacturing activity if the taxpayer, under warranty or maintenance agreements, repairs only customer-owned (or customer-leased) equipment that is manufactured only by the taxpayer; or

(b) asset class 57.0, *Distributive Trades or Services*, if: (i) the taxpayer, under warranty or maintenance agreements, repairs both customer-owned (or customer-leased) equipment that is manufactured by the taxpayer and customer-owned (or customer-leased) equipment that is manufactured by others; (ii) the taxpayer is not a manufacturer of the type of customer-owned (or customer-leased) equipment that is being repaired; or (iii) the taxpayer (including a taxpayer described in section 4.03(1)(a) of this revenue procedure) charges the customer a nominal service fee (that is unrelated to the actual cost of parts and labor provided) to repair customer-owned (or customer-leased) equipment under warranty or maintenance agreements.

(2) *Additional first year depreciation deduction.* In determining the amount of the § 481(a) adjustment as described in section 5.04 of this revenue procedure, the additional first year depreciation deduction allowable under § 168(k), 1400L(b), or 1400N(d) is taken into account for any qualifying rotatable spare part. However, the deemed placed-in-service date referred to in section 5.04(2)(b) of this revenue procedure for the rotatable spare part is not the acquisition date of the rotatable spare part for purposes of the acquisition date requirement in § 168(k), 1400L(b), or 1400N(d).

.04 Establishment of Pools.

(1) *In general.* Under the safe harbor method of accounting described in section 4.02 of this revenue procedure, a taxpayer must establish one or more pools for the rotatable spare parts. Each pool must include only the rotatable spare parts that are placed in service by the taxpayer in the same taxable year and have the same: (a) asset class under Rev. Proc. 87-56, (b) applicable depreciation method, (c) applicable recovery period, and (d) applicable convention. Additionally, rotatable spare parts subject to the mid-quarter convention may only be grouped into a pool with rotatable spare parts that are placed in service in the same quarter of the taxable year.

(2) *General asset account election.* If a taxpayer within the scope of this revenue procedure is changing the treatment of its rotatable spare parts to the safe harbor method of accounting described in section 4.02 of this revenue procedure, the taxpayer also may elect to establish general asset accounts for the rotatable spare parts beginning in the year of change, provided the terms and conditions in section 5.02(5) of this revenue procedure are satisfied beginning in the year of change.

.05 Dispositions.

(1) *In general.* Under the safe harbor method of accounting described in section 4.02 of this revenue procedure, a taxpayer must use a method of accounting provided in this section 4.05 for identifying the disposed rotatable spare parts. Any method other than one provided in this section 4.05 (including the “net additions” method) is not a permissible method of accounting for dispositions.

(2) *Permissible methods of identifying disposed rotatable spare parts.* For purposes of the safe harbor method of accounting described in section 4.02 of this revenue procedure, a taxpayer must use one of the following methods of accounting to identify its disposed rotatable spare parts:

(a) Specific identification of each disposed rotatable spare part; or

(b) A first-in, first-out method of accounting if, in the case of rotatable spare parts that are mass assets, the total rotatable spare parts dispositions during a particular taxable year are readily determined from a taxpayer’s records but it is impracticable for the taxpayer to maintain records from which the taxpayer can determine the particular taxable year in which the dis-

posed rotatable spare parts were placed in service by the taxpayer. A taxpayer using the first-in, first-out method of accounting under this section 4.05(2)(b) must identify the rotatable spare parts disposed of in a taxable year from the pool with the earliest placed-in-service year existing at the beginning of the taxable year of the disposition. For purposes of this paragraph, mass assets are a mass or group of individual items of depreciable property —

(i) that are not necessarily homogeneous;

(ii) each of which is minor in value relative to the total value of the mass or group;

(iii) numerous in quantity;

(iv) usually accounted for only on a total dollar or quantity basis;

(v) with respect to which separate identification is impracticable; and,

(vi) that are placed in service by the taxpayer in the same taxable year.

SECTION 5. CHANGES IN METHOD OF ACCOUNTING

.01 In General. Any change in a taxpayer’s treatment of rotatable spare parts pursuant to this revenue procedure is a change in method of accounting to which § 446 and (except as otherwise provided in this section 5) § 481, and the regulations thereunder, apply. This section 5 applies to a taxpayer within the scope of this revenue procedure that —

(1) currently does not capitalize and depreciate the cost of its rotatable spare parts and wants to change to the safe harbor method of accounting described in section 4.02 of this revenue procedure;

(2) currently treats its rotatable spare parts in accordance with sections 4.02(1), (3), and (4) of this revenue procedure and wants to establish rotatable spare parts pools in accordance with section 4.04(1) of this revenue procedure;

(3) currently treats its rotatable spare parts in accordance with sections 4.02(1), (2), and (4) of this revenue procedure and wants to change to a method of accounting described in section 4.05(2) of this revenue procedure for identifying the disposed rotatable spare parts; or

(4) currently treats its rotatable spare parts in accordance with sections 4.02(1) and (4) of this revenue procedure and wants to establish rotatable spare parts pools

in accordance with section 4.04(1) of this revenue procedure and change to a method of accounting described in section 4.05(2) of this revenue procedure for identifying the disposed rotatable spare parts.

.02 Automatic Change. A taxpayer within the scope of this revenue procedure is granted the consent of the Commissioner to make a change in method of accounting described in section 5.01 of this revenue procedure provided that the taxpayer follows the automatic change in method of accounting provisions in Rev. Proc. 2002-9 (or any successor), with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a taxpayer that wants to make the change in method of accounting for its first or second taxable year ending on or after December 31, 2006, provided the taxpayer’s method of accounting for rotatable spare parts is not an issue under consideration for taxable years under examination, within the meaning of section 3.09 of Rev. Proc. 2002-9, at the time the Form 3115, *Application for Change in Accounting Method*, is filed with the national office.

(2) For purposes of completing line 1a of Form 3115, the designated automatic accounting method change number for the changes in method of accounting provided in section 5.01 of this revenue procedure is No. 109.

(3) The taxpayer must compute any applicable § 481(a) adjustment in accordance with section 5.04 of this revenue procedure.

(4) The taxpayer must own the rotatable spare parts as of the beginning of the year of change and must determine the adjusted depreciable basis of the rotatable spare parts as of the beginning of the year of change in accordance with § 167(c), § 1011(a), and § 1.168(b)-1(a)(3) and (a)(4). The reductions required by § 1016(a)(2) for the depreciation allowable for the rotatable spare parts must be determined under the method of accounting for depreciation allowable under section 4.03 of this revenue procedure for all open and closed taxable years prior to the year of change.

(5) If a taxpayer described in section 4.04(2) of this revenue procedure elects to establish general asset accounts for the rotatable spare parts, the taxpayer must meet all of the following requirements beginning in the year of change:

(a) The taxpayer must consent to, and agree to apply, all of the provisions of § 1.168(i)-1 to the rotatable spare parts included in the general asset accounts, beginning with the year of change. Thus, pursuant to § 1.168(i)-1(k)(1), the establishment of general asset accounts beginning with the year of change is irrevocable and will be binding on the taxpayer for computing taxable income for the year of change and for all subsequent taxable years, except as provided in § 1.168(i)-1(c)(1)(ii)(A), (e)(3), (g), or (h)(1).

(b) The taxpayer must use a method of accounting described in section 4.05(2) of this revenue procedure for identifying the disposed rotatable spare parts for purposes of applying § 1.168(i)-1(i).

(c) The taxpayer must group the rotatable spare parts into one or more general asset accounts in accordance with the rules in § 1.168(i)-1(c) and each general asset account must include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account. The beginning balance for the unadjusted depreciable basis of each general asset account is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all rotatable spare parts included in that general asset account. The beginning balance of the depreciation reserve of each general asset account is equal to the portion of the accumulated depreciation component of the net § 481(a) adjustment that is allocable to the rotatable spare parts included in that general asset account.

.03 Changes Made on a Cut-off Method. A taxpayer making a change in method of accounting described in section 5.01(2), (3), or (4) of this revenue procedure must make the change on a cut-off method. Thus, the new method of accounting applies to rotatable spare parts placed in service, or disposed of, by the taxpayer beginning in the year of change.

.04 Changes Made Using a § 481(a) Adjustment.

(1) *In general.* A taxpayer making a change in method of accounting under section 5.01(1) of this revenue procedure to the safe harbor method of accounting must make the change using a § 481(a) adjustment. As required by the Form 3115, the taxpayer must attach a summary of the computation and an explanation of

the methodology used to determine the § 481(a) adjustment. To use the safe harbor method of accounting, the taxpayer also must include in the required attachment the amount of the taxpayer's total gross sales (less returns) of rotatable spare parts and gross revenues (less returns) from the taxpayer's maintenance operation for the year of change and every year of the qualifying period used to compute the § 481(a) adjustment.

(2) *Computation of § 481(a) Adjustment.*

(a) In computing the § 481(a) adjustment, the taxpayer must use the adjusted depreciable basis of the rotatable spare parts computed under the safe harbor method, as of the first day of the year of change taking into account the placed-in-service date provided for in subparagraph (2)(b) of this section 5.04 and the qualifying period described in subparagraph (3) of this section 5.04.

(b) Any rotatable spare parts that were: (i) placed in service by the taxpayer after 1986 and in a taxable year prior to the earliest taxable year of the qualifying period, and (ii) owned by the taxpayer as of the beginning of the earliest taxable year of the qualifying period, must be treated as placed in service by the taxpayer in the earliest taxable year of the qualifying period. A taxpayer that does not have the books and records to determine whether it meets the requirements of section 4.01 of this revenue procedure in every year in which the rotatable spare parts on hand as of the beginning of the year of change were placed in service and in every subsequent year prior to the year of change, must compute the § 481(a) adjustment using a qualifying period that can be established based on its books and records.

(3) *Qualifying period.* For purposes of this section 5.04, a "qualifying period" consists of the taxable year, or consecutive taxable years, immediately preceding the year of change during which the taxpayer can establish that it meets the requirements of section 4.01 of this revenue procedure.

.05 Nonautomatic Changes. If a taxpayer is not eligible to change to the safe harbor method of accounting provided in this revenue procedure, the taxpayer may request to change its method of accounting for treating rotatable spare parts by filing a Form 3115 with the Commissioner in accordance with the requirements of

§ 1.446-1(e)(3)(i) and Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432).

.06 Requirement to Change From the Safe Harbor Method. A taxpayer that changes to the safe harbor method under this revenue procedure and subsequently fails to meet the requirements of section 4.01 of this revenue procedure must change its method of accounting for rotatable spare parts to an appropriate inventory method of accounting for the first taxable year in which the taxpayer becomes ineligible to use the safe harbor method of accounting for rotatable spare parts. A taxpayer that is required to change its method of accounting under this section 5.06 must file a Form 3115 in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002-9 (or any successor), with the following modifications:

(1) the scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply; and

(2) the designated automatic accounting method change number for changes in method of accounting from the safe harbor method of accounting made pursuant to this section 5.06 is No. 110.

SECTION 6. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2002-9 is modified and amplified to include the accounting method changes described in this revenue procedure in section 3 of the APPENDIX.

.02 Section 2.01(1)(d)(xiii)(A) of the APPENDIX of Rev. Proc. 2002-9 (as modified by Rev. Proc. 2004-11, 2004-1 C.B. 311) is modified to read as follows:

(A) a change in inventory costs (for example, when property is reclassified from inventory property to depreciable property, or vice versa) (but see section 3.02 of this APPENDIX for making a change in method of accounting from inventory property to depreciable property for unrecoverable line pack gas or unrecoverable cushion gas, and Rev. Proc. 2007-48, 2007-29 I.R.B. 110, for making a change in method of accounting from inventory property to depreciable property for rotatable spare parts);

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2006. The Service will not challenge a taxpayer's use of the safe harbor method of accounting described in section 4.02 of this revenue procedure in an earlier taxable year if the taxpayer, for that taxable year, meets the requirements of section 4.01 of this revenue procedure. Moreover, if a taxpayer currently uses the safe harbor method of accounting described in section 4.02 of this revenue procedure and the use of such method is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9) in examination, before an appeals office, or before the U.S. Tax Court and the taxpayer meets the requirements of section 4.01 of this revenue procedure for the taxable years under examination, before an appeals office, or before the U.S. Tax Court, the issue will not be further pursued.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2070. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 5.04(1). This information is required to determine whether the taxpayer qualifies to use the safe harbor method of accounting. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions. The estimated total annual reporting and/or recordkeeping burden is 75 hours. The estimated annual frequency of responses is 300.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Gwen Turner of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Turner at (202) 622-5020 (not a toll-free call). For further information regarding the method of computing depreciation for rotatable spare parts, the establishment of pools or general asset accounts for rotatable spare parts, or the method of identifying the disposed rotatable spare parts, contact Douglas Kim of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

Proposed Form 1118, Foreign Tax Credit — Corporations

Announcement 2007–62

The Internal Revenue Service (IRS) announces that it is requesting comments from the public on proposed revisions to Form 1118, “*Foreign Tax Credit — Corporations*.” This Form is used by U.S. corporate taxpayers to compute the foreign tax credit for certain taxes paid or accrued to foreign countries or U.S. possessions. Form 1118 is being revised as a result of amendments to section 904 of the Internal Revenue Code (Code) relating to the number of separate foreign tax credit limitation categories and the effect of overall domestic losses. Attached to this announcement is a copy of the proposed form, with respect to which the IRS is requesting comments from the public. The proposed revisions have also been posted on the IRS website, at <http://www.irs.gov/taxpros/lists/0,,id=97782,00.html>.

BACKGROUND

Section 404 of the American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (October 22, 2004) (AJCA) generally reduced the number of separate categories under section 904(d) from eight to two, effective for tax years beginning after December 31, 2006. This provision does not, however, affect the separate computation of foreign tax credit limitations under special provisions of the Code relating to, for example, treaty-based sourcing rules or specified countries under section 901(j).

Section 402(a) of the AJCA added new section 904(g), which provides for the

recharacterization of U.S. source income as foreign source income in cases in which a taxpayer’s foreign tax credit limitation has been reduced in an earlier year as a result of an overall domestic loss. The new section 904(g) provides parity in the treatment of overall foreign losses and overall domestic losses in order to mitigate the double taxation of foreign source income.

PROPOSED REVISIONS TO FORM 1118

Form 1118 has generally been revised to eliminate information reporting regarding section 904(d) separate categories that have been eliminated by the AJCA. In addition, several other revisions have been made to the Form to reflect the overall domestic loss provisions of new section 904(g). For example, a new column has been added to Schedule A to more clearly reflect deductions for NOL carryovers and several other specific revisions have been made to Schedule J.

A new column has been added to Schedule J for U.S. source income or loss. This column is intended to be helpful in determining U.S. income subject to recharacterization from the recapture of overall domestic losses and otherwise tracking the balances of overall domestic losses.

In Part I, the step for allocating current year U.S. source losses on line 10 of the current Schedule J is moved to line 5 and renamed “allocation of domestic losses.” Placing this step before the recapture of overall foreign losses is a departure from the ordering rules set forth in Notice 89–3, 1989–1 C.B. 623. A new step has also been added to Part I on line 10 for the recapture of overall domestic losses now required under the new section 904(g). The

instructions to Schedule J will clarify that the recapture amount is determined based on the U.S. income subtotal from line 6, which does not take into account the effect of any recapture of overall foreign losses.

A new Part IV has been added to Schedule J to track additions and reductions to overall domestic loss account balances that are needed in applying the provisions of new section 904(g).

REQUEST FOR PUBLIC COMMENT

The IRS requests comments on the proposed revisions to the current Form 1118. The IRS is particularly interested in receiving comments on the ordering rules as reflected on the proposed Schedule J. Such comments will be useful in the drafting of proposed regulations under section 904(f) and (g), which will include detailed ordering rules as well as other guidance under these provisions.

Written comments should be sent to: Tax Products Coordinating Committee, Internal Revenue Service, SE:W:CAR:MP:T, Room 6406, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Alternatively, comments may be e-mailed to tfpmail@publish.no.irs.gov. Comments must be received by September 10, 2007.

The principal author of this announcement is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this announcement, contact Jeffrey L. Parry at (202) 622–3850 (not a toll-free call).

Foreign Tax Credit—Corporations

OMB No. 1545-0122

Name of corporation _____ For calendar year 20____, or other tax year beginning _____, 20____, and ending _____, 20____. Employer identification number _____

Use a **separate** Form 1118 for each applicable category of income listed below. See **Categories of Income** on page 1 of instructions. Also, see **Specific Instructions** on page 5. Check only one box on each form.

- Passive Category Income** Section 901(j) Income: Name of Sanctioned Country _____
- General Category Income** Income Re-sourced by Treaty: Name of Country _____

Schedule A Income or (Loss) Before Adjustments (Report all amounts in U.S. dollars. See page 5 of instructions.)

| | 1. Foreign Country or U.S. Possession (Enter two-letter code from list beginning on page 11 of instructions. Use a separate line for each.)* | | 2. Deemed Dividends (see instructions) | | 3. Other Dividends | | 4. Interest | 5. Gross Rents, Royalties, and License Fees | 6. Gross Income From Performance of Services | 7. Other (attach schedule) | 8. Total (add columns 2(a) through 7) |
|--------------------------------|--|------------------------|--|------------------------|----------------------|------------------------|-------------|---|--|----------------------------|---------------------------------------|
| | (a) Exclude gross-up | (b) Gross-up (sec. 78) | (a) Exclude gross-up | (b) Gross-up (sec. 78) | (a) Exclude gross-up | (b) Gross-up (sec. 78) | | | | | |
| A | | | | | | | | | | | |
| B | | | | | | | | | | | |
| C | | | | | | | | | | | |
| D | | | | | | | | | | | |
| E | | | | | | | | | | | |
| F | | | | | | | | | | | |
| Totals (add lines A through F) | | | | | | | | | | | |

* For section 863(b) income, use a single line and enter "863(b)."

Deductions (INCLUDE Foreign Branch Deductions here and on Schedule F)

| | 9. Definitely Allocable Deductions | | | 10. Apportioned Share of Deductions Not Definitely Allocable (enter amount from applicable line of Schedule H, Part II, column (d)) | 11. Net Operating Loss Deduction | 12. Total Deductions (add columns 9(e) through 11) | 13. Total Income or (Loss) Before Adjustments (subtract column 12 from column 8) |
|--------|---|--------------------|---|---|----------------------------------|--|--|
| | (a) Rental, Royalty, and Depreciation, and Amortization | (b) Other Expenses | (c) Expenses Related to Gross Income From Performance of Services | | | | |
| A | | | | | | | |
| B | | | | | | | |
| C | | | | | | | |
| D | | | | | | | |
| E | | | | | | | |
| F | | | | | | | |
| Totals | | | | | | | |

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 10900F

Form **1118** (Rev. 12-2007)

Schedule B Foreign Tax Credit (Report all foreign tax amounts in U.S. dollars.)

Part I—Foreign Taxes Paid, Accrued, and Deemed Paid (see page 5 of instructions)

| 1. Credit is Claimed for Taxes: | | 2. Foreign Taxes Paid or Accrued (attach schedule showing amounts in foreign currency and conversion rate(s) used) | | | | 3. Tax Deemed Paid (from Schedule C—Part I, column 10, Part II, column 8(b), and Part III, column 8) | | |
|---------------------------------|--------------|--|--------------|---|---------------------------|--|---|--|
| Date Paid | Date Accrued | Tax Withheld at Source on: | | Other Foreign Taxes Paid or Accrued on: | | | (h) Total Foreign Taxes Paid or Accrued (add columns 2(a) through 2(g)) | |
| | | (a) Dividends | (b) Interest | (c) Rents, Royalties, and License Fees | (d) Section 863(b) Income | (e) Foreign Branch Income | | |
| A | | | | | | | | |
| B | | | | | | | | |
| C | | | | | | | | |
| D | | | | | | | | |
| E | | | | | | | | |
| F | | | | | | | | |
| Totals (add lines A through F) | | | | | | | | |

Part II—Separate Foreign Tax Credit (Complete a separate Part II for each applicable category of income.)

| | | |
|----|---|--|
| 1 | Total foreign taxes paid or accrued (total from Part I, column 2(h)) | |
| 2 | Total taxes deemed paid (total from Part I, column 3) | |
| 3 | Reductions of taxes paid, accrued, or deemed paid (enter total from Schedule G) | |
| 4 | Total carryover of foreign taxes (attach schedule showing computation in detail—see page 6 of the instructions) | |
| 5 | Total foreign taxes (combine lines 1 through 4) | |
| 6 | Enter the amount from the applicable column of Schedule J, Part I, line 11 (see page 6 of instructions). If Schedule J is not required to be completed, enter the result from the "Totals" line of column 12 of the applicable Schedule A | |
| 7a | Total taxable income from all sources (enter taxable income from the corporation's tax return) | |
| b | Adjustments to line 7a (see page 6 of instructions) | |
| c | Subtract line 7b from line 7a | |
| 8 | Divide line 6 by line 7c. Enter the resulting fraction as a decimal (see instructions). If line 6 is greater than line 7c, enter 1 | |
| 9 | Total U.S. income tax against which credit is allowed (regular tax liability (see section 26(b)) minus American Samoa Economic Development Credit) | |
| 10 | Credit limitation (multiply line 8 by line 9) (see page 6 of instructions) | |
| 11 | Separate foreign tax credit (enter the smaller of line 5 or line 10 here and on the appropriate line of Part III) | |

Part III—Summary of Separate Credits (Enter amounts from Part II, line 11 for each applicable category of income. Do not include taxes on taxable income attributable to foreign trade income or taxes paid to sanctioned countries.)

| | | |
|---|--|--|
| 1 | Credit for taxes on passive category income | |
| 2 | Credit for taxes on general category income | |
| 3 | Credit for taxes on income re-sourced by treaty (combine all such credits on this line) | |
| 4 | Total (add lines 1 through 3) | |
| 5 | Reduction in credit for international boycott operations (see page 6 of instructions) | |
| 6 | Total foreign tax credit (subtract line 5 from line 4). Enter here and on the appropriate line of the corporation's tax return | |

Schedule C Tax Deemed Paid by Domestic Corporation Filing Return

Use this schedule to figure the tax deemed paid by the corporation with respect to dividends from a first-tier foreign corporation under section 902(a), and deemed inclusions of earnings from a first- or lower-tier foreign corporation under section 960(a). Report all amounts in U.S. dollars unless otherwise specified.

Part I—Dividends and Deemed Inclusions From Post-1986 Undistributed Earnings

Table with 10 columns: 1. Name of Foreign Corporation, 2. Tax Year End, 3. Country of Incorporation, 4. Post-1986 Undistributed Earnings, 5. Opening Balance, 6. Foreign Taxes Paid, 7. Post-1986 Foreign Income Taxes, 8. Dividends and Deemed Inclusions, 9. Divide Column 8(a) by Column 4, 10. Tax Deemed Paid.

Total (Add amounts in column 10. Enter the result here and include on "Totals" line of Schedule B, Part I, column 3)

Part II—Dividends Paid Out of Pre-1987 Accumulated Profits

Table with 8 columns: 1. Name of Foreign Corporation, 2. Tax Year End, 3. Country of Incorporation, 4. Accumulated Profits, 5. Foreign Taxes Paid and Deemed Paid, 6. Dividends Paid, 7. Divide Column 6(a) by Column 4, 8. Tax Deemed Paid.

Total (Add amounts in column 8b. Enter the result here and include on "Totals" line of Schedule B, Part I, column 3)

Part III—Deemed Inclusions From Pre-1987 Earnings and Profits

Table with 8 columns: 1. Name of Foreign Corporation, 2. Tax Year End, 3. Country of Incorporation, 4. E&P for Tax Year, 5. Foreign Taxes Paid and Deemed Paid, 6. Deemed Inclusions, 7. Divide Column 6(a) by Column 4, 8. Tax Deemed Paid.

Total (Add amounts in column 8. Enter the result here and include on "Totals" line of Schedule B, Part I, column 3)

Schedule D Tax Deemed Paid by First- and Second-Tier Foreign Corporations under Section 902(b)

Use Part I to compute the tax deemed paid by a first-tier foreign corporation with respect to dividends from a second-tier foreign corporation. Use Part II to compute the tax deemed paid by a second-tier foreign corporation with respect to dividends from a third-tier foreign corporation. Report all amounts in U.S. dollars unless otherwise specified.

Part I—Tax Deemed Paid by First-Tier Foreign Corporations

Table with 10 columns: 1. Name of Second-Tier Foreign Corporation and Its Related First-Tier Foreign Corporation; 2. Tax Year End (Yr-Mo); 3. Country of Incorporation; 4. Post-1986 Undistributed Earnings; 5. Opening Balance in Post-1986 Foreign Income Taxes; 6. Foreign Taxes Paid and Deemed Paid for Tax Year; 7. Post-1986 Foreign Income Taxes; 8. Dividends Paid; 9. Divide Column 8(a) by Column 4; 10. Tax Deemed Paid.

Section A—Dividends Paid Out of Post-1986 Undistributed Earnings (Include the column 10 results in Schedule C, Part I, column 6(b).)

Table with 7 columns: 1. Name of Second-Tier Foreign Corporation and Its Related First-Tier Foreign Corporation; 2. Tax Year End (Yr-Mo); 3. Country of Incorporation; 4. Accumulated Profits for Tax Year; 5. Foreign Taxes Paid and Deemed Paid for Tax Year; 6. Dividends Paid; 7. Divide Column 6(a) by Column 4; 8. Tax Deemed Paid.

Section B—Dividends Paid Out of Pre-1987 Accumulated Profits (Include the column 8(b) results in Schedule C, Part I, column 6(b).)

Table with 7 columns: 1. Name of Second-Tier Foreign Corporation and Its Related First-Tier Foreign Corporation; 2. Tax Year End (Yr-Mo); 3. Country of Incorporation; 4. Accumulated Profits for Tax Year; 5. Opening Balance in Post-1986 Foreign Income Taxes; 6. Foreign Taxes Paid and Deemed Paid for Tax Year; 7. Divide Column 6(a) by Column 4; 8. Tax Deemed Paid.

Part II—Tax Deemed Paid by Second-Tier Foreign Corporations

Table with 10 columns: 1. Name of Third-Tier Foreign Corporation and Its Related Second-Tier Foreign Corporation; 2. Tax Year End (Yr-Mo); 3. Country of Incorporation; 4. Post-1986 Undistributed Earnings; 5. Opening Balance in Post-1986 Foreign Income Taxes; 6. Foreign Taxes Paid and Deemed Paid for Tax Year; 7. Post-1986 Foreign Income Taxes; 8. Dividends Paid; 9. Divide Column 8(a) by Column 4; 10. Tax Deemed Paid.

Schedule E Tax Deemed Paid by Certain Third-, Fourth-, and Fifth-Tier Foreign Corporations Under Section 902(b)

Use this schedule to report taxes deemed paid with respect to dividends from eligible post-1986 undistributed earnings of fourth-, fifth- and sixth-tier controlled foreign corporations. Report all amounts in U.S. dollars unless otherwise specified.

Part I—Tax Deemed Paid by Third-Tier Foreign Corporations (Include the column 10 results in Schedule D, Part II, Section A, column 6(b).)

| 1. Name of Fourth-Tier Foreign Corporation and Its Related Third-Tier Foreign Corporation | 2. Tax Year End (Yr-Mo) (see instructions) | 3. Country of Incorporation (enter country code from instructions) | 4. Post-1986 Undistributed Earnings (in functional currency—attach schedule) | 5. Opening Balance in Post-1986 Foreign Income Taxes | 6. Foreign Taxes Paid and Deemed Paid for Tax Year Indicated | | 7. Post-1986 Foreign Income Taxes (add columns 5, 6(a), and 6(b)) | 8. Dividends Paid (in functional currency) | | 9. Divide Column 8(a) by Column 4 | 10. Tax Deemed Paid (multiply column 7 by column 9) |
|---|--|--|--|--|--|---|---|--|-----------------------|-----------------------------------|---|
| | | | | | (a) Taxes Paid | (b) Taxes Deemed Paid (from Part II, column 10) | | (a) Of Fourth-tier CFC | (b) Of Third-tier CFC | | |
| | | | | | | | | | | | |
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Part II—Tax Deemed Paid by Fourth-Tier Foreign Corporations (Include the column 10 results in column 6(b) of Part I above.)

| 1. Name of Fifth-Tier Foreign Corporation and Its Related Fourth-Tier Foreign Corporation | 2. Tax Year End (Yr-Mo) (see instructions) | 3. Country of Incorporation (enter country code from instructions) | 4. Post-1986 Undistributed Earnings (in functional currency—attach schedule) | 5. Opening Balance in Post-1986 Foreign Income Taxes | 6. Foreign Taxes Paid and Deemed Paid for Tax Year Indicated | | 7. Post-1986 Foreign Income Taxes (add columns 5, 6(a), and 6(b)) | 8. Dividends Paid (in functional currency) | | 9. Divide Column 8(a) by Column 4 | 10. Tax Deemed Paid (multiply column 7 by column 9) |
|---|--|--|--|--|--|--|---|--|------------------------|-----------------------------------|---|
| | | | | | (a) Taxes Paid | (b) Taxes Deemed Paid (from Part III, column 10) | | (a) Of Fifth-tier CFC | (b) Of Fourth-tier CFC | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |

Part III—Tax Deemed Paid by Fifth-Tier Foreign Corporations (Include the column 10 results in column 6(b) of Part II above.)

| 1. Name of Sixth-Tier Foreign Corporation and Its Related Fifth-Tier Foreign Corporation | 2. Tax Year End (Yr-Mo) (see instructions) | 3. Country of Incorporation (enter country code from instructions) | 4. Post-1986 Undistributed Earnings (in functional currency—attach schedule) | 5. Opening Balance in Post-1986 Foreign Income Taxes | 6. Foreign Taxes Paid For Tax Year Indicated | 7. Post-1986 Foreign Income Taxes (add columns 5 and 6) | 8. Dividends Paid (in functional currency) | | 9. Divide Column 8(a) by Column 4 | 10. Tax Deemed Paid (multiply column 7 by column 9) |
|--|--|--|--|--|--|---|--|-----------------------|-----------------------------------|---|
| | | | | | | | (a) Of Sixth-tier CFC | (b) Of Fifth-tier CFC | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
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| | | | | | | | | | | |

Schedule G Reductions of Taxes Paid, Accrued, or Deemed Paid

Schedule F Gross Income and Definitely Allocable Deductions for Foreign Branches

| 1. Name of Foreign Country or U.S. Possession (Use a separate line for each.) | | 2. Gross Income | 3. Definitely Allocable Deductions |
|---|--|-----------------|------------------------------------|
| A | | | |
| B | | | |
| C | | | |
| D | | | |
| E | | | |
| F | | | |
| Totals (add lines A through F) ▶ | | | |

| A | Reduction of Taxes Under Section 901(e)—Attach separate schedule |
|--|---|
| B | Reduction of Oil and Gas Extraction Taxes—Enter amount from Schedule I, Part II, line 6 |
| C | Reduction of Taxes Due to International Boycott Provisions—Enter appropriate portion of Schedule C (Form 5713), line 2b. Important: Enter only "specifically attributable taxes" here. |
| D | Reduction of Taxes for Section 6038(c) Penalty—Attach separate schedule |
| E | Other Reductions of Taxes—Attach schedule(s) |
| Total (add lines A through E). Enter here and on Schedule B, Part II, line 3. ▶ | |

* Note: The Schedule F totals are not carried over to any other Form 1118 Schedule. (These totals were already included in Schedule A.) However, the IRS requires the corporation to complete Schedule F under the authority of section 905(b).

Schedule H Apportionment of Deductions Not Definitely Allocable (complete only once)

Part I—Research and Development Deductions

| | Product line #1 (SIC Code:)* | | Product line #2 (SIC Code:)* | | Sales Method | | Gross Income Method—Check method used: | | (c) Total R&D Deductions Not Definitely Allocable (enter all amounts from column (a)(v) or all amounts from column (b)(vii)) |
|---|-------------------------------|---------------------|-------------------------------|---------------------|------------------|---|--|--|--|
| | (i) Gross Sales | (ii) R&D Deductions | (iii) Gross Sales | (iv) R&D Deductions | (v) Gross Income | (vi) Total R&D Deductions Under Gross Income Method | (vii) Total R&D Deductions Under Gross Income Method | | |
| 1 Totals (see pages 8 and 9 of instructions) | | | | | | | | | |
| 2 Total to be apportioned | | | | | | | | | |
| 3 Apportionment among statutory groupings: | | | | | | | | | |
| a General category income | | | | | | | | | |
| b Passive category income | | | | | | | | | |
| c Section 901(j) income* | | | | | | | | | |
| d Income re-sourced by treaty* | | | | | | | | | |
| 4 Total foreign (add lines 3a through 3d) | | | | | | | | | |

*Important: See Computer-Generated Schedule H in instructions.

Schedule H Apportionment of Deductions Not Definitely Allocable (continued)
Part II—Interest Deductions, All Other Deductions, and Total Deductions

| | (e) Average Value of Assets—Check method used: | | (b) Interest Deductions | | (c) All Other Deductions Not Definitely Allocable | (d) Totals (add the corresponding amounts from column (c), Part I; columns (b)(iii) and (b)(iv), Part II; and column (c), Part II). Enter each amount from lines 3a through 3d below in column 10 of the corresponding Schedule A. |
|--|---|--|-------------------------------|-----------------------------|---|--|
| | <input type="checkbox"/> Fair market value <input type="checkbox"/> Alternative tax book value | <input type="checkbox"/> Tax book value <input type="checkbox"/> Financial Corporations | (i) Nonfinancial Corporations | (ii) Financial Corporations | | |
| 1a Totals (see pages 9 and 10 of instructions) | | | | | | |
| b Amounts specifically allocable under Temp. Regs. 1.861-10T(e) | | | | | | |
| c Other specific allocations under Temp. Regs. 1.861-10T | | | | | | |
| d Assets excluded from apportionment formula | | | | | | |
| 2 Total to be apportioned (subtract the sum of lines 1b, 1c, and 1d from line 1a) | | | | | | |
| 3 Apportionment among statutory groupings: | | | | | | |
| a General category income | | | | | | |
| b Passive category income | | | | | | |
| c Section 901(j) income* | | | | | | |
| d Income re-sourced by treaty* | | | | | | |
| 4 Total foreign (add lines 3a through 3d) | | | | | | |

* Important: See Computer-Generated Schedule H in instructions.



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**Schedule J
(Form 1118)**

(Rev. December 2007)

**Adjustments to Separate Limitation Income (Loss) Categories for
Determining Numerators of Limitation Fractions, Year-End
Recharacterization Balances, and Overall Foreign and Domestic
Loss Account Balances**

OMB No. 1545-0122

For calendar year 20, or other tax year beginning, 20,
and ending, 20

▶ Attach to Form 1118. For Paperwork Reduction Act Notice, see the Instructions for Form 1118.

Department of the Treasury
Internal Revenue Service
Name of corporation

Employer identification number

Part I Adjustments to Separate Limitation Income or (Losses) in Determining Numerators of Limitation Fractions (see instructions)

| | (i) General category income | (ii) Passive category income | (iii) Other income* | (iv) U.S. income |
|--|--------------------------------|---------------------------------|------------------------|---------------------|
| 1 Income or (loss) before adjustments | | | | |
| 2 Allocation of separate limitation losses: | | | | |
| a General category income | () | () | () | |
| b Passive category income | () | () | () | |
| c Other income* | () | () | () | |
| 3 Subtotal—Combine lines 1 through 2c. | | | | |
| 4 Allocation of overall foreign losses | | | | () |
| 5 Allocation of domestic losses | () | () | () | |
| 6 Subtotal—Combine lines 3 through 5. | | | | |
| 7 Recapture of overall foreign losses | () | () | () | |
| 8 Subtotal—Combine lines 6 and 7. | | | | |
| 9 Recharacterization of separate limitation income: | | | | |
| a General category income | () | | | |
| b Passive category income | | () | | |
| c Other income* | | | () | |
| 10 Recapture of overall domestic losses | | | | () |
| 11 Numerator of Limitation Fraction— Combine lines 8 through 10. Enter each result here and on Part II, line 6, of corresponding Schedule B. | | | | |

Part II Year-End Balances of Future Separate Limitation Income That Must Be Recharacterized (section 904(f)(5)(C))

| | | | | |
|----------------------------------|--|--|--|--|
| a General category income | | | | |
| b Passive category income | | | | |
| c Other income* | | | | |

Part III Overall Foreign Loss Account Balances (section 904(f)(1))
Complete for *each* separate limitation income category.

| | | | | |
|---|-----|-----|-----|--|
| 1 Beginning balance | | | | |
| 2 Current year additions | | | | |
| 3 Current year reductions (other than recapture) | () | () | () | |
| 4 Current year recapture (from Part I, line 7) | () | () | () | |
| 5 Ending balance—Combine lines 1 through 4. | | | | |

Part IV Overall Domestic Loss Account Balances (section 904(g)(1))

| | | | | |
|---|-----|-----|-----|--|
| 1 Beginning balance | | | | |
| 2 Current year additions | | | | |
| 3 Current year reductions (other than recapture) | () | () | () | |
| 4 Subtotal—Combine lines 1 through 3. | | | | |
| 5 Current year recapture (from Part I, line 10) | | | | |
| 6 Ending balance—Subtract line 5 from line 4. | | | | |

* Important: See Computer-Generated Schedule J in instructions.

Cat. No. 10309U

Schedule J (Form 1118) (Rev. 12-2007)

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2007-64

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction

for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 16, 2007, and would end on the date the court first determines that the organization is not described

in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

South Carolina Benevolent Society, Inc.
Columbia, SC
Home Buyers Assistance Foundation, Inc.
Woodstock, GA
Angel Wings Cat Rescue and Sanctuary
Kingston, KY
Brian Lees Sports Spectrum
Grand Rapids, MI

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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