

Part III – Administrative, Procedural, and Miscellaneous

Extension of June 28, 2005, Safe Harbor Date

Notice 2006-15

The purpose of this notice is to extend the June 28, 2005, grandfather date in Rev. Proc. 2005-24, 2005-16, I.R.B. 909, until further guidance is issued by the Internal Revenue Service.

Rev. Proc. 2005-24 applies to any charitable remainder annuity trust (CRAT) or charitable remainder unitrust (CRUT) that is created by the grantor, *G*, if, under applicable state law, *G*'s surviving spouse, *S*, has a right of election exercisable on *G*'s death to receive an elective, statutory share of *G*'s estate, and such share could be satisfied in whole or in part from the assets of the CRAT or CRUT in violation of § 664(d)(1)(B) or (d)(2)(B) of the Internal Revenue Code. Rev. Proc. 2005-24 provides a safe harbor procedure under which the Service will disregard the right of election for purposes of determining whether the CRAT or CRUT meets the requirements of § 664(d)(1)(B) or (d)(2)(B) continuously since its creation, if *S* irrevocably waives the right of election in the manner prescribed in the revenue procedure. For trusts created before June 28, 2005, the Service will disregard the right of election, even without a waiver, but only if *S* does not exercise the right of election.

Commentators have asserted that Rev. Proc. 2005-24 places an undue burden on taxpayers and trustees seeking to comply with the safe harbor rule. Some commentators have recommended that the Service withdraw the revenue procedure. Other commentators have suggested alternative safe harbor rules. The Service and Treasury are reconsidering the approach of Rev. Proc. 2005-24, including the safe harbor rule. The Service and Treasury are also considering alternative safe harbor rules. Consequently, the Service is extending the June 28, 2005, grandfather date. Until further guidance is published regarding the effect of a spousal right of election on a trust's qualification as a CRAT or CRUT, the Service will disregard the existence of such a right of election, even without a waiver as described in Rev. Proc. 2005-24, but only if the surviving spouse does not exercise the right of election.

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