PRACTICAL CHARITABLE PLANNING – EXAMPLES THAT DON'T REQUIRE YOU TO BE A TAX EXPERT. THE "ABCS" OF CRATS, CRUTS, CLATS AND CLUTS.

IS THE ALPHABET *REALLY* THAT DIFFICULT? HOW TO PROVIDE FOR YOUR FURRY FRIENDS!

Presented for the SPCA Tampa Bay and Suncoast Hospice Continuing Education Seminar for Professional Advisors

May 3, 2012

BY

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Practical Charitable Planning – Examples That Don't Require You to be a Tax Expert. The "ABCs" of CRATs, CRUTs, CLATs and CLUTs.
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BACKGROUND OF CHARITABLE DEDUCTIONS

I. Income Tax Deduction – The charitable deduction for income taxes was created in 1917, just four years after the first income tax was enacted. Since then, its scope has generally been expanded. Just as it is done now, historically the deduction was subtracted from the donor's gross income to determine the based amount against which taxes were to be applied.

II. Transfer Tax Deduction – The first estate tax charitable deduction was created one year later by the Revenue Act of 1918. That Act allowed a decedent's net estate to be calculated by deducting the value of transfers for religious, charitable, scientific, literary, or educational purposes from his gross estate.

WHAT IS A GIFT, WHEN IS IT DEDUCTIBLE, AND HOW IS IT VALUED?

I. A gift is a voluntary transfer of goods or services without compensation.

II. Deduction in year actually paid or in the year delivered

    A. Check – delivery date or date mailed

    B. Credit card – charge date

    C. Securities – delivery date or date mailed; date recorded on corporation's books; date of instructions to broker/agent

    D. Real estate – delivery and/or recording

III. Value of gift

    A. Fair market value (FMV)

    B. Cost basis

    C. Appraisal and/or recording

    D. Limitations on tax return for gifts to public charities

1. 50% AGI limitation

2. 30% AGI limitation for appreciated property

3. 50% AGI limitation if cost basis elected

4. 5-year carry forward

E. Substantiation

1. Cash less than $250 – bank record or receipt

2. Cash greater than $250 – receipt

3. Property less than $500 – receipt

4. Property greater than $500 – receipt, date and manner of acquisition, cost basis, and Form 8283

5. Property greater than $5,000 – receipt, date and manner of acquisition, cost basis, Form 8283, and qualified appraisal

WHY WOULD A CLIENT WANT TO GIVE TO THE SPCA TAMPA BAY AND OTHER CHARITABLE ENTITIES?

I. Societal Mores

II. Love of Animals

III. Income Tax Deductions

A. Gifts of cash or unappreciated property "to" public charities are deductible up to 50% of the donor's contribution base.

B. Gifts of cash or unappreciated property "for the use of" public charities, gifts of capital gains property (real estate, closely held stock, etc.) to public charities, and gifts of cash or ordinary income property to private foundations are deductible up to 30% of the donor's contribution base.

C. Contributions that exceed the 50% and 30% contribution limitations can be carried over for 5 years.

IV. Estate Tax Deductions

A. Unlimited deduction from gross estate for charitable bequests. § 2055

B. Applies to amounts going to charity following a "qualified disclaimer"

C. Deduction can't be more than the value of the gifted property that is required to be included in the gross estate

D. No deduction for testamentary exercise of a special power of appointment in favor of a charity

E. No deduction for bequests to or for the use of organizations or trusts described in §§ 508(d) & 4948(c)(4)

V. Gift Tax Deductions

A. Unlimited deductions for lifetime transfers. §2522

B. Not required to file a gift tax return if entire value of gifted property qualifies for the deduction

VI. Generation Skipping Transfer Tax (GSTT) Deductions

A. To determine the Inclusion Ratio, the denominator of the fraction is reduced by "any charitable deduction allowed under section 2055 or 2522 with respect to such property"

B. Essentially takes charitable gifts out of the equation for calculating the GST tax

WHAT CAN A CLIENT GIVE AND WHICH ITEMS ARE PREFERABLE?

I. Cash

II. Appreciated securities

III. Real estate

A. Personal residence

B. Vacation home

C. Commercial real estate

D. Vacant land

IV. Tangible personal property

V. Remainder interest in house or farm

VI. Interests in FLPs and/or LLCs

VII. Life Insurance

VIII. IRAs and retirement plan assets

IX. Annuities

WHERE DOES A CLIENT PROVIDE FOR CHARITABLE GIFTS?

I. Charitable Non-Trust Vehicles

A. Outright inter vivos gift

B. Outright testamentary gift

C. Charitable gift annuity

1. General characteristics

a. Contractual agreement between the donor and a charity – donor transfers cash or property to a charity in exchange for the charity's promise to pay the donor or other non-charitable beneficiary an annuity for life

b. Annuity can be payable immediately or can be deferred for one year or more from the date of transfer. Note: This is the ONLY income vehicle that allows the beneficiary's income steam to begin at a future date

c. Not governed by any specific code provision

2. Tax consequences

a. The excess of the amount of the gift over the annuity stream is deductible as a charitable gift

b. Survivorship interest in a spouse qualifies for the marital deduction if no benefits are provided to persons other than the spouse

c. To compute capital gain, donor must allocate his basis in the property gifted to the charity since transaction is treated as part-gift part-sale

D. Private foundation

1. General Characteristics

a. A tax-exempt charitable organization described in § 501(c)(3) that is not a 50% organization, a publically supported organization, a supporting organization, an underwriters laboratory, or certain public safety testing organizations

b. Gives donors greater flexibility and control over their charitable donations

c. Extensive annual reporting requirements

2. Tax consequences

a. Income tax deductions for gifts of cash or ordinary income property up to 30% of the donor's contribution base and for gifts of capital gain property up to 20% of the donor's contribution base

b. Unlimited transfer tax deduction, so no transfer taxes

II. Charitable Trust Vehicles

A. Charitable Remainder Trust (CRT)

1. CRTs Generally

a. Irrevocable

b. Can be created inter vivos or upon death

c. Non-charitable beneficiary gets interest either for life or a period of not more than 20 years, and the charity gets the remainder interest

d. Payments can be made “to or for” the benefit of the non-charitable beneficiary. This allows for payments to a disabled beneficiary or for payments into another trust established for the sole benefit of the non-charitable beneficiary

e. Charitable remainder must go to charity described in § 170(c)

    i. Multiple charitable beneficiaries are permitted if relative shares are determined when the trust ends

    ii. Can go to private foundation but the 30% deduction limitation will apply

2. Income taxation of CRTs

    a. Donor – Receives income, estate, and/or gift tax deduction for the present value of the charitable remainder interest. Treated as a gift “to” charity for income tax purposes.

    b. Trust – exempt from taxation unless the trust has any unrelated business income under § 512

    c. Non-charitable beneficiary

        i. Generally, amounts paid to beneficiary retain the character they had in the trust, and payments are characterized by reference to the entire history of the trust

        ii. Annuity or unitrust amounts paid are treated as ordinary income to the extent of the trust’s current and past undistributed income. Thereafter, payments are characterized as follows:

            1. Capital gain to the extent of current and past undistributed long-term capital gains;

2. Other income to the extent of the trust's current and past undistributed other income; and

3. Trust corpus

3. Gift taxation of CRTs

    a. Lifetime payments to donor – not subject to gift tax

    b. Charitable remainder interest – not subject to gift tax but must be reported on a timely filed gift tax return

    c. Payments to others – donor designates someone other than himself to receive the initial annuity or unitrust interest

        i. Qualifies for the gift tax annual per donee exclusion

        ii. Donor must pay gift tax if the annuity or unitrust interest is greater than the available per donee exclusion

        iii. No gift tax results if the annuity or unitrust interest is given to the donor's spouse because the marital deduction applies

        iv. Successor non-charitable beneficiary interests are also subject to gift tax unless donor reserves the right to revoke those interests by will

4. Estate tax consequences of CRTs

    a. Lifetime transfers

        i. Donor is sole non-charitable beneficiary – value of trust assets generally includable in donor's gross estate but qualify for an offsetting estate tax charitable deduction

        ii. Other beneficiary is sole non-charitable beneficiary – not includable in donor's gross estate unless donor reserves the power to revoke the interest by will

        iii. Donor is beneficiary for life (or for a term of years that doesn't expire before his death) and non-charitable beneficiary's interest follows donor's interest –

1. Entire trust included in donor's estate

2. Offsetting estate tax charitable deduction allowed for the present value of the charitable remainder interest as of the donor's death

3. Current value of the non-charitable annuity or unitrust interest is taxable in donor's estate

b. Testamentary transfers

i. Donor's spouse is sole non-charitable beneficiary – not includable in donor's estate or in donor's spouse's estate at spouse's death

ii. Any other non-charitable beneficiary – Donor's estate qualifies for a partially offsetting estate tax charitable deduction based on the present value of the charitable remainder interest

5. Charitable Remainder Annuity Trust – CRAT – Pays a fixed sum or percentage of the *initial* trust corpus to the non-charitable beneficiary. Percentage must be "not less than 5 percent nor more than 50 percent".

a. Advantages of CRATs

i. Good for grantors with appreciated property who want to make a substantial bequest upon death but want to use the income during their lifetimes

ii. The fixed annuity stream can benefit non-charitable beneficiaries other than the grantor

iii. Income tax deduction is larger than would be available for a comparable unitrust

iv. Generally provide a higher charitable deduction than unitrusts

v. Charitable remainder tends to be overvalued when the Service's assumed valuation tables on discount rates exceed the actual rates of return on the annuity assets

vi. Lower administrative costs than CRUTs since trust assets must be valued only at creation

b. Disadvantages of CRATs

i. No later contributions can be added to the CRAT, so another CRAT must be created if more deductions and/or higher annual income distributions are desired

ii. Corpus can only be invaded to meet payout requirements

iii. Corpus must be a certain sum and cannot be reduced by fees

6. Charitable Remainder Unitrust – CRUT – Pays a fixed percentage of the *annual* value of the trust assets to the non-charitable beneficiary. Percentage must be “not less than 5 percent nor more than 50 percent”.

a. Advantages of CRUTs

i. Good for grantors with appreciated property who want to make a substantial bequest upon death but want to use the income during their lifetimes

ii. The benefits stream can benefit non-charitable beneficiaries other than the grantor

iii. Variable payment each year protects the lifetime beneficiaries from the negative impact of inflation

iv. Can add to corpus in later years to increase deduction and income payments

v. Charitable remainder tends to be overvalued when the Service’s assumed valuation tables on discount rates exceed the actual rates of return on the annuity assets

b. Disadvantages of CRUTs

i. Lower income tax deduction than for comparable annuity trust

ii. Corpus can only be invaded to meet payout requirements

iii. Cannot contribute residential property that the donor continues to occupy or the donor will be treated as retaining an interest other than a unitrust interest and a self-dealing violation will occur

iv. Higher administrative costs since trust assets must be re-valued each year

B. Charitable Lead Trust

1. General Characteristics

a. Main uses – reduce gift tax exposure for inter vivos gifts and estate tax exposure for gifts at death

b. Fixed or variable annuity (the lead interest) is paid to a charity for a period measured by either a term of years or the life of one or more individuals. Charity must be designated when the trust is created or the donor must provide a method for designating the charity that is beyond his legal control.

c. Remainder passes outright or in trust to one or more non-charitable beneficiaries. Remainder beneficiary can be one or more individuals, partnerships, corporations, estates or trusts.

2. Charitable lead interest payments

a. Term can be measured by any of the following:

i. term of years;

ii. the life or lives of individuals living when the CLT is created; or

iii. the shorter of a term of years or a measuring life plus a term of years

b. Core requirement – term must be ascertainable when the CLT is created

c. No minimum or maximum payout requirement

d. No limitation on the number of years the annuity can be paid to the charity

3. Qualified CLTs

    a. Definition – a trust that meets the various statutory definitions that qualify a donor's transfer to the CLT for one or more tax deductions

    b. CLT must pay the charitable lead interest in the form of a fixed annuity or unitrust amount

        i. Charitable Lead Annuity Trust (CLAT)

            1. Fixed sum is distributed periodically (not less than annually) to one or more charitable beneficiaries

            2. Trust principal must be used to satisfy annuity payments if trust income is insufficient

            3. Can make provision to vary annuity payments as long as payments are determinable when CLAT is created

        ii. Charitable Lead Unitrust (CLUT)

            1. Fixed percentage of the net FMV of the trust assets is distributed periodically (not less than annually) to one or more charitable beneficiaries

            2. Trust principal must be used to satisfy annuity payments if trust income is insufficient

            3. Percentage CANNOT vary over the term of the CLUT

    c. Designation of charitable beneficiary can be left up to trustees, and trustees can change the beneficiary from year to year

    d. Types of Qualified CLTs

        i. Qualified Non-Grantor CLT

            1. Created inter vivos or at death

            2. Treated as separate taxpayer

ii. Qualified Grantor CLT

1. Created inter vivos

2. Grantor is treated as owner of CLT income for income tax purposes

3. Most commonly created by giving the donor or his spouse a reversionary interest with a value greater than 5% of the value of the CLT assets at the time assets are transferred to the CLT

iii. Non-Qualified Non-Grantor CLT

1. Created inter vivos

2. Charity receives "all net income" instead of an annuity or unitrust interest

4. Tax Consequences to the Donor of a Qualified Non-Grantor CLT

a. Income Tax – no immediate deductions available; CLT treated as a taxpayer separate and apart from the donor

b. Gift Tax

i. Deduction based on the present value of the charitable interest

ii. Remainder interest does NOT qualify for a gift tax per donee exclusion

iii. Gift must be complete – no deduction allowed if donor retains the power to directly or indirectly affect the charitable recipient

c. Estate Tax

i. Estate tax charitable deduction allowed for the value of the charitable interest

ii. If donor retains a lifetime revisionary interest in a lifetime CLT that exceeds 5% of the trust corpus and dies during the term of the trust, a portion of the value of the CLT is includable in his estate

d. Generation-Skipping Transfer Tax (GSTT)

i. A CLT and its charitable beneficiaries are non-skip persons, so the creation of a CLT and distributions to its charitable beneficiaries does not result in GSTT

ii. GSTT may be imposed upon termination of the charitable lead interest in a CLT if the remainder beneficiaries are skip persons in relation to the donor

iii. Generally, GSTT is paid from the remainder interest

5. Income Tax Consequences to the Qualified Non-Grantor CLT

a. CLT is taxed as a complex trust

b. Income in excess of the income tax deduction allowable with respect to the charitable payout is taxed to the CLT

c. CLT receives an unlimited charitable income tax deduction for gross income that are paid to the qualified charity during the taxable years pursuant to the terms of the trust instrument

d. Charitable deduction is reduced by any unrelated business income realized during the taxable year to the extent the UBI exceeds the percentage limitations applicable to individuals under § 170(b)(1)(A) §§ 681 and 512(b)(11)

e. Charitable deduction is limited to the extent capital gains or tax-exempt income is deemed distributed

f. CLT is subject to estimated tax payments

6. Income Tax Consequences to the Non-charitable Beneficiaries of a Qualified Non-Grantor CLT – generally no income tax during the ongoing term of the CLT

7. Tax Consequences to the Donor of a Qualified Grantor CLT

a. Income tax

i. Taxed as owned by the donor

ii. Deductions can be taken; all items of income, deduction and credit of the CLT are attributed to the donor

iii. Charitable income tax deduction is equal to the present value of all the qualified annuity or unitrust distributions payable to the charity

iv. Gift is considered “for the use of” the charity, so the 30% or 20% limitations apply

v. In all subsequent years, the donor is taxed on all CLT income

b. Estate and gift taxes – charitable deduction is allowed if a charitable designation is made after the CLT income is earned

8. Tax Consequences to the Donor of a Non-Qualified Non-Grantor CLT

a. NO income or gift tax charitable deduction allowed to donor

b. CLT income not taxed to donor

c. CLT qualifies for unlimited income tax deduction for the full amount going to charity § 642(c)

C. Pooled Income Fund

1. General Characteristics

a. Function much like charitable remainder trusts

b. Maintained by the charity

c. Charity comingles funds from multiple donors and gives donors a percentage of total trust shares

2. Income tax charitable deduction

a. Fund must qualify under § 642(c)(5)

b. Donor must retain life interest for himself or one or more non-charitable beneficiaries who are alive and ascertainable at the time of contribution

c. All contributions of the donor must be comingled by the charity and the funds must be maintained and controlled by the charity that holds the remainder interest

d. No donor or non-charitable beneficiary may serve as a fiduciary

e. Fund may not receive or invest in tax-exempts

f. Non-charitable beneficiaries entitled to receive income must receive an amount determined by the fund's rate of return for the year in question

g. The remainder interest must be separated from the fund and paid to the charity or retained for the charity's use upon the life interest's termination

3. Advantages of pooled income funds

    a. Generally no legal fees necessary to make the gift

    b. Donor may have the option to choose the character of income – many larger charities have several pooled income funds to choose from

    c. Gifts of appreciated property give the donor an immediate tax deduction, avoid the immediate payment of income tax on capital gains from the sale of the property, and recognize an immediate increase in cash flow for the donor or other non-charitable beneficiaries

4. Disadvantages of pooled income funds

    a. Corpus can't be invaded on a discretionary basis

    b. Donor doesn't get to select trustee, so he loses control over the investment strategy

WHEN SHOULD CLIENTS BE GIVING?

I. Income tax deductions

   A. Conversion to Roth

   B. Large income year

II. Estate tax deduction

   A. Children are well-established and have plenty of money

   B. Involve children in charitable giving

   C. Drafting will and trust

HOW SHOULD CLIENTS BE GIVING?

Assume Al Gator (who is 86) and Alberta Gator (who is 81) wish to give $100,000 cash to the SPCA. Further assume that the Gators are in the 35% income tax bracket, have $300,000 in annual income, have an estate of $1,000,000, and that the estate tax rate is 45%.

   A. Tax effects if no gift is made

      1. Income taxes paid: **$105,000** ($300,000 x 35%)

      2. Estate taxes paid with no gift: **$402,750** [($1,000,000-$105,000) x 45%]

   B. Tax effects of an outright lifetime gift

Outright Lifetime Gift

- *Income tax deduction of $100,000*
- *Taxable income after gift: $200,000 ($300,000 - $100,000)*
- *Income taxes paid after gift: $70,000 ($200,000 x 35%)*

Income taxes saved: $35,000

- *Taxable estate after gift: $830,000 ($1,000,000 - gift of $100,000 - income taxes paid of $70,000)*
- *Estate taxes paid after gift: $373,500 ($830,000 x 45%)*

Estate taxes saved: $29,250

Total taxes saved: $64,250

C. Tax effects of an outright testamentary gift

<u>Outright Testamentary Gift</u>

- *Estate tax deduction of $100,000*
- *Taxable estate after gift: $900,000 ($1,000,000- $100,000)*
- *Estate taxes paid after gift: $405,000 ($900,000 x 45%)*

Estate taxes saved ($450,000 – 405,000): $45,000

D. Tax effects of inter vivos CRUT

Donors are sole non-charitable beneficiaries and 5% unitrust beneficiaries; AFR is 3.4%; gift of $100,000:

- *Income tax deduction for charitable gift of $62,916 (PV of charitable remainder interest)*
- *Taxable income after gift: $237,084 ($300,000 - $62,916)*
- *Income taxes paid: $82,979 ($237,084 x 35%)*

Income taxes saved: $22,021 ($105,000- $82,979)

- *Taxable estate after gift: $817,021 ($1,000,000 - income taxes paid of $82,979 - gift of $100,000)*
- *Estate taxes paid after gift: $367,659 ($817,021 x 45%)*

Estate taxes saved: $37,341 ($405,000 - $367,659)

Total taxes saved: $59,362 ($22,021 + $37,341)

E. Tax effects of testamentary CRUT

Donor's spouse is sole non-charitable beneficiary:

- *$69,210 excluded from Donor's estate (value of CRT) (and $100,000 excluded from spouse's estate at spouse's death)*
- *Taxable estate after gift: $930,790 ($1,000,000 - $69,210)*
- *Estate taxes paid: $418,856 ($930,790 x 45%)*

Estate taxes saved: $31,144 ($450,000 - $418,856)

F. Tax effects of a Qualified Non-Grantor CLAT – AFR is 1.6%

- *Estate tax deduction of $23,987 (value of charitable interest)*
- *Taxable estate after gift: $976,013 ($1,000,000 - $23,987)*
- *Estate taxes paid: $439,205 ($976,013 x 45%)*

Estate taxes saved: $10,795 ($450,000 - $439,205)

G. Tax effects of a Qualified Grantor CLAT – AFR is 1.6%

- *Income tax deduction of $23,987 (PV of all annuity/unitrust distributions payable to the charity)*
- *Taxable income after gift: $276,013 ($300,000 - $23,987)*
- *Income taxes paid: $96,605 ($276,013 x 35%)*

Income taxes saved: $8,395 ($105,000 - $96,605)

H. Tax effects of a Charitable Gift Annuity

- *Gift of cash: $100,000*
- *Annuity of 7.4%*
- ***Income tax deduction for Charitable Gift: $34,851***
- *Income taxes paid by Al and Alberta: $92,802 ($300,000 - $34,851 = $265,149 x 35%)*

Income taxes saved: $12,198 ($105,000 - $92,802)

II. IRS Form – CRUT for One Life – Rev. Proc. 2005-52 – Inter Vivos Charitable Remainder Unitrust for One Measuring Life

Table of Contents

SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements of § 664(d)(2) and (d)(3) of the Internal Revenue Code for an inter vivos charitable remainder unitrust (CRUT) providing for unitrust 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 CRUTs. The Service is updating the previously issued samples and issuing new samples for additional types of CRUTs; 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 CRUT providing for unitrust payments for one measuring life, samples are provided in other separate revenue procedures for:

a. an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-53);
b. an inter vivos CRUT providing for unitrust payments payable consecutively for two measuring lives (see Rev. Proc. 2005-54, superseding section 4 of Rev. Proc. 90-30, 1990-1 C.B. 534, and section 5 of Rev. Proc. 90-31, 1990-1 C.B. 539);
c. an inter vivos CRUT providing for unitrust payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2005-55, superseding section 5 of Rev. Proc. 90-30 and section 6 of Rev. Proc. 90-31);
d. a testamentary CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005-56, superseding section 6 of Rev. Proc. 90-30 and section 7 of Rev. Proc. 90-31);
e. a testamentary CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-57);
f. a testamentary CRUT providing for unitrust payments payable consecutively for two measuring lives (see Rev. Proc. 2005-58, superseding section 7 of Rev. Proc. 90-30 and section 8 of Rev. Proc. 90-31); and
g. a testamentary CRUT providing for unitrust payments payable concurrently and consecutively for two measuring lives (see Rev. Proc. 2005-59, superseding section 8 of Rev. Proc. 90-30 and section 9 of Rev. Proc. 90-31).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for an inter vivos CRUT 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 certain alternate provisions concerning: (.01) the payment of part of the unitrust amount to an organization described in § 170(c); (.02) a qualified contingency; (.03) the last unitrust payment to the recipient; (.04) the restriction of the charitable remainderman to a public charity; (.05) a retained right to substitute the charitable remainderman; (.06) a power of appointment to designate the charitable remainderman; (.07) the net income method of calculating the unitrust amount; (.08) the net income with make-up method of calculating the unitrust amount; and (.09) a combination of methods for calculating the unitrust amount.

For transfers to a qualifying CRUT, as defined in § 664(d)(2) and, if applicable, § 664(d)(3), 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) also are met. The Service will recognize a trust as a qualified CRUT meeting all of the requirements of § 664(d)(2) and, if applicable, § 664(d)(3), 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 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 providing for unitrust payments for one measuring life qualifies as a CRUT. 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 CRUT.

SECTION 4. SAMPLE INTER VIVOS CHARITABLE REMAINDER UNITRUST — ONE LIFE

On this ______ day of ______, 20___, I, ________ (hereinafter "the Donor"), desiring to establish a charitable remainder unitrust within the meaning of Rev. Proc. 2005-52 and § 664(d)(2) 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 Unitrust.

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, and any property subsequently transferred, under the terms set forth in this trust instrument.

2. ***Payment of Unitrust Amount.*** In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter "the Recipient") a unitrust amount equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the first day of each taxable year of the trust (hereinafter "the valuation date"). The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death. The unitrust 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 unitrust amount shall be added to principal. If, for any year, the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, 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 unitrust amount(s) properly payable and the unitrust amount(s) actually paid.

3. ***Proration of Unitrust Amount.*** For a short taxable year and for the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the unitrust amount described in paragraph 2, or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 5.

4. ***Distribution to Charity.*** At the termination of the unitrust period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the terms of this trust) 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.*** If any additional contributions are made to the trust after the initial contribution, the unitrust amount for the year in which any additional contribution is made shall be [*same percentage used in paragraph 2*] percent of the sum of (a) the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year) and (b) for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period. In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

6. ***Deferral of the Unitrust Payment Allocable to Testamentary Transfer.*** All property passing to the trust by reason of the death of the Donor (hereinafter "the testamentary transfer") shall be considered to be a single contribution that is made on the date of the Donor's death. Notwithstanding the provisions of paragraphs 2 and 5 above, the obligation to pay the unitrust amount with respect to the testamentary transfer shall commence with the date of the Donor's death. Nevertheless, payment of the unitrust amount with respect to the testamentary transfer

may be deferred from the date of the Donor's death until the end of the taxable year in which the funding of the testamentary transfer is completed. Within a reasonable time after the end of the taxable year in which the testamentary transfer is completed, 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 unitrust amounts allocable to the testamentary transfer that were actually paid, plus interest, and the unitrust amounts allocable to the testamentary transfer that were 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.

7. ***Unmarketable Assets*.** Whenever the value of a trust asset must be determined, the Trustee shall determine the value of any assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents (hereinafter "unmarketable assets"), by either (a) obtaining a current "qualified appraisal" from a "qualified appraiser," as defined in § 1.170A-13(c)(3) and § 1.170A-13(c)(5) of the Income Tax Regulations, respectively, or (b) ensuring the valuation of these unmarketable assets is performed exclusively by an "independent trustee," within the meaning of § 1.664-1(a)(7)(iii) of the Income Tax Regulations.

8. ***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.

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

10. ***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 unitrust under § 664(d)(2) of the Code and the corresponding regulations.

11. ***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 unitrust within the meaning of § 664(d)(2) of the Code.

12. ***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.

13. ***Definition of Recipient*.** References to the Recipient in this trust instrument shall be deemed to include the estate of the Recipient with regard to all provisions in this trust instrument that describe amounts payable to and/or due from the Recipient. The prior sentence shall not apply to the determination of the last day of the unitrust period.

SECTION 5. ANNOTATIONS REGARDING SAMPLE INTER VIVOS CHARITABLE REMAINDER UNITRUST — 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 unitrust amount. Section 1.664-1(a)(4). In addition, funding the trust with certain types of assets may disqualify 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 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). See section 5.07 of this revenue procedure for further guidance related to the valuation of unmarketable assets.
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 6.04 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 Unitrust Amount, of the Sample Trust.*

1. ***Permissible recipients.*** For a CRUT with a unitrust period based on the life of one individual, the unitrust 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 unitrust 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 unitrust amount. Section 664(d)(2)(A) and § 1.664-3(a)(3)(i). See section 6.01 of this revenue procedure for an alternate provision that provides for payment of part of the unitrust amount to an organization described in § 170(c).
2. ***Fixed percentage method.*** Paragraph 2, Payment of Unitrust Amount, of the sample trust calculates the unitrust amount under the fixed percentage method by using a fixed percentage of the net fair market value of the trust assets valued annually. See section 6.07 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.08 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.09 of this revenue procedure for an alternate provision that uses a combination of methods for calculating the unitrust amount as described in § 1.664-3(a)(1)(i)(*c*).
3. ***Percentage requirements.*** The fixed percentage unitrust amount must be at least 5 percent and not more than 50 percent of the annual net fair market value of the assets in the trust. Section 664(d)(2)(A). In addition, with respect to each contribution of property to the trust, the value of the charitable remainder interest (determined under § 7520) is required to be at least 10 percent of the net fair market value of the contributed property as of the date of its contribution to the trust. Section 664(d)(2)(D).
4. ***Payment of unitrust amount in installments.*** Paragraph 2, Payment of Unitrust Amount, of the sample trust specifies that the unitrust amount is to be paid in equal quarterly installments at the end of each quarter. However, the trust instrument may specify that the unitrust amount is to be paid to the recipient annually or in equal or unequal installments throughout the year. See § 1.664-3(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 § 1.664-3(c) and § 1.664-4.
5. ***Rules applicable to valuation.*** Paragraph 2, Payment of Unitrust Amount, of the sample trust specifies that the net fair market value of trust assets is to be valued as of the first day of each taxable year of the trust. However, the value of the trust assets may be determined on any one date during the taxable year of the trust, or by taking the average of valuations made on more than one date during the taxable year of the trust, so long as the same valuation date or dates and the same valuation methods are used each year. If the governing instrument does not specify the valuation date or dates, the trustee must select the date or dates and indicate the selection on the first Form 5227, "*Split-Interest Trust Information Return,*" that the trust must file. Section 1.664-3(a)(1)(iv). Note that if

the valuation date is a date other than the first day of each taxable year of the trust, it may be necessary to modify the provisions in the sample trust regarding: (i) the timing of the payment of the unitrust amount; (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period; and (iii) additional contributions. See § 1.664-3(a)(1)(v) and § 1.664-3(b). See section 5.05(4) for further guidance related to the valuation date and additional contributions.

6. ***Payment of unitrust amount by close of taxable year.*** Generally, the unitrust amount for any taxable year, if computed under the fixed percentage method, must be paid before the close of the taxable year for which it is due. For circumstances under which the unitrust amount computed under the fixed percentage method may be paid within a reasonable time after the close of the taxable year, see § 1.664-3(a)(1)(i)(*g*) and (*k*). See section 5.06(2) of this revenue procedure for additional information regarding the deferral of the unitrust payment allocable to a testamentary transfer.
7. ***Incorrect valuations.*** Nothing in § 664 or the regulations thereunder requires that interest be paid on the amount of any underpayment or overpayment of the unitrust amount resulting from the incorrect valuation of trust assets. Section 1.664-3(a)(1)(iii). Notwithstanding the foregoing, state law may require the payment of interest on the amount of any such underpayment or overpayment of the unitrust amount.
8. ***Early distributions to charity.*** The trust instrument may provide that an amount other than the unitrust amount 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 1.664-3(a)(4).

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

1. ***Prorating unitrust amount.*** To compute the unitrust amount in a short taxable year and in the taxable year in which the unitrust period terminates, see § 1.664-3(a)(1)(v)(*a*) and (*b*), respectively.
2. ***Determining unitrust amount payable in year of recipient's death.*** Paragraph 3, Proration of Unitrust Amount, of the sample trust specifies that the unitrust amount shall be prorated on a daily basis. See section 6.03 of this revenue procedure for an alternate provision that provides for the termination of the payment of the unitrust 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(3) of this revenue procedure, with respect to each contribution of property to the trust, the value of the charitable remainder interest (determined under § 7520) is required to be at least 10 percent of the net fair market value of the property contributed to the trust as of the date of its contribution to the trust. Section 664(d)(2)(D).

2. ***Distribution to remainderman.*** The trustee of a charitable remainder trust has a reasonable time after the termination of the unitrust period to complete the settlement of the trust, including making the required distributions. See § 1.664-3(a)(6)(ii).
3. ***Designated remainderman.*** Any named charitable remainderman must be an organization described in § 170(c) at the time of the transfer to the CRUT. See § 664(d)(2)(C). Any named charitable remainderman must also 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 6.05 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.06 of this revenue procedure for an alternate provision in which the recipient is granted a power of appointment to designate the charitable remainderman.
4. ***Multiple remaindermen.*** The remainder interest may pass to more than one charitable organization as long as each organization is described in §§ 170(c) and 2522(a), and, if needed, § 2055(a). Section 1.664-3(a)(6)(i).
5. ***Alternative remaindermen.*** The trust instrument of a CRUT must provide a means for selecting alternative charitable remaindermen in the event any designated organization is not qualified at the time any payments are to be made to it from the trust. Section 1.664-3(a)(6)(iv). This requirement is satisfied in the sample trust by conferring the power upon the trustee to designate an alternative charitable remainderman. Note that the donor may designate one or more alternative charitable remaindermen in the trust instrument; however, the trust instrument must continue to provide a means for selecting an alternative charitable remainderman if any designated organization is not qualified at the time payments are to be made to it from the trust.
6. ***Continuing trust for charity.*** Upon the expiration of the unitrust period, the trust may continue in existence for charity. See § 1.664-3(a)(6)(ii). See section 5.08(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.05 *Annotations for Paragraph 5, Additional Contributions, of the Sample Trust.*

1. ***Identity of additional contributors.*** For purposes of qualification under this revenue procedure, only a donor or a donor's estate may make an additional contribution to the trust. See section 5.01(5) of this revenue procedure for examples of who may be a donor of a CRUT for purposes of qualification under this revenue procedure.
2. ***Proration of additional contributions.*** Paragraph 5, Additional Contributions, of the sample trust provides a formula for determining the unitrust amount in each year that an additional contribution is made to the CRUT. If an additional contribution is made in a short taxable year or in the taxable year of the recipient's death, the unitrust amount computed under paragraph 5 of the sample trust must be prorated pursuant to paragraph 3, Proration of Unitrust Amount, of the sample trust.
3. ***Severance of certain additional contributions.*** If an additional contribution is made to an existing CRUT and the contribution does not satisfy the 10 percent test described in § 664(d)(2)(D), the contribution shall be treated as a transfer to a separate trust. Section 664(d)(4).
4. ***Valuation date in year of additional contribution.*** Paragraph 2, Payment of Unitrust Amount, of the sample trust specifies a January 1 valuation date for the trust. The formula contained in paragraph 5, Additional Contributions, of the sample trust may be used when January 1 or any other single date during the taxable year is selected as the valuation date for a CRUT. Note, however, that if a single date other than January 1 is selected as the valuation date for a CRUT, the formulas in both paragraphs 2 and 5 of the sample trust for computing the unitrust amount will be deficient unless the trust instrument addresses the possibility that the unitrust period may end before the valuation date, for instance, by providing that in a year in which the unitrust period ends before the valuation date, "the valuation date" for purposes of paragraph 2 and paragraph 5 shall be the last day of the unitrust period. In addition, if the trust instrument is drafted to provide for the valuation of trust assets by averaging the valuations as of multiple specified dates during the trust year, the additional contributions formula will require modification.
5. ***Option to prohibit additional contributions.*** Paragraph 5, Additional Contributions, of the sample trust provides rules for determining the unitrust amount payable in a year during which an additional contribution is made to the trust. However, paragraph 5 of the trust instrument may instead prohibit contributions to the trust after the initial contribution. Section 1.664-3(b). In such an instance, all references to the unitrust amount computed under paragraph 5 must be removed from the sample trust and paragraph 6, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust should be deleted.

.06 *Annotations for Paragraph 6, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the Sample Trust.*

1. ***Contribution at death of donor.*** All property passing to a charitable remainder unitrust by reason of the death of the donor shall be considered to constitute a single contribution. Section 1.664-3(b).
2. ***Testamentary additions.*** If the donor is not the recipient and the donor makes an additional contribution at death whereby the obligation to pay the unitrust amount with

respect to any property passing to the trust by reason of the donor's death begins as of the date of the donor's death, the requirement to pay the portion of the unitrust amount allocable to that contribution may be deferred pursuant to the provisions of § 1.664-1(a)(5)(i). The deferral provision in paragraph 6 of the sample trust uses the method for computing deferred payments that is provided in § 1.664-1(a)(5)(i). Note that § 1.664-1(a)(5)(ii) provides an alternate method for determining the amount described in § 1.664-1(a)(5)(i)(*b*), *i.e.*, the unitrust amounts payable plus interest on those amounts. Rev. Rul. 92-57, 1992-2 C.B. 123, provides sample language to be included in the governing instrument if the alternate method set forth in § 1.664-1(a)(5)(ii) for determining the amount described in § 1.664-1(a)(5)(i)(*b*) is selected. Note that paragraph 6, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust may be deleted if the donor is the recipient.

.07 *Annotations for Paragraph 7, Unmarketable Assets, of the Sample Trust*.

1. ***Multiple trustees*.** Any co-trustee who is an independent trustee, within the meaning of § 1.664-1(a)(7)(iii), may value the trust's unmarketable assets.
2. ***Valuation using qualified appraisal or independent trustee*.** The trustee may alternately use an independent trustee or a qualified appraisal by a qualified appraiser to value unmarketable assets. For instance, an unmarketable asset that is valued in one year by an independent trustee may be valued in a successive year by a qualified appraiser in a qualified appraisal. In addition, within a single year, some unmarketable assets may be valued by a qualified appraiser while others are valued by an independent trustee.
3. ***Appointment of independent trustee*.** The governing instrument may authorize the trustee of the trust to appoint from time to time an independent trustee, within the meaning of § 1.664-1(a)(7)(iii), to perform the valuation of unmarketable assets.

.08 *Annotations for Paragraph 8, Prohibited Transactions, of the Sample Trust*.

1. ***Payment of the unitrust amount*.** Payment of the unitrust 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 within the meaning of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings within the meaning of § 4943, as modified by § 4947(a)(2)(A), are required if the trust provides for payment of any part of a unitrust amount to an organization described in § 170(c) and gift and/or estate tax charitable deductions are sought for the organization's interest in the unitrust amount. See § 4947(b)(3). See section 6.01 of this revenue procedure for an alternate provision that provides for payment of part of the unitrust amount 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 unitrust 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 8 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 unitrust 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(a) and (b).

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

.01 *Payment of Part of the Unitrust Amount to an Organization Described in § 170(c)*.

1. ***Explanation*.** An organization described in § 170(c) may receive part, but not all, of any unitrust amount. Section 664(d)(2)(A). If a gift tax charitable deduction and, if needed, an estate tax charitable deduction are sought for the present value of the unitrust interest passing to a charitable organization, the trust instrument must contain additional provisions. First, the trust instrument must specify the portion of each unitrust 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 unitrust amount is to be paid to it. Third, the trust instrument must contain prohibitions against investments that jeopardize the exempt purpose of the trust within the meaning of § 4944, as modified by § 4947(a)(2)(A), and against retaining any excess business holdings within the meaning of § 4943, as modified by § 4947(a)(2)(A).
2. ***Instructions for use*.**
   a. Replace paragraph 2, Payment of Unitrust Amount, of the sample trust with the following paragraph:

      Payment of Unitrust Amount. The unitrust amount is equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the first day of each taxable year of the trust (hereinafter "the valuation date"). In each taxable year of the trust during the unitrust period, the Trustee shall pay [*the percentage of the unitrust amount payable to the* *noncharitable recipient*] percent of the unitrust amount to [*permissible recipient*] (hereinafter "the Recipient") and [*the percentage of the unitrust amount payable to the charitable recipient*] percent of the unitrust 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 unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust 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 unitrust payment is to be distributed to it, then the Trustee shall distribute that unitrust 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 unitrust 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 unitrust amount shall be added to principal. If, for any year, the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, 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 unitrust amount(s) properly payable and the unitrust 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 terms of this trust)

c. Replace each reference to "the Recipient" in paragraph 6, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust with a reference to "the Recipient and the Charitable Recipient."

d. Add the following sentence after the first and only sentence in paragraph 8, Prohibited Transactions, of the sample trust:

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

.02 *Qualified Contingency.*

1. ***Explanation.*** Under § 664(f), payment of the unitrust 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. ***Instructions for use.*** Replace the second sentence of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following sentence:

   The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death or, if earlier, the date on which occurs the [*qualified contingency*].

.03 *Last Unitrust Payment to the Recipient.*

1. ***Explanation.*** As an alternative to prorating the unitrust amount in the taxable year of the recipient's death, the obligation to pay the unitrust amount may terminate with the last regular payment preceding the recipient's death. However, the fact that the recipient may not receive a final prorated payment shall not be taken into account for purposes of determining the present value of the remainder interest. Section 1.664-3(a)(5)(i). Note that although the obligation to pay the unitrust amount may terminate with the last regular payment preceding the recipient's death, the trustee must pay to the recipient's estate any amounts allocated to the payments payable before the recipient's death that are due as a result of an adjustment to the unitrust amount payable for that year, as in the case of an undervaluation or an additional contribution.
2. ***Instructions for use.*** Replace paragraph 3, Proration of Unitrust Amount, of the sample trust with the following paragraph:

   Proration of Unitrust Amount. For a short taxable year, the Trustee shall prorate on a daily basis the unitrust amount described in paragraph 2, or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 5. In the taxable year of the trust during which the unitrust period ends, however, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Recipient.

.04 *Restricting the Charitable Remainderman to a Public Charity.*

1. ***Explanation.*** The amount of the donor's charitable contribution deduction for income tax purposes may be limited by the percentage of income limitations described in § 170(b). In general, a larger charitable contribution deduction may be available for income tax purposes for a contribution to a charitable organization described in § 170(b)(1)(A) than for a contribution to a private foundation (other than a private foundation described in § 170(b)(1)(E)). See § 170(b) and Rev. Rul. 79-368, 1979-2 C.B. 109. To take advantage of the larger charitable contribution deduction for income tax purposes, a donor of an inter vivos CRUT 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."

.05 *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. ***Instructions 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.

.06 *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. ***Instructions for use.*** Replace paragraph 4, Distribution to Charity, of the sample trust with the following paragraph:

   Distribution to Charity. At the termination of the unitrust period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the terms of this trust) 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.

.07 *Net Income Method of Calculating the Unitrust Amount.*

1. ***Explanation.*** As an alternative to using the fixed percentage method of calculating the unitrust amount in paragraph 2 of the sample trust, a CRUT may use the net income method for calculating the unitrust amount. Under the net income method, the unitrust amount is the lesser of a fixed percentage of the net fair market value of the trust assets valued annually or the amount of trust income for that year. Section 664(d)(3)(A) and § 1.664-3(a)(1)(i)(*b*)(*1*). For purposes of determining the amount of the charitable contribution, the remainder interest is computed on the basis that an amount equal to the fixed percentage unitrust amount is to be distributed each year, without regard to the possibility that a smaller amount of trust income may be the amount distributed. Section 664(e).
2. ***Definition of trust income.*** For purposes of the methods described in § 664(d)(3), trust income generally means income as defined under § 643(b) and the applicable regulations. Section 1.664-3(a)(1)(i)(*b*)(*3*). Even if permitted by applicable state law, however, trust income of a CRUT that uses the net income method, the net income with make-up method, or a combination of methods of determining the unitrust amount may not be determined by reference to a fixed percentage of the net fair market value of the trust property. In addition, although certain proceeds from the sale or exchange of assets must be allocated to principal and not to trust income, other such proceeds may be allocated to trust income pursuant to the terms of the governing instrument, if not prohibited by applicable local law. A discretionary power to make this allocation may be granted to the trustee under the terms of the governing instrument, but only to the extent that the applicable state statute permits the trustee to make adjustments between income and principal to treat beneficiaries impartially. Section 1.664-3(a)(1)(i)(*b*)(*3*). A definition of trust income that is consistent with these requirements may, but need not, be included in the trust instrument.
3. ***Instructions for use.***
    a. Each and every time a reference to "§ 664(d)(2)" appears in the sample trust, replace it with a reference to "§ 664(d)(2) and (d)(3)."
    b. Replace the first four sentences of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following:

    In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter "the Recipient") a unitrust amount equal to the lesser of (a) a fixed percentage amount equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the valuation date (hereinafter "the fixed percentage amount described in (a) of paragraph 2") or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. The valuation date is the first day of each taxable year of the trust. The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death. The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.

c. Replace paragraph 3, Proration of Unitrust Amount, of the sample trust with the following paragraph:

   Proration of Unitrust Amount. For a short taxable year and for the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the fixed percentage amount described in (a) of paragraph 2, or, if an additional contribution is made to the trust, the fixed percentage amount described in (a) of paragraph 5. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 2 or in (a) of paragraph 5 to determine the unitrust amount payable for that year.

d. Replace paragraph 5, Additional Contributions, of the sample trust with the following paragraph:

   Additional Contributions. Notwithstanding paragraph 2, if any additional contributions are made to the trust after the initial contribution, the unitrust amount for the year in which any additional contribution is made shall be equal to the lesser of (a) a fixed percentage amount equal to [*same percentage used in (a) of paragraph 2*] percent of the sum of (1) the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year) and (2) for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period (hereinafter “the fixed percentage amount described in (a) of paragraph 5”) or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

.08 *Net Income with Make-up Method of Calculating the Unitrust Amount.*

1. ***Explanation.*** As an alternative to using the fixed percentage method of calculating the unitrust amount in paragraph 2 of the sample trust, a CRUT may use the net income with make-up method for calculating the unitrust amount. Under the net income with make-up method, the unitrust amount consists of two components: (i) the amount determined under the net income method (as described in section 6.07 of this revenue procedure); and (ii) the amount of trust income that is in excess of the fixed percentage amount for

that year, but only to the extent that the aggregate of the unitrust amounts paid to the recipient in prior years was less than the amounts that would have been paid to the recipient if the unitrust amount had been computed using the fixed percentage method. Section 664(d)(3)(B) and § 1.664-3(a)(1)(i)(*b*)(*2*). For purposes of determining the amount of the charitable contribution, the remainder interest is computed on the basis that an amount equal to the fixed percentage unitrust amount is to be distributed each year, without regard to the possibility that a smaller or larger amount of trust income may be the amount distributed. Section 664(e). See section 6.07(2) of this revenue procedure for rules relating to the definition of trust income.

2. *Instructions for use*.

a. Each and every time a reference to "§ 664(d)(2)" appears in the sample trust, replace it with a reference to "§ 664(d)(2) and (d)(3)."

b. Replace the first four sentences of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following:

In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter "the Recipient") a unitrust amount equal to the lesser of (a) a fixed percentage amount equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the valuation date (hereinafter "the fixed percentage amount described in (a) of paragraph 2") or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. The unitrust amount for a taxable year shall also include any amount of trust income for the year that is in excess of [*the fixed percentage amount determined under (a) of this paragraph for the year*], but only to the extent that the aggregate of the amounts paid to the Recipient in prior years was less than the aggregate of the amounts determined for all prior years under (a) of this paragraph and (a) of paragraph 5. The valuation date is the first day of each taxable year of the trust. The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death. The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.

c. Replace paragraph 3, Proration of Unitrust Amount, of the sample trust with the following paragraph:

Proration of Unitrust Amount. For a short taxable year and for the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the fixed percentage amount described in (a) of paragraph 2, or, if an additional contribution is made to the trust, the fixed percentage amount described in (a) of paragraph 5. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 2 or in (a) of paragraph 5 to determine the unitrust amount payable for that year.

d. Replace paragraph 5, Additional Contributions, of the sample trust with the following paragraph:

Additional Contributions. Notwithstanding paragraph 2, if any additional contributions are made to the trust after the initial contribution, the unitrust amount for the year in which any additional contribution is made shall be equal to the lesser of (a) a fixed percentage amount equal to [*same percentage used in (a) of paragraph 2*] percent of the sum of (1) the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year) and (2) for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period (hereinafter "the fixed percentage amount described in (a) of paragraph 5") or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. The unitrust amount for that year shall also include any amount of trust income for the year that is in excess of [*the fixed percentage amount determined under (a) of this paragraph for the year*], but only to the extent that the aggregate of the amounts paid to the Recipient in prior years was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 2 and (a) of this paragraph. In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

.09 *Combination of Methods for Calculating the Unitrust Amount.*

1. ***Explanation.*** The net income method (described in section 6.07 of this revenue procedure) or the net income with make-up method (described in section 6.08 of this revenue procedure) may be combined with the fixed percentage method for calculating the unitrust amount. Section 1.664-3(a)(1)(i)(*c*). More specifically, the governing instrument may provide for payment of the unitrust amount not less often than annually using the net income or the net income with make-up method of calculation, and then, in the years following a permissible triggering event (as described in § 1.664-3(a)(1)(i)(*c*) and (*d*)), for payment of the unitrust amount using the fixed percentage method of calculation. To provide for a one-time conversion from the net income or the net income with make-up method to the fixed percentage method of calculation, the governing instrument must provide that: (i) the change in method is triggered on a specific date or by a single event whose occurrence is not discretionary with, or within the control of, the

trustees or any other persons; (ii) the change in method occurs at the beginning of the taxable year that immediately follows the taxable year during which the permissible triggering event occurs; and (iii) following the trust's conversion to the fixed percentage method, the trust will pay at least annually to the recipient the amount described in § 1.664-3(a)(1)(i)(*a*) and no amount described in § 1.664-3(a)(1)(i)(*b*). Section 1.664-3(a)(1)(i)(*c*). Thus, any make-up amount described in § 1.664-3(a)(1)(i)(*b*)(*2*) that is not paid by the beginning of the taxable year immediately following the taxable year during which the permissible triggering event occurs shall be forfeited by the recipient and added to principal.

2. ***Instructions for use to combine the net income and fixed percentage methods.*** To convert from the net income method for calculating the unitrust amount to the fixed percentage method after a permissible triggering event:
    a. Each and every time a reference to "§ 664(d)(2)" appears in the sample trust, replace it with a reference to "§ 664(d)(2) and (d)(3)."
    b. Replace paragraph 2, Payment of Unitrust Amount, of the sample trust with the following paragraph:

    Payment of Unitrust Amount.

    i. *Unitrust amount determined by net income method*. In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter "the Recipient") a unitrust amount equal to the lesser of (a) a fixed percentage amount equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the valuation date (hereinafter "the fixed percentage amount described in (a) of paragraph 2(i)") or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.

    ii. *Conversion to fixed percentage method of determining unitrust amount*. Notwithstanding paragraph 2(i), upon the occurrence of [*permissible triggering event as described in § 1.664-3(a)(1)(i)(c) and (d) of the Income Tax Regulations*] (hereinafter "the triggering event") and effective as of the first day of the taxable year that immediately follows the triggering event (hereinafter "the effective date of the triggering event"), the Trustee shall pay to the Recipient in each remaining taxable year of the trust during the unitrust period a unitrust amount equal to [*same percentage used in (a) of paragraph 2(i)]* percent of the net fair market value of the trust assets as of the valuation date. Beginning on the effective date of the triggering event, the Trustee shall no longer pay the amount equal to the lesser of (a) or (b) in paragraph 2(i). The unitrust 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 unitrust amount shall be added to principal.

iii. *In general*. The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death. The valuation date is the first day of each taxable year of the trust. If, for any year, the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, 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 unitrust amount(s) properly payable and the unitrust amount(s) actually paid.

c. Replace paragraph 3, Proration of Unitrust Amount, of the sample trust with the following paragraph:

Proration of Unitrust Amount.

i. *Proration in years preceding the effective date of triggering event*. For a short taxable year before the effective date of the triggering event, which may include the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the fixed percentage amount described in (a) of paragraph 2(i) or, if an additional contribution is made to the trust, the fixed percentage amount described in (a) of paragraph 5(i). In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 2(i) or in (a) of paragraph 5(i) to determine the unitrust amount payable for that year.

ii. *Proration on and after effective date of triggering event*. For a short taxable year beginning on or after the effective date of the triggering event, which may include the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the unitrust amount described in paragraph 2(ii) or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 5(ii).

d. Replace paragraph 5, Additional Contributions, of the sample trust with the following paragraph:

Additional Contributions.

i. *Additional contributions made before effective date of triggering event*. Notwithstanding paragraph 2(i), if any additional contributions are made to the trust after the initial contribution and before the effective date of the triggering event, the unitrust amount for the year in which the additional contribution is made shall be equal to the lesser of:

a. a fixed percentage amount equal to [*same percentage used in (a) of paragraph 2(i)*] percent of the sum of:
    1. the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year); and
    2. for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period

   (hereinafter "the fixed percentage amount described in (a) of paragraph 5(i)"); or

b. the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations.

In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

ii. *Additional contributions made on or after effective date of triggering event*. Notwithstanding paragraph 2(ii), if any additional contributions are made to the trust after the initial contribution and on or after the effective date of the triggering event, the unitrust amount described in paragraph 2(ii) for the year in which the additional contribution is made shall be [*same percentage used in (a) of paragraph 2(i)*] percent of the sum of:

   a. the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year); and
   b. for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the

date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period.

In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date. Beginning on the effective date of the triggering event, the trustee shall no longer pay the amount equal to the lesser of (a) or (b) in paragraph 5(i).

3. ***Instructions for use to combine the net income with make-up and fixed percentage methods***. To convert from the net income with make-up method for calculating the unitrust amount to the fixed percentage method after a permissible triggering event:
   a. Each and every time a reference to "§ 664(d)(2)" appears in the sample trust, replace it with a reference to "§ 664(d)(2) and (d)(3)."
   b. Replace paragraph 2, Payment of Unitrust Amount, of the sample trust with the following paragraph:

   Payment of Unitrust Amount.

   i. *Unitrust amount determined by net income with make-up method*. In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter "the Recipient") a unitrust amount equal to the lesser of (a) a fixed percentage amount equal to [*a number no less than 5 and no more than 50*] percent of the net fair market value of the assets of the trust valued as of the valuation date (hereinafter "the fixed percentage amount described in (a) of paragraph 2(i)") or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. The unitrust amount for a taxable year shall also include any amount of trust income for the year that is in excess of [*the fixed percentage amount determined under (a) of paragraph 2(i) for the year*], but only to the extent that the aggregate of the amounts paid to the Recipient in prior years was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 2(i) and (a) of paragraph 5(i). The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.
   ii. *Conversion to fixed percentage method of determining unitrust amount*. Notwithstanding paragraph 2(i), upon the occurrence of [*permissible

triggering event as described in § 1.664-3(a)(1)(i)(c) and (d) of the Income Tax Regulations] (hereinafter "the triggering event") and effective as of the first day of the taxable year that immediately follows the triggering event (hereinafter "the effective date of the triggering event"), the Trustee shall pay to the Recipient in each remaining taxable year of the trust during the unitrust period a unitrust amount equal to [*same percentage used in (a) of paragraph 2(i)*] percent of the net fair market value of the trust assets as of the valuation date. Beginning on the effective date of the triggering event, the Trustee shall no longer pay the amount equal to the lesser of (a) or (b) in paragraph 2(i) and shall not pay any amount of trust income described in the second sentence of paragraph 2(i). The unitrust 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 unitrust amount shall be added to principal.

iii. *In general*. The first day of the unitrust period shall be the date property is first transferred to the trust and the last day of the unitrust period shall be the date of the Recipient's death. The valuation date is the first day of each taxable year of the trust. If, for any year, the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, 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 unitrust amount(s) properly payable and the unitrust amount(s) actually paid.

c. Replace paragraph 3, Proration of Unitrust Amount, of the sample trust with the following paragraph:

Proration of Unitrust Amount.

i. *Proration in years preceding the effective date of triggering event*. For a short taxable year before the effective date of the triggering event, which may include the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the fixed percentage amount described in (a) of paragraph 2(i) or, if an additional contribution is made to the trust, the fixed percentage amount described in (a) of paragraph 5(i). In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 2(i) or in (a) of paragraph 5(i) to determine the unitrust amount payable for that year.

ii. *Proration on and after effective date of triggering event*. For a short taxable year beginning on or after the effective date of the triggering event, which may include the taxable year during which the unitrust period ends, the Trustee shall prorate on a daily basis the unitrust amount described in paragraph 2(ii) or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 5(ii).

d. Replace paragraph 5, Additional Contributions, of the sample trust with the following paragraph:

Additional Contributions.

i. *Additional contributions made before effective date of triggering event*. Notwithstanding paragraph 2(i), if any additional contributions are made to the trust after the initial contribution and before the effective date of the triggering event, the unitrust amount for the year in which the additional contribution is made shall be equal to the lesser of:

   a. a fixed percentage amount equal to [*same percentage used in (a) of paragraph 2(i)*] percent of the sum of:

      1. the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year); and
      2. for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period

   (hereinafter "the fixed percentage amount described in (a) of paragraph 5(i)"); or

   b. the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations.

The unitrust amount for that year shall also include any amount of trust income for the year that is in excess of [*the fixed percentage amount determined under (a) of paragraph 5(i) for the year*], but only to the extent that the aggregate of the amounts paid to the Recipient in prior years was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 2(i) and (a) of this paragraph. In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

ii. *Additional contributions made on or after effective date of triggering event*. Notwithstanding paragraph 2(ii), if any additional contributions are made to the trust after the initial contribution and on or after the effective date of the triggering event, the unitrust amount described in paragraph 2(ii) for the year in which the additional contribution is made shall be [*same percentage used in (a) of paragraph 2(i)*] percent of the sum of:

a. the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year); and
b. for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period.

In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date. Beginning on the effective date of the triggering event, the Trustee shall no longer pay the amount equal to the lesser of (a) or (b) in paragraph 5(i) and shall not pay any amount of income described in the second sentence of paragraph 5(i).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 89-20, 1989-1 C.B. 841, and section 4 of Rev. Proc. 90-31 are 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).

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