

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

Rev. Proc. 2003-53, page 230.

Sample inter vivos charitable remainder annuity trust (CRAT) for one measuring life. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for an inter vivos charitable remainder annuity trust for one measuring life. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Rev. Proc. 89-21 superseded.

Rev. Proc. 2003-54, page 236.

Sample inter vivos charitable remainder annuity trust (CRAT) for a term of years. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for an inter vivos charitable remainder annuity trust with a term of years annuity period. This procedure also contains annotations to the sample trust and alternate provisions that may be intergrated into the sample trust.

Rev. Proc. 2003-55, page 242.

Sample inter vivos charitable remainder annuity trust (CRAT) with consecutive interests for two measuring lives. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for an inter vivos charitable remainder annuity trust with consecutive interests for two measuring lives. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Section 4 of Rev. Proc. 90-32 superseded.

Rev. Proc. 2003-56, page 249.

Sample inter vivos charitable remainder annuity trust (CRAT) with concurrent and consecutive interests for two measuring lives. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for an inter vivos charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Section 5 of Rev. Proc. 90-32 superseded.

Rev. Proc. 2003-57, page 257.

Sample testamentary charitable remainder annuity trust (CRAT) for one measuring life. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for a testamentary charitable remainder annuity trust for one measuring life. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Section 6 of Rev. Proc. 90-32 superseded.

Rev. Proc. 2003-58, page 262.

Sample testamentary charitable remainder annuity trust (CRAT) for a term of years. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for a testamentary charitable remainder annuity trust with a term of years annuity period. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 281.
Finding Lists begin on page ii.
Index for July begins on page iv.

Rev. Proc. 2003-59, page 268.

Sample testamentary charitable remainder annuity trust (CRAT) with consecutive interests for two measuring lives. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for a testamentary charitable remainder annuity trust with consecutive interests for two measuring lives. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Section 7 of Rev. Proc. 90-32 superseded.

Rev. Proc. 2003-60, page 274.

Sample testamentary charitable remainder annuity trust (CRAT) with concurrent and consecutive interests for two measuring lives. This procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the regulations for a testamentary charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. Section 8 of Rev. Proc. 90-32 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 consolidated 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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.

Sample testamentary CRAT with concurrent and consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for a testamentary charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-60, page 274.

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

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

Sample inter vivos CRAT for one measuring life. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust for one measuring life. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-53, page 230.

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

Sample inter vivos CRAT with consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-55, page 242.

Sample inter vivos CRAT with concurrent and consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-56, page 249.

Sample testamentary CRAT for one measuring life. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for a testamentary charitable remainder annuity trust for one measuring life. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-57, page 257.

Sample testamentary CRAT for a term of years. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for a testamentary charitable remainder annuity trust with a term of years annuity period. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-58, page 262.

Sample testamentary CRAT with consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for a testamentary charitable remainder annuity trust with consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-59, page 268.

Sample testamentary CRAT with concurrent and consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for a testamentary charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and

alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-60, page 274.

Section 2522.—Charitable and Similar Gifts

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

Sample inter vivos CRAT for one measuring life. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust for one measuring life. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-53, page 230.

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

Sample inter vivos CRAT with consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-55, page 242.

Sample inter vivos CRAT with concurrent and consecutive interests for two measuring lives. This revenue procedure contains a sample declaration of trust that meets the requirements under section 664 of the Code and 1.664-2 of the Income Tax Regulations for an inter vivos charitable remainder annuity trust with concurrent and consecutive interests for two measuring lives. This revenue procedure also contains annotations to the sample trust and alternate provisions that may be integrated into the sample trust. See Rev. Proc. 2003-56, page 249.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055, 2522; 1.170A-6, 1.664-2, 20.2055-2, 25.2522(c)-3.)

Rev. Proc. 2003-53

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-54);
- (b) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superceding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (c) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superceding section 5 of Rev. Proc. 90-32);
- (d) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-57, superceding section 6 of Rev. Proc. 90-32);
- (e) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-58);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-59, superceding section 7 of Rev. Proc. 90-32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-60, superceding section 8 of Rev. Proc. 90-32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for an inter vivos CRAT with one measuring life 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the last annuity payment to the recipient; (.05) the restriction of the charitable remainderman to a public charity; (.06) a retained right to substitute the charitable remainderman; and (.07) a power of appointment to designate the charitable remainderman.

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

SECTION 4. SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

On this _____ day of _____, 20__, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–53 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”), hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Charitable Remainder Annuity Trust.

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

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

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

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

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

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664–1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664–1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor’s spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the annuity amount. Section 1.664–1(a)(4). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664–1(a)(7) and Rev. Rul. 73–610, 1973–2 C.B. 213.

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

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

- (1) *Permissible recipients.* For a CRAT with an annuity period based on the life of one individual, the annuity amount must generally be paid to that individual and the individual must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (2) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 or § 2522 if the probability that the trust corpus will be exhausted before the death of the recipient exceeds 5 percent. Rev. Rul. 77-374, 1977-2 C.B. 329 and Rev. Rul. 70-452, 1970-2 C.B. 199. See §§ 1.7520-3(b) and 25.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (3) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (4) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a).
- (5) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

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

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of recipient’s death.* Paragraph 3, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.04 of this revenue procedure for an alternate provision that provides for the termination of the annuity amount with the last regular payment preceding the recipient’s death.

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

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

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

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

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664-2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*

- (a) Replace the first sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] (hereinafter “the Recipient”) an annuity amount equal to [*the stated dollar amount*].
- (b) Delete the last sentence of paragraph 2, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

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

.03 Qualified Contingency.

- (1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the death of the recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instruction for use.* Replace the second sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following sentence:
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 the Recipient’s death or, if earlier, the date on which occurs the [*qualified contingency*].

.04 Last Annuity Payment to the Recipient.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the recipient's death, payment of the annuity amount may terminate with the last regular payment preceding the recipient's death. However, the fact that the recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-2(a)(5)(i).
- (2) *Instruction for use.* Replace the second sentence of paragraph 3, Proration of Annuity Amount, of the sample trust with the following sentence:

In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the death of the Recipient.

.05 Restricting the Charitable Remainderman to a Public Charity.

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

.06 Retaining the Right to Substitute the Charitable Remainderman.

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

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

.07 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant the recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient or the Recipient's estate under the provisions above) to one or more charitable organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 89-21, 1989-1 C.B. 842, is superseded.

DRAFTING INFORMATION

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

*26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055, 2522; 1.170A-6, 1.664-2, 20.2055-2, 25.2522(c)-3.)*

Rev. Proc. 2003-54

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

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

SECTION 3. SCOPE AND OBJECTIVE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.01 Annuity Amount Stated as a Specific Dollar Amount.

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

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

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

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

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

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

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

.04 Qualified Contingency.

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

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

.05 Restricting the Charitable Remainderman to a Public Charity.

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

.06 Retaining the Right to Substitute the Charitable Remainderman.

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

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

.07 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76–7, 1976–1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the provisions above) to one or more charitable organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

DRAFTING INFORMATION

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

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055, 2522; 1.170A–6, 1.664–2, 20.2055–2, 25.2522(c)–3.)

Rev. Proc. 2003–55

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–53, superceding Rev. Proc. 89–21, 1989–1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003–54);
- (c) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003–56, superceding section 5 of Rev. Proc. 90–32, 1990–1 C.B. 546);

- (d) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–57, superceding section 6 of Rev. Proc. 90–32);
- (e) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003–58);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003–59, superceding section 7 of Rev. Proc. 90–32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003–60, superceding section 8 of Rev. Proc. 90–32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for an inter vivos CRAT with consecutive interests for two measuring lives 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the retained right to revoke the interest of the survivor recipient; (.05) the last annuity payments to the recipients; (.06) the restriction of the charitable remainderman to a public charity; (.07) the retained right to substitute the charitable remainderman; and (.08) a power of appointment to designate the charitable remainderman.

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

SECTION 4. SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONSECUTIVE INTERESTS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–55 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”), hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Charitable Remainder Annuity Trust.

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

2. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to [permissible recipient] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 4), an annuity amount equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). The 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 the death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or Successor Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

3. *Payment of Federal Estate Taxes and State Death Taxes.* The lifetime annuity interest of the Successor Recipient will take effect upon the death of the Initial Recipient only if the Successor Recipient furnishes the funds for payment of any federal estate taxes and

state death taxes for which the Trustee may be liable upon the death of the Initial Recipient. If the funds are not furnished by the Successor Recipient, the annuity period shall terminate on the death of the Initial Recipient, notwithstanding any other provision in this instrument to the contrary.

4. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular annuity payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

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

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

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONSECUTIVE INTERESTS

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor’s spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the annuity amount. Section 1.664-1(a)(4). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.
- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Income tax deductibility limitations.* The amount of the charitable deduction for income tax purposes is affected by a number of factors, including the type of property contributed to the trust, the type of charity receiving the property, whether the remainder interest is paid outright to charity or held in further trust, and the donor’s adjusted gross income (with certain adjustments). See § 170(b) and (e); § 1.170A-8; Rev. Rul. 80-38, 1980-1 C.B. 56; and Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.06 of this revenue procedure for an alternate provision that restricts the charitable remainderman to a public charity (as defined therein).
- (4) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

- (5) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor may be an individual or a husband and wife. Appropriate adjustments should be made to the introductory paragraph if a husband and wife are the donors. Terms such as “grantor” or “settlor” may be substituted for “donor.”

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

- (1) *Permissible recipients.* For a CRAT with an annuity period based on the lives of two individuals, the annuity amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002–20, 2002–1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664–2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (2) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 or § 2522 if the probability that the trust corpus will be exhausted before the death of the survivor of the recipients exceeds 5 percent. Rev. Rul. 77–374, 1977–2 C.B. 329, and Rev. Rul. 70–452, 1970–2 C.B. 199. See §§ 1.7520–3(b) and 25.7520–3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (3) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664–2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664–2(c) and § 20.2031–7(d)(2)(iv).
- (4) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664–2(a)(1)(i)(a).
- (5) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664–2(a)(4).

.03 Annotation for Paragraph 3, Payment of Federal Estate Taxes and State Death Taxes, of the Sample Trust.

- (1) *Tax payment clause.* If it is possible that all or part of the fair market value of the trust assets will be includible for federal estate tax purposes in the gross estate of the donor, the trust must contain a tax payment clause. If federal estate taxes and state death taxes are paid from other sources, the tax payment clause will never become operative. Nevertheless, the tax payment clause is necessary because it ensures that the trustee will never be required to pay federal estate taxes or state death taxes from the trust assets. See § 664(d)(1)(B); § 1.664–1(a)(6), *Example 3*; and Rev. Rul. 82–128, 1982–2 C.B. 71.

.04 Annotations for Paragraph 4, Proration of Annuity Amount, of the Sample Trust.

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664–2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of a recipient’s death.* Paragraph 4, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.05 of this revenue procedure for alternate provisions that provide for termination of the annuity amount with the last regular payment preceding the death of each recipient.

.05 Annotations for Paragraph 5, Distribution to Charity, of the Sample Trust.

- (1) *Minimum value of remainder.* As noted in section 5.02(2) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in § 170(c) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C). Any named charitable remainderman also must

be an organization described in § 2522(a) to qualify for the gift tax charitable deduction and an organization described in § 2055(a) to qualify for the estate tax charitable deduction. See Rev. Rul. 77-385, 1977-2 C.B. 331. If it is determined 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. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c), 2055(a), and 2522(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. The gift of the remainder interest will be incomplete for gift tax purposes if, for example: (i) the donor retains the power to substitute the charitable remainderman; or (ii) the trust instrument provides the trustee with the power to designate the charitable remainderman and the donor is not prohibited from serving as trustee. See § 25.2511-2(c). Note, however, that an income tax charitable deduction is available even if the donor has the authority to substitute the charitable remainderman or the trustee has the authority to designate the charitable remainderman. Rev. Rul. 68-417, 1968-2 C.B. 103; Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.07 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.08 of this revenue procedure for an alternate provision in which a recipient is granted a power of appointment to designate the charitable remainderman.

- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

.06 Annotations for Paragraph 7, Prohibited Transactions, of the Sample Trust.

- (1) *Payment of the annuity amount.* Payment of the annuity amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A), are required if the trust provides for payment of part of an annuity amount to an organization described in § 170(c) and gift and estate tax charitable deductions are sought for this interest. See § 4947(b)(3). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (3) *Trust to continue in existence for benefit of charity.* The governing instrument requirements of § 508(e) must be included in the trust instrument if, after the termination of the annuity period: (i) the trust instrument provides that the trust shall continue in existence for the benefit of the charitable remainderman and, as a result, the trust will become subject to the provisions of § 4947(a)(1); and (ii) the trust will be treated as a private foundation within the meaning of § 509(a), as modified by § 4947(a)(1). Except as provided in paragraph 7 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the annuity period when the trust continues in existence for the benefit of the charitable remainderman. Note that when the trust provides for the trust corpus to be retained, in whole or in part, in trust for the charitable remainderman, the higher deductibility limitations in § 170(b)(1)(A) for the income tax charitable deduction will not be available (even if the charitable remainderman is restricted to a public charity) because the contribution of the trust corpus is made “for the use of” rather than “to” the charitable remainderman. See § 1.170A-8(b).

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST— TWO LIVES, CONSECUTIVE INTERESTS

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664-2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*
 - (a) Replace the first sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death and thereafter to [permissible recipient] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 4), an annuity amount equal to [the stated dollar amount].
 - (b) Delete the last sentence of paragraph 2, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

(1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If a gift tax charitable deduction, and, if needed, an estate tax charitable deduction are sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipient and to the charitable organization described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).

(2) *Instructions for use.*

(a) Replace paragraph 2, Payment of Annuity Amount, of the sample trust with the following paragraph:

Payment of Annuity Amount. The annuity amount is equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of transfer). In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the noncharitable recipients] percent of the annuity amount to [permissible recipient] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to [permissible recipient] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 4). In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the charitable recipient] percent of the annuity amount to [an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code] (hereinafter “the Charitable Recipient”). The 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 the death of the survivor of the Initial Recipient and the Successor Recipient. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

(b) Replace the first parenthetical in paragraph 5, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Initial Recipient, the Successor Recipient, or their estates and the Charitable Recipient under the provisions above).

(c) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Qualified Contingency.

(1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the death of the survivor of the initial recipient and the successor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).

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

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 the death of the survivor of the Initial Recipient and the Successor Recipient or, if earlier, the date on which occurs the [qualified contingency].

.04 Retaining the Right to Revoke the Interest of the Successor Recipient.

(1) *Explanation.* The donor may retain the right to revoke or terminate the interest of the successor recipient. This right is exercisable only by the donor’s last will and testament. Section 1.664-2(a)(4). The retention of this right may have gift and

estate tax consequences. It will affect the value of the annuity interests transferred. It may also cause a portion of the trust to be included in the donor's gross estate for federal estate tax purposes, even if it would otherwise not be includible. The following alternate provision provides for the donor's retention of the right to revoke when the donor is also a recipient.

- (2) *Instructions for use.* To retain the right to revoke the successor recipient's interest by the donor's last will and testament:
- (a) Designate the donor as the initial recipient in paragraph 2, Payment of Annuity Amount, of the sample trust.
 - (b) Replace the second sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following two sentences:

The Donor hereby expressly reserves the power, exercisable only by the Donor's last will and testament, to revoke and terminate the interest of the Successor Recipient under this trust. 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 the death of the survivor of the Initial Recipient and the Successor Recipient or, if the Donor revokes the interest of the Successor Recipient, the date of the Initial Recipient's death.

.05 Last Annuity Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the initial recipient's death, payment of the initial recipient's share of the annuity amount may terminate with the last regular payment preceding the initial recipient's death. Similarly, as an alternative to prorating the annuity amount in the taxable year of the termination of the annuity period, payment of the annuity amount may terminate with the last regular payment preceding the termination of the annuity period. However, the fact that a recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-2(a)(5)(i).

- (2) *Instructions for use.*

- (a) To add an alternate provision to terminate the payment of the initial recipient's share of the annuity amount with the last regular payment preceding his or her death, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay the annuity amount to the Initial Recipient shall terminate with the regular quarterly installment next preceding the Initial Recipient's death. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

- (b) To add an alternate provision to terminate the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular annuity payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

- (c) To add an alternate provision terminating the payment of the initial recipient's share of the annuity amount with the last regular payment preceding his or her death, and terminating the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay the annuity amount to the Initial Recipient shall terminate with the regular quarterly installment next preceding the Initial Recipient's death. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

.06 Restricting the Charitable Remainderman to a Public Charity.

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

- (2) *Instruction for use.* To restrict the charitable remainderman to a public charity, each and every time the phrase “an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code” appears in the sample trust, replace it with the phrase “an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code.”

.07 Retaining the Right to Substitute the Charitable Remainderman.

- (1) *Explanation.* The donor may retain the right to substitute another charitable remainderman for the charitable remainderman named in the trust instrument. See Rev. Rul. 76–8, 1976–1 C.B. 179. Note, however, that the retention of this right will cause the gift of the remainder interest to be incomplete for gift tax purposes. See § 25.2511–2(c) and Rev. Rul. 77–275, 1977–2 C.B. 346.
- (2) *Instruction for use.* Insert the following sentence between the first and last sentences of paragraph 5, Distribution to Charity, of the sample trust:
- The Donor reserves the right to designate, at any time and from time to time, in lieu of the Charitable Organization identified above, one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman and shall make any such designation by giving written notice to the Trustee.

.08 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76–7, 1976–1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 5, Distribution to Charity, of the sample trust with the following paragraph:
- Distribution to Charity.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipients or their estates under the provisions above) to one or more charitable organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 4 of Rev. Proc. 90–32 is superseded.

DRAFTING INFORMATION

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

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055, 2522; 1.170A–6, 1.664–2, 20.2055–2, 25.2522(c)–3.)

Rev. Proc. 2003–56

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–53, superceding Rev. Proc. 89–21, 1989–1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003–54);
- (c) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003–55, superceding section 4 of Rev. Proc. 90–32, 1990–1 C.B. 546);
- (d) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–57, superceding section 6 of Rev. Proc. 90–32);
- (e) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003–58);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003–59, superceding section 7 of Rev. Proc. 90–32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003–60, superceding section 8 of Rev. Proc. 90–32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for an inter vivos CRAT with concurrent and consecutive interests for two measuring lives 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the retained right to revoke the interest of the survivor recipient; (.05) the last annuity payments to the recipients; (.06) the restriction of the charitable remainderman to a public charity; (.07) the retained right to substitute the charitable remainderman; and (.08) a power of appointment to designate the charitable remainderman.

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

SECTION 4. SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–56 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”), hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Charitable Remainder Annuity Trust.

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

2. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their lifetimes, an annuity amount equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer), and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire annuity amount (subject to any proration in paragraph 4) to the survivor (hereinafter “the Survivor Recipient”). 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 the Survivor Recipient’s death. 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 Recipients (in the case of an undervaluation) or receive from the Recipients (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. *Payment of Federal Estate Taxes and State Death Taxes.* The lifetime annuity interest of the Survivor Recipient will continue in effect upon the death of the Predeceasing Recipient only if the Survivor Recipient furnishes the funds for payment of any federal estate taxes and state death taxes for which the Trustee may be liable upon the death of the Predeceasing Recipient. If the funds are not furnished by the Survivor Recipient, the annuity period shall terminate on the death of the Predeceasing Recipient, notwithstanding any other provision in this instrument to the contrary.

4. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the Predeceasing Recipient’s share of the next regular annuity payment between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

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

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

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor’s spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the annuity amount. Section 1.664-1(a)(4). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.

- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Income tax deductibility limitations.* The amount of the charitable deduction for income tax purposes is affected by a number of factors, including the type of property contributed to the trust, the type of charity receiving the property, whether the remainder interest is paid outright to charity or held in further trust, and the donor’s adjusted gross income (with certain adjustments). See § 170(b) and (e); § 1.170A-8; Rev. Rul. 80-38, 1980-1 C.B. 56; and Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.06 of this revenue procedure for an alternate provision that restricts the charitable remainderman to a public charity (as defined therein).
- (4) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.
- (5) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor may be an individual or a husband and wife. Appropriate adjustments should be made to the introductory paragraph if a husband and wife are the donors. Terms such as “grantor” or “settlor” may be substituted for “donor.”

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

- (1) *Permissible recipients.* For a CRAT having an annuity period based on the lives of two individuals, the annuity amount must generally be paid to those individuals, and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (2) *Division of annuity amount between recipients.* The sample trust provides that while both recipients are alive they will share the annuity amount equally and upon the death of the predeceasing recipient the survivor recipient will receive all of the annuity amount, subject to any proration in paragraph 4. The annuity amount may be divided other than equally during the joint lives of the recipients. In addition, the share of the predeceasing recipient may be made payable to an organization described in § 170(c) for the rest of the survivor recipient’s life.
- (3) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 or § 2522 if the probability that the trust corpus will be exhausted before the death of the survivor of the recipients exceeds 5 percent. Rev. Rul. 77-374, 1977-2 C.B. 329 and Rev. Rul. 70-452, 1970-2 C.B. 199. See §§ 1.7520-3(b) and 25.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (4) *Payment of annuity amount in installments.* Paragraph 2, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipients annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (5) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a).
- (6) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotation for Paragraph 3, Payment of Federal Estate Taxes and State Death Taxes, of the Sample Trust.

- (1) *Tax payment clause.* If it is possible that all or part of the fair market value of the trust assets will be includible for federal estate tax purposes in the gross estate of the donor, the trust must contain a tax payment clause. If federal estate taxes and state death taxes are paid from other sources, the tax payment clause will never become operative. Nevertheless, the tax

payment clause is necessary because it ensures that the trustee will never be required to pay federal estate taxes or state death taxes from the trust assets. See § 664(d)(1)(B); § 1.664-1(a)(6), *Example 3*; and Rev. Rul. 82-128, 1982-2 C.B. 71.

.04 Annotations for Paragraph 4, Proration of Annuity Amount, of the Sample Trust.

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of a recipient's death.* Paragraph 4, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.05 of this revenue procedure for alternate provisions that provide for termination of the annuity amount with the last regular payment preceding the death of each recipient.

.05 Annotations for Paragraph 5, Distribution to Charity, of the Sample Trust.

- (1) *Minimum value of remainder.* As noted in section 5.02(3) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in § 170(c) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C). Any named charitable remainderman also must be an organization described in § 2522(a) to qualify for the gift tax charitable deduction and an organization described in § 2055(a) to qualify for the estate tax charitable deduction. See Rev. Rul. 77-385, 1977-2 C.B. 331. If it is determined 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. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c), 2055(a), and 2522(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. The gift of the remainder interest will be incomplete for gift tax purposes if, for example: (i) the donor retains the power to substitute the charitable remainderman; or (ii) the trust instrument provides the trustee with the power to designate the charitable remainderman and the donor is not prohibited from serving as trustee. See § 25.2511-2(c). Note, however, that an income tax charitable deduction is available even if the donor has the authority to substitute the charitable remainderman or the trustee has the authority to designate the charitable remainderman. Rev. Rul. 68-417, 1968-2 C.B. 103; Rev. Rul. 79-368, 1979-2 C.B. 109. See section 6.07 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.08 of this revenue procedure for an alternate provision in which a recipient is granted a power of appointment to designate the charitable remainderman.
- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

.06 Annotations for Paragraph 7, Prohibited Transactions, of the Sample Trust.

- (1) *Payment of the annuity amount.* Payment of the annuity amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A), are required if the trust provides for payment of part of an annuity amount to an organization described in § 170(c) and gift and estate tax charitable deductions are sought for this interest. See § 4947(b)(3). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (3) *Trust to continue in existence for benefit of charity.* The governing instrument requirements of § 508(e) must be included in the trust instrument if, after the termination of the annuity period: (i) the trust instrument provides that the trust shall continue in existence for the benefit of the charitable remainderman and, as a result, the trust will become subject to the provisions of § 4947(a)(1); and (ii) the trust will be treated as a private foundation within the meaning of § 509(a), as modified by § 4947(a)(1). Except as provided in paragraph 7 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the annuity period when the trust continues in existence for the benefit of the charitable remainderman. Note that when the trust provides for the trust corpus to be retained, in whole or in part, in trust for the charitable remainderman, the higher deductibility limitations in § 170(b)(1)(A) for the income tax charitable deduction will not be available (even if the charitable remainderman is restricted to a public charity) because the contribution of the trust corpus is made “for the use of” rather than “to” the charitable remainderman. See § 1.170A-8(b).

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664-2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*
 - (a) Replace the first sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] and to [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their lifetimes an annuity amount equal to [*the stated dollar amount*], and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire annuity amount (subject to any proration in paragraph 4) to the survivor (hereinafter “the Survivor Recipient”).
 - (b) Delete the last sentence of paragraph 2, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If a gift tax charitable deduction and, if needed, an estate tax charitable deduction are sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipients and to the charitable organization described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).
- (2) *Instructions for use.*
 - (a) Replace paragraph 2, Payment of Annuity Amount, of the sample trust with the following paragraph:
Payment of Annuity Amount. The annuity amount is equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). In each taxable year of the trust during the annuity period, the Trustee shall pay [*the percentage of the annuity amount payable to the noncharitable recipients*] percent of the annuity amount to [*permissible recipient*] and [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their joint lives, and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay that entire percentage of the annuity amount (subject to any proration in paragraph 4) to the survivor (hereinafter “the Survivor Recipient”). In each taxable year of the trust during the annuity period, the Trustee shall pay [*the percentage of the annuity amount payable to the charitable recipient*] percent of the annuity amount to [*an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code*] (hereinafter “the Charitable Recipient”). The 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 the Survivor Recipient’s death. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Recipients and the Charitable Recipient (in the case of an undervaluation) or receive from the Recipients and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.
 - (b) Replace the first parenthetical in paragraph 5, Distribution to Charity, of the sample trust with the following parenthetical:
(other than any amount due the Recipients or their estates and the Charitable Recipient under the provisions above).
 - (c) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust:

The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Qualified Contingency.

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

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 the Survivor Recipient's death or, if earlier, the date on which occurs the [qualified contingency].

.04 Retaining the Right to Revoke the Interest of the Survivor Recipient.

- (1) *Explanation.* The donor may retain the right to revoke or terminate the interest of the other noncharitable recipient. This right is exercisable only by the donor's last will and testament. Section 1.664-2(a)(4). The retention of this right may have gift and estate tax consequences. It will affect the value of the annuity interests transferred. It may also cause a portion of the trust to be included in the donor's gross estate for federal estate tax purposes, even if it would otherwise not be includible. The following alternate provision provides for the donor's retention of the right to revoke when the donor is also a recipient.
- (2) *Instructions for use.* To retain the right to revoke the other noncharitable recipient's interest by the donor's last will and testament:
 - (a) Designate the donor as a recipient in paragraph 2, Payment of Annuity Amount, of the sample trust.
 - (b) Replace the second sentence of paragraph 2, Payment of Annuity Amount, of the sample trust with the following two sentences:

The Donor hereby expressly reserves the power, exercisable only by the Donor's last will and testament, to revoke and terminate the interest of [the name of permissible recipient who is not the Donor] under this trust. 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 the Survivor Recipient, or on the earlier death of the Donor if the power to revoke [the name of permissible recipient who is not the Donor]'s interest is exercised.

.05 Last Annuity Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the predeceasing recipient's death, payment of the predeceasing recipient's share of the annuity amount may terminate with the last regular payment preceding the predeceasing recipient's death. Similarly, as an alternative to prorating the annuity amount in the taxable year of the termination of the annuity period, payment of the annuity amount may terminate with the last regular payment preceding the termination of the annuity period. However, the fact that a recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-2(a)(5)(i).
- (2) *Instructions for use.*
 - (a) To add an alternate provision to terminate the payment of the predeceasing recipient's share of the annuity amount with the last regular payment preceding his or her death, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay a share of the annuity amount to the Predeceasing Recipient shall terminate with the regular quarterly installment next preceding the Predeceasing Recipient's death. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.
 - (b) To add an alternate provision to terminate the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the Predeceasing Recipient's share of the next regular annuity payment between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

- (c) To add an alternate provision terminating the payment of the predeceasing recipient's share of the annuity amount with the last regular payment preceding his or her death, and terminating the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 4, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay a share of the annuity amount to the Predeceasing Recipient shall terminate with the regular quarterly installment next preceding the Predeceasing Recipient's death. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

.06 Restricting the Charitable Remainderman to a Public Charity.

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

.07 Retaining the Right to Substitute the Charitable Remainderman.

- (1) *Explanation.* The donor may retain the right to substitute another charitable remainderman for the charitable remainderman named in the trust instrument. See Rev. Rul. 76-8, 1976-1 C.B. 179. Note, however, that the retention of this right will cause the gift of the remainder interest to be incomplete for gift tax purposes. See § 25.2511-2(c) and Rev. Rul. 77-275, 1977-2 C.B. 346.
- (2) *Instruction for use.* Insert the following sentence between the first and last sentences of paragraph 5, Distribution to Charity, of the sample trust:
- The Donor reserves the right to designate, at any time and from time to time, in lieu of the Charitable Organization identified above, one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman and shall make any such designation by giving written notice to the Trustee.

.08 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 5, Distribution to Charity, of the sample trust with the following paragraph:
- Distribution to Charity.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipients or their estates under the provisions above) to one or more charitable organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 5 of Rev. Proc. 90-32 is superseded.

DRAFTING INFORMATION

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

*26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055, 1.664-2, 20.2055-2.)*

Rev. Proc. 2003-57

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-53, superceding Rev. Proc. 89-21, 1989-1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-54);
- (c) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superceding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (d) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superceding section 5 of Rev. Proc. 90-32);
- (e) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-58);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-59, superceding section 7 of Rev. Proc. 90-32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-60, superceding section 8 of Rev. Proc. 90-32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CRAT with one measuring life 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the last annuity payment to the recipient; and (.05) a power of appointment to designate the charitable remainderman.

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

issue letter rulings on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a CRAT.

SECTION 4. SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003-57 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Annuity Trust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] (hereinafter “the Recipient”) an annuity amount equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. The 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 the Recipient’s death. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Recipient (in the case of an undervaluation) or receive from the Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

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

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

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

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively

as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). Section 1.664-1(a)(4). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). Section 1.664-1(a)(5)(i). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.

- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

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

- (1) *Permissible recipients.* For a CRAT with an annuity period based on the life of one individual, the annuity amount must generally be paid to that individual and the individual must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (2) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 if the probability that the trust corpus will be exhausted before the death of the recipient exceeds 5 percent. Rev. Rul. 77-374, 1977-2 C.B. 329. See § 20.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (3) *Payment of annuity amount in installments.* Paragraph 1, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (4) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a). In addition, § 1.664-1(a)(5)(i) provides a special rule applicable to charitable remainder trusts created by testamentary transfer that may defer the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded. See section 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the annuity amount until the end of the taxable year in which the trust is completely funded.
- (5) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

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

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

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of recipient's death.* Paragraph 3, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.04 of this revenue procedure for an alternate provision that provides for the termination of the annuity amount with the last regular payment preceding the recipient's death.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(2) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in §§ 170(c) and 2055(a) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C) and Rev. Rul. 77-385, 1977-2 C.B. 331. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.05 of this revenue procedure for an alternate provision in which the recipient is granted a power of appointment to designate the charitable remainderman.
- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c) and 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

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

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

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — ONE LIFE

.01 Annuity Amount Stated as a Specific Dollar Amount.

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

- (b) Delete the last sentence of paragraph 1, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If an estate tax charitable deduction is sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipient and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).

- (2) *Instructions for use.*

- (a) Replace paragraph 1, Payment of Annuity Amount, of the sample trust with the following paragraph:

Payment of Annuity Amount. The annuity amount is equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the noncharitable recipient] percent of the annuity amount to [permissible recipient] (hereinafter “the Recipient”) and [the percentage of the annuity amount payable to the charitable recipient] percent of the annuity amount to [an organization described in §§ 170(c) and 2055(a) of the Code] (hereinafter “the Charitable Recipient”). The 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 the Recipient’s death. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

- (b) In paragraph 2, Deferral Provision, of the sample trust, replace each reference to “the Recipient” with a reference to “the Recipient and the Charitable Recipient.”
- (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Recipient or the Recipient’s estate and the Charitable Recipient under the provisions above).
- (d) Add the following sentence after the first and only sentence in paragraph 6, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Qualified Contingency.

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

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 the Recipient’s death or, if earlier, the date on which occurs the [qualified contingency].

.04 Last Annuity Payment to the Recipient.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the recipient’s death, payment of the annuity amount may terminate with the last regular payment preceding the recipient’s death. However, the fact that the

recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-2(a)(5)(i).

- (2) *Instruction for use.* Replace the second sentence of paragraph 3, Proration of Annuity Amount, of the sample trust with the following sentence:

In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the death of the Recipient.

.05 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant the recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.

- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient or the Recipient's estate under the provisions above) to one or more charitable organizations described in §§ 170(c) and 2055(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 6 of Rev. Proc. 90-32 is superseded.

DRAFTING INFORMATION

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

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055; 1.644-2, 20.2055-2.)

Rev. Proc. 2003-58

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-53, superseding Rev. Proc. 89-21, 1989-1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-54);
- (c) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superseding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (d) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superseding section 5 of Rev. Proc. 90-32);

- (e) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–57, superceding section 6 of Rev. Proc. 90–32);
- (f) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003–59, superceding section 7 of Rev. Proc. 90–32); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003–60, superceding section 8 of Rev. Proc. 90–32).

SECTION 3. SCOPE AND OBJECTIVE

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

For transfers to a qualifying CRAT, as defined in § 664(d)(1), the remainder interest will be deductible by the estate of a citizen or resident of the United States under § 2055(e)(2)(A) if the other requirements of § 2055(e)(2)(A) (that is, the requirements not relating to the provisions of the governing instrument) are also met. The Service will recognize a trust as a qualified CRAT meeting all of the requirements of § 664(d)(1) if the trust operates in a manner consistent with the terms of the trust instrument, if the trust is a valid trust under applicable local law, and if the trust instrument: (i) is substantially similar to the sample in section 4 of this revenue procedure; or (ii) properly integrates one or more alternate provisions from section 6 of this revenue procedure into a document substantially similar to the sample in section 4 of this revenue procedure. A trust instrument that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure, or provisions necessary to establish a valid trust under applicable local law that are not inconsistent with the applicable federal tax requirements), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternate provision from section 6 of this revenue procedure is properly integrated), will not necessarily be disqualified, but neither will that trust be assured of qualification under the provisions of this revenue procedure. The Service generally will not issue a letter ruling on whether a testamentary trust created by an individual and having a term of years annuity period qualifies as a CRAT. The Service, however, generally will issue letter rulings on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a CRAT.

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

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

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

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

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

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

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

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

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

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

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

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

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

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). Section 1.664-1(a)(4). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). Section 1.664-1(a)(5)(i). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.
- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder. Note that certain powers given to certain persons serving as the trustee may cause the trustee to be treated as the owner of the trust under subpart E and thus disqualify the trust as a charitable remainder trust. See § 1.664-1(a)(4). See section 6.03 of this revenue procedure for an alternate provision providing for the apportionment of the annuity amount among members of a named class in the discretion of the trustee.

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

- (1) *Permissible term.* The period for which the annuity amount is payable must not exceed 20 years. Section 1.664-2(a)(5)(i). Thus, for example, the annuity period of a CRAT for a term of 20 years will end on the day preceding the twentieth anniversary of the date the trust was created.
- (2) *Permissible recipients.* For a CRAT having a term of years annuity period, the annuity amount must generally be paid to a named person or persons (within the meaning of § 7701(a)(1)). If the annuity amount is to be paid to an individual or individuals, all the individuals must be living at the time of the creation of the trust. The annuity amount may be payable to

the estate or heirs of a named recipient who dies prior to the expiration of the term of years. See Rev. Rul. 74-39, 1974-1 C.B. 156. The annuity amount may be payable to members of a named class and, because the annuity period is for a term of years, all of the members of the class need not be living or ascertainable at the creation of the trust. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).

- (3) *Multiple noncharitable recipients.* Generally, if the annuity amount is payable to more than one person, the trust instrument should describe the interest of each person. See section 6.03 of this revenue procedure for an alternate provision providing for the apportionment of the annuity amount among members of a named class in the discretion of the trustee.
- (4) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D). See § 20.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs.
- (5) *Payment of annuity amount in installments.* Paragraph 1, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (6) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a). In addition, § 1.664-1(a)(5)(i) provides a special rule applicable to charitable remainder trusts created by testamentary transfer that may defer the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded. See section 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the annuity amount until the end of the taxable year in which the trust is completely funded.
- (7) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

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

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

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

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

- (1) *Minimum value of remainder.* As noted in section 5.02(4) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in §§ 170(c) and 2055(a) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C) and Rev. Rul. 77-385, 1977-2 C.B. 331. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.05 of this revenue procedure for an alternate provision in which a recipient is granted a power of appointment to designate the charitable remainderman.
- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c) and 2055(a). Section 1.664-2(a)(6)(i).

- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

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

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

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

.01 Annuity Amount Stated as a Specific Dollar Amount.

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

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

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If an estate tax charitable deduction is sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipient and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).
- (2) *Instructions for use.*
 - (a) Replace paragraph 1, Payment of Annuity Amount, of the sample trust with the following paragraph:
Payment of Annuity Amount. The annuity amount is equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. In each taxable year of the trust during the annuity period, the Trustee shall pay [*the percentage of the annuity amount payable to the noncharitable recipient*] percent of the annuity amount to [*permissible recipient*] (hereinafter “the Recipient”) and [*the percentage of the annuity amount payable to the charitable recipient*] percent of the annuity amount to [*an organization described in §§ 170(c) and 2055(a) of the Code*] (hereinafter “the Charitable Recipient”).

The annuity period is a term of [*not more than 20*] years. The first day of the annuity period shall be the date of my death and the last day of the annuity period shall be the day preceding the [*ordinal number corresponding to the length of the annuity period*] anniversary of that date. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

- (b) In paragraph 2, Deferral Provision, and paragraph 4, Distribution to Charity, of the sample trust, replace each reference to "the Recipient" with a reference to "the Recipient and the Charitable Recipient."
- (c) Add the following sentence after the first and only sentence in paragraph 6, Prohibited Transactions, of the sample trust:
The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

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

- (1) *Explanation.* A trust is not a CRAT if any person has the power to alter the amount to be paid to any named person other than an organization described in § 170(c) if the power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E were applicable to the trust. Section 1.664-2(a)(3)(ii). See Rev. Rul. 77-73, 1977-1 C.B. 175. A trustee's discretionary power, exercisable solely by that trustee, to allocate the annuity amount among the members of a class would cause the trustee to be treated as the owner of all or a portion of the trust under § 678(a) if the trustee is a member of the class, if the trustee may apply trust income or corpus to satisfy the trustee's own legal obligation, or if the trustee actually exercises the power to satisfy a support obligation owed by the trustee. Therefore, if any trustee is given the discretionary power exercisable solely by that trustee to allocate the annuity amount among members of a class, the trust instrument must provide that such trustee must be: (i) not a member of the recipient class; and (ii) prohibited from applying any part of the annuity payment in satisfaction of the trustee's own legal obligation.
- (2) *Instructions for use.*
 - (a) Add the following sentence to the sample trust:
Any trustee who is authorized in the trustee's sole discretion to allocate the annuity amount among members of a Recipient class must not be a member of the Recipient class.
 - (b) Replace the first sentence of paragraph 1, Payment of Annuity Amount, of the sample trust with the following three sentences:
In each taxable year of the trust during the annuity period, the Trustee shall pay to a member or members of a class of persons comprised of [*designated members of class*] (hereinafter "the Recipient") an annuity amount equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. The Trustee may pay the annuity amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, may from time to time deem advisable. The Trustee may not, however, apply the payment for the Trustee's own benefit, or in satisfaction of any support or other legal obligation of the Trustee.

.04 Qualified Contingency.

- (1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the expiration of the term of years. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instruction for use.* Replace the second and third sentences of paragraph 1, Payment of Annuity Amount, of the sample trust with the following two sentences, respectively:
The annuity period is a term of [*not more than 20*] years, unless earlier terminated by the occurrence of [*qualified contingency*]. The first day of the annuity period shall be the date of my death and the last day of the annuity period shall be the day preceding the [*ordinal number corresponding to the length of the annuity period*] anniversary of that date or, if earlier, the date on which occurs the [*qualified contingency*].

.05 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the provisions above) to one or more charitable organizations described in §§ 170(c) and 2055(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

DRAFTING INFORMATION

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

*26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055; 1.644-2, 20.2055-2.)*

Rev. Proc. 2003-59

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-53, superceding Rev. Proc. 89-21, 1989-1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-54);
- (c) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superceding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (d) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superceding section 5 of Rev. Proc. 90-32);
- (e) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-57, superceding section 6 of Rev. Proc. 90-32);
- (f) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-58); and
- (g) a testamentary CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-60, superceding section 8 of Rev. Proc. 90-32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CRAT with consecutive interests for two measuring lives 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the last annuity payments to the recipients; and (.05) a power of appointment to designate the charitable remainderman.

For transfers to a qualifying CRAT, as defined in § 664(d)(1), the remainder interest will be deductible by the estate of a citizen or resident of the United States under § 2055(e)(2)(A) if the other requirements of § 2055(e)(2)(A) (that is, the requirements not relating to the provisions of the governing instrument) are also met. The Service will recognize a trust as a qualified CRAT meeting all of the requirements of § 664(d)(1) if the trust operates in a manner consistent with the terms of the trust instrument, if the trust is a valid trust under applicable local law, and if the trust instrument: (i) is substantially similar to the sample in section 4 of this revenue procedure; or (ii) properly integrates one or more alternate provisions from section 6 of this revenue procedure into a document substantially similar to the sample in section 4 of this revenue procedure. A trust instrument that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure, or provisions necessary to establish a valid trust under applicable local law that are not inconsistent with the applicable federal tax requirements), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternate provision from section 6 of this revenue procedure is properly integrated), will not necessarily be disqualified, but neither will that trust be assured of qualification under the provisions of this revenue procedure. The Service generally will not issue a letter ruling on whether a testamentary trust created by an individual and with consecutive interests for two measuring lives qualifies as a CRAT. The Service, however, generally will issue letter rulings on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a CRAT.

SECTION 4. SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONSECUTIVE INTERESTS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–59 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Annuity Trust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 3), an annuity amount equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. The 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 the death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or Successor Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

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

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular annuity payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

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

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONSECUTIVE INTERESTS

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). Section 1.664-1(a)(4). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). Section 1.664-1(a)(5)(i). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.
- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

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

- (1) *Permissible recipients.* For a CRAT with an annuity period based on the lives of two individuals, the annuity amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).
- (2) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 if the probability that the trust corpus will be exhausted before the death of the survivor of the recipients exceeds 5 percent. Rev. Rul. 77-374, 1977-2 C.B. 329. See § 20.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (3) *Payment of annuity amount in installments.* Paragraph 1, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument

may specify that the annuity amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).

- (4) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a). In addition, § 1.664-1(a)(5)(i) provides a special rule applicable to charitable remainder trusts created by testamentary transfer that may defer the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded. See section 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the annuity amount until the end of the taxable year in which the trust is completely funded.
- (5) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

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

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

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of a recipient's death.* Paragraph 3, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.04 of this revenue procedure for alternate provisions that provide for termination of the annuity amount with the last regular payment preceding the death of each recipient.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(2) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in §§ 170(c) and 2055(a) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C) and Rev. Rul. 77-385, 1977-2 C.B. 331. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.05 of this revenue procedure for an alternate provision in which a recipient is granted a power of appointment to designate the charitable remainderman.
- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c) and 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

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

- (1) *Payment of the annuity amount.* Payment of the annuity amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A), are required if the trust provides for payment of

part of an annuity amount to an organization described in § 170(c) and an estate tax charitable deduction is sought for this interest. See § 4947(b)(3). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).

- (3) *Trust to continue in existence for benefit of charity.* The governing instrument requirements of § 508(e) must be included in the trust instrument if, after the termination of the annuity period: (i) the trust instrument provides that the trust shall continue in existence for the benefit of the charitable remainderman and, as a result, the trust will become subject to the provisions of § 4947(a)(1); and (ii) the trust will be treated as a private foundation within the meaning of § 509(a), as modified by § 4947(a)(1). Except as provided in paragraph 6 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the annuity period when the trust continues in existence for the benefit of the charitable remainderman.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONSECUTIVE INTERESTS

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664-2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*
 - (a) Replace the first sentence of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death and thereafter to [*permissible recipient*] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 3), an annuity amount equal to [*the stated dollar amount*].
 - (b) Delete the last sentence of paragraph 1, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If an estate tax charitable deduction is sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipient and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).
- (2) *Instructions for use.*
 - (a) Replace paragraph 1, Payment of Annuity Amount, of the sample trust with the following paragraph:
Payment of Annuity Amount. The annuity amount is equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. In each taxable year of the trust during the annuity period, the Trustee shall pay [*the percentage of the annuity amount payable to the noncharitable recipients*] percent of the annuity amount to [*permissible recipient*] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor Recipient”) (subject to any proration in paragraph 3). In each taxable year of the trust during the annuity period, the Trustee shall pay [*the percentage of the annuity amount payable to the charitable recipient*] percent of the annuity amount to [*an organization described in §§ 170(c) and 2055(a) of the Code*] (hereinafter “the Charitable Recipient”). The 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 the death of the survivor of the Initial Recipient and the Successor Recipient. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the

trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

- (b) In paragraph 2, Deferral Provision, of the sample trust, replace each reference to “the Initial Recipient and/or the Successor Recipient” with a reference to “the Initial Recipient and/or the Successor Recipient and the Charitable Recipient.”
- (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Initial Recipient, the Successor Recipient, or their estates and the Charitable Recipient under the provisions above).
- (d) Add the following sentence after the first and only sentence in paragraph 6, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Qualified Contingency.

- (1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the death of the survivor of the initial recipient and the successor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instructions for use.* Replace the second sentence of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentence:

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 the death of the survivor of the Initial Recipient and the Successor Recipient or, if earlier, the date on which occurs the [qualified contingency].

.04 Last Annuity Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the initial recipient’s death, payment of the initial recipient’s share of the annuity amount may terminate with the last regular payment preceding the initial recipient’s death. Similarly, as an alternative to prorating the annuity amount in the taxable year of the termination of the annuity period, payment of the annuity amount may terminate with the last regular payment preceding the termination of the annuity period. However, the fact that a recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-2(a)(5)(i).
- (2) *Instruction for use.*
 - (a) To add an alternate provision to terminate the payment of the initial recipient’s share of the annuity amount with the last regular payment preceding his or her death, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay the annuity amount to the Initial Recipient shall terminate with the regular quarterly installment next preceding the Initial Recipient’s death. In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.
 - (b) To add an alternate provision to terminate the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular annuity payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.
 - (c) To add an alternate provision terminating the payment of the initial recipient’s share of the annuity amount with the last regular payment preceding his or her death, and terminating the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay the annuity amount to the Initial Recipient shall

terminate with the regular quarterly installment next preceding the Initial Recipient's death. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

.05 Power of Appointment to Designate the Charitable Remainderman.

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

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 7 of Rev. Proc. 90-32 is superseded.

DRAFTING INFORMATION

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

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055; 1.664-2, 20.2055-2.)

Rev. Proc. 2003-60

SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements of § 664(d)(1) of the Internal Revenue Code for a testamentary charitable remainder annuity trust (CRAT) providing for annuity payments payable concurrently and consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

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

- (a) an inter vivos CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003-53, superseding Rev. Proc. 89-21, 1989-1 C.B. 842);
- (b) an inter vivos CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003-54);
- (c) an inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003-55, superseding section 4 of Rev. Proc. 90-32, 1990-1 C.B. 546);
- (d) an inter vivos CRAT providing for annuity payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2003-56, superseding section 5 of Rev. Proc. 90-32);

- (e) a testamentary CRAT providing for annuity payments for one measuring life (see Rev. Proc. 2003–57, superceding section 6 of Rev. Proc. 90–32);
- (f) a testamentary CRAT providing for annuity payments for a term of years (see Rev. Proc. 2003–58); and
- (g) a testamentary CRAT providing for annuity payments payable consecutively for two measuring lives (see Rev. Proc. 2003–59, superceding section 7 of Rev. Proc. 90–32).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CRAT with concurrent and consecutive interests for two measuring lives 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 alternate provisions concerning: (.01) the statement of the annuity amount as a specific dollar amount; (.02) the payment of part of the annuity to an organization described in § 170(c); (.03) a qualified contingency; (.04) the last annuity payments to the recipients; and (.05) a power of appointment to designate the charitable remainderman.

For transfers to a qualifying CRAT, as defined in § 664(d)(1), the remainder interest will be deductible by the estate of a citizen or resident of the United States under § 2055(e)(2)(A) if the other requirements of § 2055(e)(2)(A) (that is, the requirements not relating to the provisions of the governing instrument) are also met. The Service will recognize a trust as a qualified CRAT meeting all of the requirements of § 664(d)(1) if the trust operates in a manner consistent with the terms of the trust instrument, if the trust is a valid trust under applicable local law, and if the trust instrument: (i) is substantially similar to the sample in section 4 of this revenue procedure; or (ii) properly integrates one or more alternate provisions from section 6 of this revenue procedure into a document substantially similar to the sample in section 4 of this revenue procedure. A trust instrument that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure, or provisions necessary to establish a valid trust under applicable local law that are not inconsistent with the applicable federal tax requirements), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternate provision from section 6 of this revenue procedure is properly integrated), will not necessarily be disqualified, but neither will that trust be assured of qualification under the provisions of this revenue procedure. The Service generally will not issue a letter ruling on whether a testamentary trust created by an individual and with concurrent and consecutive interests for two measuring lives qualifies as a CRAT. The Service, however, generally will issue letter rulings on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a CRAT.

SECTION 4. SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003–60 and § 664(d)(1) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Annuity Trust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*permissible recipient*] and to [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their lifetimes, an annuity amount equal to [*a number no less than 5 and no more than 50*] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes, and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire annuity amount (subject to any proration in paragraph 3) to the survivor (hereinafter “the Survivor Recipient”). 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 the Survivor Recipient’s death. 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 Recipients (in the case of an undervaluation) or receive from the Recipients (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 Recipients (in the case of an underpayment) or receive from the Recipients (in the case of an overpayment) the difference between any annuity amounts actually paid, plus interest, and the annuity amounts payable, plus interest. The interest shall be computed for any period at the rate of interest, compounded annually, that the federal income tax regulations under § 664 of the Code prescribe for this computation.

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the Predeceasing Recipient’s share of the next regular annuity payment between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during

which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

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

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). Section 1.664-1(a)(4). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). Section 1.664-1(a)(5)(i). In addition, funding the trust with certain types of assets may disqualify it as a charitable remainder trust. See § 1.664-1(a)(7) and Rev. Rul. 73-610, 1973-2 C.B. 213.
- (2) *Valuation of unmarketable assets.* If the trust is funded with unmarketable assets, the initial net fair market value of the assets must be determined exclusively by an independent trustee, as defined in § 1.664-1(a)(7)(iii), or must be determined by a current “qualified appraisal” from a “qualified appraiser,” as defined in § 1.170A-13(c)(3) and (c)(5), respectively. Section 1.664-1(a)(7).
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

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

- (1) *Permissible recipients.* For a CRAT having an annuity period based on the lives of two individuals, the annuity amount must generally be paid to those individuals, and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the annuity amount may be paid to a trust for the benefit of an individual who is financially disabled. An organization described in § 170(c) may receive part, but not all, of the annuity amount. Section 664(d)(1)(A) and § 1.664-2(a)(3)(i). See section 6.02 of this revenue procedure for an alternate provision that provides for payment of part of the annuity to an organization described in § 170(c).

- (2) *Division of annuity amount between recipients.* The sample trust provides that while both recipients are alive they will share the annuity amount equally and upon the death of the predeceasing recipient the survivor recipient will receive all of the annuity amount, subject to any proration in paragraph 3. The annuity amount may be divided other than equally during the joint lives of the recipients. In addition, the share of the predeceasing recipient may be made payable to an organization described in § 170(c) for the rest of the survivor recipient's life.
- (3) *Percentage requirements.* The sum certain annuity amount must be at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust. Section 664(d)(1)(A). Even if the sum certain annuity amount is at least 5 percent and not more than 50 percent of the initial net fair market value of the assets placed in trust, no deduction will be allowable under § 2055 if the probability that the trust corpus will be exhausted before the death of the survivor of the recipients exceeds 5 percent. Rev. Rul. 77-374, 1977-2 C.B. 329. See § 20.7520-3(b) for special rules that may be applicable in valuing interests transferred to CRATs. In addition, the value (determined under § 7520) of the charitable remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (4) *Payment of annuity amount in installments.* Paragraph 1, Payment of Annuity Amount, of the sample trust specifies that the annuity amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the annuity amount is to be paid to the recipients annually or in equal or unequal installments throughout the year. See § 1.664-2(a)(1)(i). The amount of the charitable deduction will be affected by the frequency of payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 1.664-2(c) and § 20.2031-7(d)(2)(iv).
- (5) *Payment of annuity amount by close of taxable year.* Generally, the annuity amount for any taxable year must be paid before the close of the taxable year for which it is due. For circumstances under which the annuity amount may be paid within a reasonable time after the close of the taxable year, see § 1.664-2(a)(1)(i)(a). In addition, § 1.664-1(a)(5)(i) provides a special rule applicable to charitable remainder trusts created by testamentary transfer that may defer the requirement to pay the annuity amount until the end of the taxable year in which the trust is completely funded. See section 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the annuity amount until the end of the taxable year in which the trust is completely funded.
- (6) *Early distributions to charity.* The trust instrument may provide that an amount other than the annuity shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c). If such a distribution is made in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution on the date of distribution. Section 1.664-2(a)(4).

.03 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

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

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

- (1) *Prorating annuity amount.* To compute the annuity amount in a short taxable year and in the taxable year in which the annuity period terminates, see § 1.664-2(a)(1)(iv)(a) and (b), respectively.
- (2) *Determining annuity amount payable in year of a recipient's death.* Paragraph 3, Proration of Annuity Amount, of the sample trust specifies that the annuity amount shall be prorated on a daily basis. See section 6.04 of this revenue procedure for alternate provisions that provide for termination of the annuity amount with the last regular payment preceding the death of each recipient.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(3) of this revenue procedure, the value (determined under § 7520) of the charitable remainder interest is required to be at least 10 percent of the initial net fair market value of all property placed in the trust. Section 664(d)(1)(D).
- (2) *Designated remainderman.* Any named charitable remainderman must be an organization described in §§ 170(c) and 2055(a) at the time of the transfer to the charitable remainder annuity trust. See § 664(d)(1)(C) and Rev. Rul. 77-385, 1977-2 C.B. 331. The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section

6.05 of this revenue procedure for an alternate provision in which a recipient is granted a power of appointment to designate the charitable remainderman.

- (3) *Multiple remaindermen.* The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c) and 2055(a). Section 1.664-2(a)(6)(i).
- (4) *Alternative remaindermen.* The trust instrument of a CRAT must provide a means for selecting alternative charitable remaindermen in the event the designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-2(a)(6)(iv).

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

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

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE REMAINDER ANNUITY TRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

.01 Annuity Amount Stated as a Specific Dollar Amount.

- (1) *Explanation.* As an alternative to stating the annuity amount as a fraction or percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount. Section 1.664-2(a)(1)(ii) and (iii). In either case, the annuity amount must be not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust. Section 664(d)(1)(A).
- (2) *Instructions for use.*
 - (a) Replace the first sentence of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentence:
In each taxable year of the trust during the annuity period, the Trustee shall pay to [permissible recipient] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their lifetimes an annuity amount equal to [the stated dollar amount], and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire annuity amount (subject to any proration in paragraph 3) to the survivor (hereinafter “the Survivor Recipient”).
 - (b) Delete the last sentence of paragraph 1, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

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

- (1) *Explanation.* An organization described in § 170(c) may receive part, but not all, of any annuity amount. Section 664(d)(1)(A). If an estate tax charitable deduction is sought for the present value of the annuity interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each annuity payment that is payable to the noncharitable recipients and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any annuity amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust for purposes of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings for purposes of § 4943, as modified by § 4947(a)(2)(A).

(2) *Instructions for use.*

- (a) Replace paragraph 1, Payment of Annuity Amount, of the sample trust with the following paragraph:

Payment of Annuity Amount. The annuity amount is equal to [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property passing to this trust as finally determined for federal estate tax purposes. In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the noncharitable recipients] percent of the annuity amount to [permissible recipient] and [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, and upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay that entire percentage of the annuity amount (subject to any proration in paragraph 3) to the survivor (hereinafter “the Survivor Recipient”). In each taxable year of the trust during the annuity period, the Trustee shall pay [the percentage of the annuity amount payable to the charitable recipient] percent of the annuity amount to [an organization described in §§ 170(c) and 2055(a) of the Code] (hereinafter “the Charitable Recipient”). The 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 the Survivor Recipient’s death. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any annuity payment is to be distributed to it, then the Trustee shall distribute that annuity payment to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Recipients and the Charitable Recipient (in the case of an undervaluation) or receive from the Recipients and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

- (b) In paragraph 2, Deferral Provision, of the sample trust, replace each reference to “the Recipients” with a reference to “the Recipients and the Charitable Recipient.”

- (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Recipients or their estates and the Charitable Recipient under the provisions above).

- (d) Add the following sentence after the first and only sentence in paragraph 6, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust for purposes of § 4944 of the Code, as modified by § 4947(a)(2)(A) of the Code, or retain any excess business holdings for purposes of § 4943 of the Code, as modified by § 4947(a)(2)(A) of the Code.

.03 Qualified Contingency.

- (1) *Explanation.* Under § 664(f), payment of the annuity amount may terminate upon the earlier of the occurrence of a qualified contingency (as defined in § 664(f)(3)) or the death of the survivor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).

- (2) *Instruction for use.* Replace the second sentence of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentence:

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 the Survivor Recipient’s death or, if earlier, the date on which occurs the [qualified contingency].

.04 Last Annuity Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the annuity amount in the taxable year of the predeceasing recipient’s death, payment of the predeceasing recipient’s share of the annuity amount may terminate with the last regular payment preceding the predeceasing recipient’s death. Similarly, as an alternative to prorating the annuity amount in the taxable year of the termination of the annuity period, payment of the annuity amount may terminate with the last regular payment preceding the termination of the annuity period. However, the fact that a recipient may not receive the last payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664–2(a)(5)(i).

- (2) *Instructions for use.*

- (a) To add an alternate provision to terminate the payment of the predeceasing recipient’s share of the annuity amount with the last regular payment preceding his or her death, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay a share of the annuity amount to the Predeceasing Recipient shall terminate with the regular quarterly installment next preceding the Predeceasing Recipient’s death.

In the taxable year of the trust during which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

- (b) To add an alternate provision to terminate the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the Predeceasing Recipient's share of the next regular annuity payment between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

- (c) To add an alternate provision terminating the payment of the predeceasing recipient's share of the annuity amount with the last regular payment preceding his or her death, and terminating the payment of the annuity amount with the last regular payment preceding the termination of the annuity period, replace paragraph 3, Proration of Annuity Amount, of the sample trust with the following paragraph:

Proration of Annuity Amount. Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay a share of the annuity amount to the Predeceasing Recipient shall terminate with the regular quarterly installment next preceding the Predeceasing Recipient's death. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

.05 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.

- (2) *Instruction for use.* Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

Distribution to Charity. At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipients or their estates under the provisions above) to one or more charitable organizations described in §§ 170(c) and 2055(a) of the Code as [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 8 of Rev. Proc. 90-32 is superseded.

DRAFTING INFORMATION

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

Part IV. Items of General Interest

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2003-50

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an adminis-

trative law judge, the following individuals have been placed under suspension from

practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Arnold, John	Clovis, CA	Enrolled Agent	February 13, 2003 to August 12, 2003

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an oppor-

tunity for a proceeding before an administrative law judge, the following individuals

have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Kalajian, Thomas	Laguna Hills, CA	CPA	October 2, 2002
Messman, Carla	Outing, MN	Enrolled Agent	January 9, 2003

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from prac-

tice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or en-

rolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Kemp, Bart	Sonoma, CA	Attorney	March 15, 2003 to November 15, 2003
Marks, Gary	Hewlett, NY	CPA	March 24, 2003 to March 23, 2004
Fehl, Kenneth	Palo Alto, CA	Attorney	April 1, 2003 to March 31, 2004
Cohen, Peter	Edison, NJ	CPA	April 3, 2003 to May 2, 2005
Kohn, Michael	St. Louis, MO	Attorney	Indefinite from April 30, 2003
Sogamoso, Carlos	Bellflower, CA	Enrolled Agent	Indefinite from May 1, 2003
Huston, James	Kingman, AZ	CPA	May 1, 2003 to April 30, 2006
Halleran, Edward	Carle Place, NY	Enrolled Agent	Indefinite from May 1, 2003
Marshall, E. Peter	Glens Falls, NY	CPA	May 1, 2003 to April 30, 2006
Bell, Rosanna	Irvington, NY	CPA	Indefinite from May 8, 2003
Kingsley, Steven	Weston, CT	CPA	Indefinite from May 15, 2003
Schawe, Rudolph	Brenham, TX	Enrolled Agent	May 22, 2003 to October 21, 2004

Name	Address	Designation	Date of Suspension
Scheve, Michael	Baltimore, MD	CPA	Indefinite from May 27, 2003
McKenzie, Dawna	Fort Smith, AR	Enrolled Agent	Indefinite from June 2, 2003
Suen, Ming	San Francisco, CA	Enrolled Agent	Indefinite from June 3, 2003
Reyes, Ruperto	Placentia, CA	Enrolled Agent	June 10, 2003 to December 9, 2005
Garmo, Georgis	W. Bloomfield, MI	CPA	Indefinite from June 10, 2003
Holmes, James L.	Burlington, NC	Enrolled Agent	Indefinite from June 18, 2003
Brooks, Sandra	San Diego, CA	Enrolled Agent	Indefinite from June 20, 2003
Malley, Wayne	Cupertino, CA	Enrolled Agent	Indefinite from June 27, 2003
Leininger, Barbara	Lutz, FL	Enrolled Agent	Indefinite from June 27, 2003

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Radwick, Peter	Woodinville, WA	CPA	Indefinite from March 10, 2003
Jellinger, Richard	Anoka, MN	Attorney	Indefinite from March 10, 2003

Name	Address	Designation	Date of Suspension
Deen, Billy	Mansfield, TX	CPA	Indefinite from March 10, 2003
Dougherty Jr, William	Newport News, VA	Attorney	Indefinite from March 10, 2003
Abood, Norman	Oregon, OH	Attorney	Indefinite from March 10, 2003
Matis, Vendel	Redlands, CA	Attorney	Indefinite from March 31, 2003
Workman, Andrew	Panama City, FL	CPA	Indefinite from March 31, 2003
Bagwell, Jr., Noel	Cunningham, TN	Attorney	Indefinite from March 31, 2003
O'Brien, Brien	Sioux City, IA	Attorney	Indefinite from March 31, 2003
Boykoff, Franklin	Pleasantville, NY	Attorney	Indefinite from March 31, 2003
McKinnon, Marva	Statesville, NC	Attorney	Indefinite from March 31, 2003
Bailey, Scott K.	Eden Prairie, MN	Attorney	Indefinite from March 31, 2003
Kim, Kun	Atlanta, GA	CPA	Indefinite from March 31, 2003
Massari III, Domenic	Tampa, FL	Attorney	Indefinite from May 12, 2003
Haugabrook II, Tyrone	Valdosta, GA	Attorney	Indefinite from May 19, 2003
Wester, Joseph	Montgomery, AL	CPA	Indefinite from May 19, 2003
Smercina, David	Solon, OH	CPA	Indefinite from May 19, 2003

Name	Address	Designation	Date of Suspension
Pullings, Retna	Washington, DC	Attorney	Indefinite from May 19, 2003
Boyd, James	Mendota Heights, MN	Attorney	Indefinite from May 20, 2003
Spindler, Judith	Omaha, NE	Attorney	Indefinite from May 20, 2003
Wintroub, Edward	Omaha, NE	Attorney	Indefinite from May 20, 2003
Brinker, Peter	Omaha, NE	Attorney	Indefinite from May 21, 2003
Valdes, Alfredo	Old Greenwich, CT	CPA	Indefinite from May 21, 2003
Cruise, Michael	Lincoln, NE	Attorney	Indefinite from May 22, 2003
Schoppert, Thomas	Minot, ND	Attorney	Indefinite from June 2, 2003
White, Paul	Smithfield, NC	Enrolled Agent	Indefinite from June 2, 2003
Brier, Michael	Providence, RI	CPA	Indefinite from June 16, 2003

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or

her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Designation
Evans, Caroline	Tiverton, RI	May 7, 2003

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney,

certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Pargas, Carlos B.	Miami, FL	CPA	March 19, 2003
Malkasian, Gary	Sacramento, CA	CPA	March 27, 2003
Wilcox, Ronald E.	Mt. Carmel, IL	CPA	April 29, 2003
Wood, David T.	Shawneetown, IL	CPA	May 27, 2003

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.

Numerical Finding List¹

Bulletin 2003–27 through 2003–30

Announcements:

2003-45, 2003-28 I.R.B. 73
2003-46, 2003-30 I.R.B. 222
2003-47, 2003-29 I.R.B. 124
2003-48, 2003-28 I.R.B. 73
2003-50, 2003-30 I.R.B. 281

Notices:

2003-38, 2003-27 I.R.B. 9
2003-39, 2003-27 I.R.B. 10
2003-40, 2003-27 I.R.B. 10
2003-41, 2003-28 I.R.B. 49
2003-42, 2003-28 I.R.B. 49
2003-43, 2003-28 I.R.B. 50
2003-44, 2003-28 I.R.B. 52
2003-45, 2003-29 I.R.B. 86
2003-46, 2003-28 I.R.B. 53
2003-47, 2003-30 I.R.B. 132
2003-48, 2003-30 I.R.B. 133

Proposed Regulations:

REG-106736-00, 2003-28 I.R.B. 60
REG-107618-02, 2003-27 I.R.B. 13
REG-122917-02, 2003-27 I.R.B. 15

Revenue Procedures:

2003-45, 2003-27 I.R.B. 11
2003-46, 2003-28 I.R.B. 54
2003-47, 2003-28 I.R.B. 55
2003-48, 2003-29 I.R.B. 86
2003-49, 2003-29 I.R.B. 89
2003-50, 2003-29 I.R.B. 119
2003-51, 2003-29 I.R.B. 121
2003-52, 2003-30 I.R.B. 134

Revenue Rulings:

2003-70, 2003-27 I.R.B. 3
2003-71, 2003-27 I.R.B. 1
2003-73, 2003-28 I.R.B. 44
2003-74, 2003-29 I.R.B. 77
2003-75, 2003-29 I.R.B. 79
2003-77, 2003-29 I.R.B. 75
2003-78, 2003-29 I.R.B. 76
2003-79, 2003-29 I.R.B. 80
2003-80, 2003-29 I.R.B. 83
2003-81, 2003-30 I.R.B. 126
2003-82, 2003-30 I.R.B. 125
2003-83, 2003-30 I.R.B. 128
2003-87, 2003-29 I.R.B. 82

Treasury Decisions:

9061, 2003-27 I.R.B. 5

Treasury Decisions— Continued:

9062, 2003-28 I.R.B. 46

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003-1 through 2003-26 is in Internal Revenue Bulletin 2003-27, dated July 7, 2003.

Findings List of Current Actions on Previously Published Items¹

Bulletin 2003–27 through 2003–30

Notices:

89-79

Modified and superseded by
Rev. Proc. 2003-47, 2003-28 I.R.B. 55

2001-70

Amplified by
Notice 2003-45, 2003-29 I.R.B. 86

2001-74

Amplified by
Notice 2003-45, 2003-29 I.R.B. 86

Proposed Regulations:

EE-86-88 (LR-279-81)

Withdrawn by
REG-122917-02, 2003-27 I.R.B. 15

Revenue Procedures:

77-12

Amplified, modified, and superseded by
Rev. Proc. 2003-51, 2003-29 I.R.B. 121

96-30

Modified and amplified by
Rev. Proc. 2003-48, 2003-29 I.R.B. 86

2002-9

Modified by
Rev. Proc. 2003-45, 2003-27 I.R.B. 11
Amplified and modified by
Rev. Proc. 2003-50, 2003-29 I.R.B. 119
Modified and amplified by
Rev. Rul. 2003-81, 2003-30 I.R.B. 126

2002-33

Amplified and modified by
Rev. Proc. 2003-50, 2003-29 I.R.B. 119

2002-34

Superseded by
Rev. Proc. 2003-52, 2003-30 I.R.B. 134

2003-3

Modified by
Rev. Proc. 2003-48, 2003-29 I.R.B. 86

2003-15

Modified and superseded by
Rev. Proc. 2003-49, 2003-29 I.R.B. 89

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003-1 through 2003-26 is in Internal Revenue Bulletin 2003-27, dated July 7, 2003.

INDEX

Internal Revenue Bulletins 2003–27 through 2003–30

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

EMPLOYEE PLANS

Full funding limitations, weighted average interest rate for:

July 2003 (Notice 48) 30, 133

Group health plan, COBRA, small employer plan exception (RR 70) 27, 3

Minimum funding, entry age normal (RR 83) 30, 128

EMPLOYMENT TAX

Extension of time, automatic extension to file certain information returns and exempt organization returns (TD 9061) 27, 5; (REG-107618-02) 27, 13

Proposed Regulations:

26 CFR 1.6081-1, amended; 1.6081-8, -9, added; 31.6081(a)-1, revised; automatic extension of time to file certain information returns and exempt organization returns (REG-107618-02) 27, 13

Regulations:

26 CFR 1.6081-1T, removed; 1.6081-8T, -9T, added; 31.6011(a)-5, amended; 31.6051-1(d)(2)(i)(c), amended; 31.6051-2(c), amended; 31.6081(a)-1, amended; 31.6081(a)-1T, added; 602.101, amended;

EMPLOYMENT TAX—Cont.

automatic extension of time to file certain information returns and exempt organization returns (TD 9061) 27, 5

ESTATE TAX

Charitable lead trusts, sample forms (Notice 39) 27, 10

EXCISE TAX

Group health plan, COBRA, small employer plan exception (RR 70) 27, 3

EXEMPT ORGANIZATIONS

Extension of time, automatic extension to file certain information returns and exempt organization returns (TD 9061) 27, 5; (REG-107618-02) 27, 13

Proposed Regulations:

26 CFR 1.6081-1, amended; 1.6081-8, -9, added; 31.6081(a)-1, revised; automatic extension of time to file certain information returns and exempt organization returns (REG-107618-02) 27, 13

Regulations:

26 CFR 1.6081-1T, removed; 1.6081-8T, -9T, added; 31.6011(a)-5, amended; 31.6051-1(d)(2)(i)(c), amended; 31.6051-2(c), amended; 31.6081(a)-1, amended; 31.6081(a)-1T, added; 602.101, amended; automatic extension of time to file certain information returns and exempt organization returns (TD 9061) 27, 5

Revocations (Ann 48) 28, 73

GIFT TAX

Charitable lead trusts, sample forms (Notice 39) 27, 10

INCOME TAX

Advance refunding bonds, tax-exempt bonds (RR 78) 29, 76

INCOME TAX—Cont.

Assumption of a partner's liabilities not accounted for under section 752(a) and (b) (TD 9062) 28, 46; (REG-106736-00) 28, 60

Backup withholding rate, reduced for amounts paid after December 31, 2002 (Ann 45) 28, 73

Compliance initiative, nonresident aliens and foreign corporations (Notice 38) 27, 9

Controlled foreign corporations, insurance business treated as a domestic corporation (RP 47) 28, 55

Corporations:

Spin-offs, stock distributions:

Acquisition by an unrelated corporation (RR 79) 29, 80

Requests for letter ruling or determination letter (RP 48) 29, 86

Separation of two different businesses within the same corporate group:

To concentrate on one business (RR 74) 29, 77

To resolve capital allocation problem (RR 75) 29, 79

Credits:

Enhanced oil recovery credit, 2003 inflation adjustment (Notice 43) 28, 50

Low-income housing credit; community service facility under section 42(d)(4)(C) of the Code (RR 77) 29, 75

Nonconventional source fuel credit, qualified fuels under section 29(c)(1)(C), solid fuel from coal, suspended private letter rulings (Ann 46) 30, 222

Deductions, limitations of section 277 membership organizations (RR 73) 28, 44

Depreciation of assets owned by a utility, used in the general business operations, asset class for (RR 81) 30, 126

Disaster relief for September 11, 2001, terrorist attack for:

Additional first year depreciation, automatic extension (RP 50) 29, 119

Depreciation and mid-quarter convention relief, automatic extension of time to make election (Notice 45) 29, 86

Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries (Ann 50) 30, 222

INCOME TAX—Cont.

Electronic and magnetic filing, specifications for Forms 1098, 1099, 5498, and W-2G (RP 52) 30, 134

Enhanced oil recovery credit, 2003 inflation adjustment (Notice 43) 28, 50

Entity classification for certain foreign eligible entities (Notice 46) 28, 53

Extension of time, automatic extension to file certain information returns and exempt organization returns (TD 9061) 27, 5; (REG-107618-02) 27, 13

Extraterritorial income exclusion, changes to Form 8873 and its instructions (Ann 47) 29, 124

Foreign corporations, compliance initiative (Notice 38) 27, 9

Forms, 8873, Extraterritorial Income Exclusion, changes to form and instructions (Ann 47) 29, 124

Government obligations, state and subdivisions:
Allocation deadline for private activity bond state ceiling (Notice 41) 28, 49
Assignment deadline for private activity bond volume cap (Notice 42) 28, 49
Carryforward election of unused private activity bond volume cap (RP 46) 28, 54

Interest:
Investment:
Federal short-term, mid-term, and long-term rates for:
July 2003 (RR 71) 27, 1

Inventory:
LIFO, price indexes used by department stores for:
May 2003 (RR 87) 29, 82
Valuation, acquired in liquidation of lump sum purchase (RP 51) 29, 121

Marginal production rates, 2003 (Notice 44) 28, 52

Marginal properties, oil and gas production, depletion, 2003 percentages (Notice 44) 28, 52

Methods of accounting, LIFO, automatic consent (RP 45) 27, 11

New York Liberty Bonds, tax-exempt bonds (Notice 40) 27, 10

Nonconventional source fuel credit, qualified fuels under section 29(c)(1)(C), solid fuel from coal, suspended private letter rulings (Ann 46) 30, 222

Nonresident aliens, compliance initiative (Notice 38) 27, 9

INCOME TAX—Cont.

Proposed Regulations:
26 CFR 1.358-7, added; 1.704-1, -2, amended; 1.705-1, amended; 1.752-0, amended; 1.752-1, -5, amended; 1.752-6, -7, added; assumption of partner liabilities (REG-106736-00) 28, 60
26 CFR 1.421-1 through -7, removed; 1.421-7 redesignated as 1.421-1 and amended; 1.421-8 redesignated as 1.421-2 and amended; 1.422-1, -2, -4, -5, added; 1.422-4, removed; 1.422-5 redesignated as 1.422-3; 1.423-1, -2, amended; 1.425-1 redesignated as 1.424-1 and amended; 1.6039-1, removed; 1.6039-2 redesignated as 1.6039-1 and revised; statutory options (REG-122917-02) 27, 15
26 CFR 1.6081-1, amended; 1.6081-8, -9, added; 31.6081(a)-1, revised; automatic extension of time to file certain information returns and exempt organization returns (REG-107618-02) 27, 13

Publications, 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically or Magnetically (RP 52) 30, 134

Qualified census tracts, issuers of qualified mortgage bonds and mortgage credit certificates; correction (RP 49) 29, 89

Qualified tertiary injectant expenses and enhanced oil recovery credit (RR 82) 30, 125

Regulations:
26 CFR 1.752-6T, added; assumption of partner liabilities (TD 9062) 28, 46
26 CFR 1.6081-1T, removed; 1.6081-8T, -9T, added; 31.6011(a)-5, amended; 31.6051-1(d)(2)(i)(c), amended; 31.6051-2(c), amended; 31.6081(a)-1, amended; 31.6081(a)-1T, added; 602.101, amended; automatic extension of time to file certain information returns and exempt organization returns (TD 9061) 27, 5

Revocations, exempt organizations (Ann 48) 28, 73

Statute of limitations on assessment as affected by bankruptcy (RR 80) 29, 83

INCOME TAX—Cont.

Stocks, statutory stock options (REG-122917-02) 27, 15

Tax-exempt bonds:
Advance refunding bonds (RR 78) 29, 76
New York Liberty Bonds (Notice 40) 27, 10

Transfers of nonstatutory stock options to related persons (Notice 47) 30, 132