

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

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(Continued on the next page)

Finding Lists begin on page ii.



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

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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 Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases.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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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Section 2522.—Charitable and Similar Gifts

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

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Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 170, 664, 2055, 2522; 1.170A-6, 1.664-1, 1.664-3, 1.664-4, 20.2055-2, 25.2522(c)-3.)

Rev. Proc. 2005-52

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)(I). 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).

26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 170, 664, 2055, 2522; 1.170A–6, 1.664–1, 1.664–3, 1.664–4, 20.2055–2, 25.2522(c)–3.)

Rev. Proc. 2005–53

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 a term of years followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 a term of years, samples are provided in other separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005–52, superseding Rev. Proc. 89–20, 1989–1 C.B. 841, and section 4 of Rev. Proc. 90–31, 1990–1 C.B. 539);
- (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);
- (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 providing for a term of years unitrust period that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) the payment of part of the unitrust amount to an organization described in § 170(c); (.02) the apportionment of the unitrust amount among members of a named class in the discretion of the trustee; (.03) a qualified contingency; (.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 and having a term of years unitrust period 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 — TERM OF YEARS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder unitrust within the meaning of Rev. Proc. 2005–53 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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 — TERM OF YEARS

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor’s spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the 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. Note that certain powers given to certain persons serving as trustee may cause the trustee to be treated as the owner of the trust under subpart E and thus disqualify the trust as a charitable remainder trust. See § 1.664-1(a)(4).
- (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 term.* The period for which the unitrust amount is payable must not exceed 20 years. Section 1.664-3(a)(5). Thus, for example, the unitrust period of a CRUT for a term of 20 years will end on the day preceding the twentieth anniversary of the date the trust was created.
- (2) *Permissible recipients.* For a CRUT having a term of years unitrust period, the unitrust amount must generally be paid to a named person or persons (within the meaning of § 7701(a)(1)). If the unitrust amount is to be paid to an individual or individuals, all the individuals must be living at the time of the creation of the trust. The unitrust amount may be payable to the estate or heirs of a named recipient who dies prior to the expiration of the term of years. See Rev. Rul. 74-39, 1974-1 C.B. 156. The unitrust amount may be payable to members of a named class and, because the unitrust period is for a term of years, all of the members of the class need not be living or ascertainable at the creation of the trust. An organization described in § 170(c) may receive part, but not all, of the 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).
- (3) *Multiple noncharitable recipients.* Generally, if the unitrust amount is payable to more than one person, the trust instrument should describe the interest of each person. See section 6.02 of this revenue procedure for an alternate provision providing for the apportionment of the unitrust amount among members of a named class in the discretion of the trustee.
- (4) *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).
- (5) *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).
- (6) *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.
- (7) *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.
- (8) *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.

- (9) *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.
- (10) *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 Annotation 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.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(5) 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 con-

tribution is made in a short taxable year or in the taxable year during which the unitrust period ends, 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.

.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)(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 — TERM OF YEARS

.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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any 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 of the sample trust, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, 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 Apportionment of the Unitrust Amount Among Members of a Named Class in the Discretion of the Trustee.

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

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

In each taxable year of the trust during the unitrust period, the Trustee shall pay to a member or members of a class of persons comprised of [*designated members of class*] (hereinafter collectively "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 Trustee may pay the unitrust amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, from time to time may deem advisable. The Trustee may not, however, apply any payment for the Trustee's own benefit, or in satisfaction of any support or other legal obligation of the Trustee.

.03 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 expiration of the term of years unitrust period. 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 and third sentences of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following two sentences:

The unitrust period is a period of [*not more than 20*] years, unless earlier terminated by the occurrence of [*qualified contingency*]. 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 day preceding the [*ordinal number corresponding to the length of the unitrust period*] anniversary of that date or, if earlier, the date on which occurs the [*qualified contingency*].

.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 a 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)(I). 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 five 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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 five 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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 unitrust period shall be a period of [a number not more than 20] years. 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 day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 5(i). 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) or 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 trust income described in the second sentence of paragraph 5(i).

DRAFTING INFORMATION

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Rev. Proc. 2005-54

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 payable consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 payable consecutively for two measuring lives, samples are provided in other separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005-52, superseding Rev. Proc. 89-20, 1989-1 C.B. 841, and section 4 of Rev. Proc. 90-31, 1990-1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-53);
- (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, 1990-1 C.B. 534, 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 having consecutive unitrust interests for two measuring lives that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of 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) a retained right to revoke the interest of the successor recipient; (.04) the last unitrust payments to the recipients; (.05) the restriction of the charitable remainderman to a public charity; (.06) a retained right to substitute the charitable remainderman; (.07) a power of appointment to designate the charitable remainderman; (.08) the net income method of calculating the unitrust amount; (.09) the net income with make-up method of calculating the unitrust amount; and (.10) 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 and having consecutive unitrust interests for two measuring lives 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 — TWO LIVES, CONSECUTIVE INTERESTS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005–54 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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [permissible recipient] (hereinafter “the Successor 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 death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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. *Payment of Federal Estate Taxes and State Death Taxes.* The lifetime unitrust interest of the Successor Recipient will take effect upon the death of the Initial Recipient only if the Successor Recipient furnishes the funds for payment of any federal estate taxes and state death taxes for which the Trustee may be liable upon the death of the Initial Recipient. If the funds are not furnished by the Successor Recipient, the unitrust period shall terminate on the death of the Initial Recipient, notwithstanding any other provision in this instrument to the contrary.

4. *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 6. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

5. *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 Initial Recipient and/or the Successor 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.

6. *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.

7. *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 6 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 Initial Recipient and/or the Successor Recipient (in the case of an underpayment) or receive from the Initial Recipient and/or the Successor Recipient (in the case of an overpayment) the difference between any unitrust amounts allocable to the testamentary transfer that were actually paid, plus interest, and the unitrust amounts allocable to the testa-

mentary 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.

8. *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.

9. *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.

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

11. *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.

12. *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.

13. *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.

14. *Definition of Initial Recipient and Successor Recipient.* References to the Initial Recipient and/or the Successor Recipient in this trust instrument shall be deemed to include the estate of the Initial Recipient and/or the Successor Recipient with regard to all provisions in this trust instrument that describe amounts payable to and/or due from the Initial Recipient and/or the Successor 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 — TWO LIVES, CONSECUTIVE INTERESTS

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor’s spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the 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 5.08 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 6.05 of this revenue procedure for an alternate provision that restricts the charitable remainderman to a public charity (as defined therein).
- (4) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.
- (5) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor may be an individual or a husband and wife. Appropriate adjustments should be made to the introductory paragraph if a husband and wife are the donors. Terms such as “grantor” or “settlor” may be substituted for “donor.”

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

- (1) *Permissible recipients.* For a CRUT with a unitrust period based on the lives of two individuals, the unitrust amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002–20, 2002–1 C.B. 794, for situations in which the 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 6.08 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.09 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.10 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 a 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 5.06(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 5.07(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 Annotation for Paragraph 3, Payment of Federal Estate Taxes and State Death Taxes, of the Sample Trust.

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

.04 Annotations for Paragraph 4, Proration of 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 each recipient's death.* Paragraph 4, Proration of Unitrust Amount, of the sample trust specifies that, upon the death of the initial recipient, the next regular unitrust payment due shall be prorated on a daily basis between the estate of the initial recipient and the successor recipient. See section 6.04 of this revenue procedure for an alternate provision that terminates the payment of the initial recipient's share of the unitrust amount with the last regular payment preceding his or her death and/or terminates the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(3) of this revenue procedure, 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 6.06 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.07 of this revenue procedure for an alternate provision in which a 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 5.09(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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 6, 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 during which the unitrust period ends, the unitrust amount computed under paragraph 6 of the sample trust must be prorated pursuant to paragraph 4, 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 6, 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 6 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 6 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 6, 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 6 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 6 must be removed from the sample trust and paragraph 7, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust should be deleted.

.07 Annotations for Paragraph 7, 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 makes an additional contribution at his or her 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 7 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.

.08 Annotations for Paragraph 8, 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.

.09 Annotations for Paragraph 9, Prohibited Transactions, of the Sample Trust.

- (1) *Payment of the unitrust amount.* Payment of the unitrust amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust 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 9 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 — TWO LIVES, CONSECUTIVE INTERESTS

.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 recipients and to the charitable organization described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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 Initial Recipient”), until the Initial Recipient’s death, and thereafter to [permissible recipient] (hereinafter “the Successor Recipient”). In each taxable year of the trust during the unitrust period, the Trustee shall pay [the percentage of 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 death of the survivor of the Initial Recipient and the Successor Recipient. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any 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 Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the unitrust amount(s) properly payable and the unitrust amount(s) actually paid.
- (b) Replace the first parenthetical in paragraph 5, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Initial Recipient and/or the Successor Recipient and the Charitable Recipient under the terms of this trust)
- (c) Replace each reference to “the Initial Recipient and/or Successor Recipient” in paragraph 7, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust with a reference to “the Initial Recipient and/or Successor Recipient and the Charitable Recipient.”

- (d) Add the following sentence after the first and only sentence in paragraph 9, 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 survivor of the initial recipient and the successor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instructions for use.* Replace the second sentence of paragraph 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 death of the survivor of the Initial Recipient and the Successor Recipient or, if earlier, the date on which occurs the [qualified contingency].

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

- (1) *Explanation.* The donor may retain the right to revoke or terminate the interest of a noncharitable recipient. This right is exercisable only by the donor's last will and testament. Section 1.664-3(a)(4). The retention of this right may have gift and estate tax consequences. It will affect the value of the unitrust interests transferred. It may also cause a portion of the trust to be included in the donor's gross estate for federal estate tax purposes, even if it would otherwise not be includible. The following alternate provision provides for the donor's retention of the right to revoke the interest of the successor recipient when the donor is the initial recipient.
- (2) *Instructions for use.* To retain the right to revoke the successor recipient's interest by the donor's last will and testament:
- (a) Designate the donor as the initial recipient in paragraph 2, Payment of Unitrust Amount, of the sample trust.
- (b) Replace the second sentence of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following two sentences:
The Donor hereby expressly reserves the power, exercisable only by the Donor's last will and testament, to revoke and terminate the interest of the Successor Recipient under this trust. The first day of the 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 death of the survivor of the Initial Recipient and the Successor Recipient or, if the power to revoke the interest of the Successor Recipient is exercised by the Donor, the date of the Initial Recipient's death.

.04 Last Unitrust Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the unitrust amount in the taxable year of the initial recipient's death, the obligation to pay the unitrust amount to the initial recipient may terminate with the last regular payment preceding the initial recipient's death. Similarly, as an alternative to prorating the unitrust amount in the taxable year of the successor recipient's death, the obligation to pay the unitrust amount may terminate with the last regular payment preceding the successor recipient's death. However, the fact that a 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 to a recipient may terminate with the last regular payment preceding that recipient's death, the trustee must pay a 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.*
- (a) To add an alternate provision to terminate the payment of the unitrust amount to the initial recipient with the last regular payment preceding his or her death, replace paragraph 4, 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 unitrust amount described in paragraph 2, or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 6. If the Successor Recipient survives the Initial Recipient, the obligation of the Trustee to pay the unitrust amount to the Initial Recipient shall terminate with the last regular quarterly installment preceding the death of the Initial Recipient, and the entire amount of the first regular quarterly installment after the death of the Initial Recipient shall be paid to the Successor Recipient.
- (b) To add an alternate provision to terminate the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, replace paragraph 4, 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 6. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the survivor of the Initial Recipient and the Successor Recipient.

- (c) To add an alternate provision terminating the payment of the unitrust amount to the initial recipient with the last regular payment preceding his or her death, and terminating the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, replace paragraph 4, Proration of Annuity 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 6. If the Successor Recipient survives the Initial Recipient, the obligation of the Trustee to pay the unitrust amount to the Initial Recipient shall terminate with the last regular quarterly installment preceding the death of the Initial Recipient, and the entire amount of the first regular quarterly installment after the death of the Initial Recipient shall be paid to the Successor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the survivor of the Initial Recipient and the Successor Recipient.

.05 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."

.06 Retaining the Right to Substitute the Charitable Remainderman.

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

.07 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *Instructions for use.* Replace paragraph 5, 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 Initial Recipient and/or the Successor 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 [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the

then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

.08 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)(I). 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 Initial Recipient”) until the Initial Recipient's death, and thereafter to [*permissible recipient*] (hereinafter “the Successor 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 death of the survivor of the Initial Recipient and the Successor Recipient. 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 4, 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 6. 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 6 to determine the unitrust amount payable for that year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.
 - (d) Replace paragraph 6, 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 6”) 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.

.09 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 6.08 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 recipients in prior years was less than the amounts that would have been paid to the recipients 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 6.08(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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor 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 in prior years, whether to the Initial Recipient or to the Successor Recipient, was less than the aggregate of the amounts determined for all prior years under (a) of this paragraph and (a) of paragraph 6. 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 death of the survivor of the Initial Recipient and the Successor Recipient. 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 4, 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 6. 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 6 to determine the unitrust amount payable for that year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.
 - (d) Replace paragraph 6, 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 6”) 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 in prior years, whether to the Initial Recipient or to the Successor Recipient, 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.

.10 Combination of Methods for Calculating the Unitrust Amount.

- (1) *Explanation.* The net income method (described in section 6.08 of this revenue procedure) or the net income with make-up method (described in section 6.09 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 initial recipient and/or the successor 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 initial recipient and/or successor 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 Initial Recipient”) until the Initial Recipient's death, and thereafter to [permissible recipient] (hereinafter “the Successor 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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Initial Recipient until his or her death, and thereafter to the Successor Recipient, 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 death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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 4, 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 6(i). In such a short taxable 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 6(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 6(ii).
- (iii) *Proration of unitrust amount between Initial Recipient and Successor Recipient.* If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

- (d) Replace paragraph 6, 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 6(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 6(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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [permissible recipient] (hereinafter “the Successor 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 in prior years, whether to the Initial Recipient or to the Successor Recipient, was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 2(i) and (a) of paragraph 6(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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Initial Recipient until his or her death, and thereafter to the Successor Recipient, 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 death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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 4, 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 6(i). In such a short taxable 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 6(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 6(ii).
 - (iii) *Proration of unitrust amount between Initial Recipient and Successor Recipient.* If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.
- (d) Replace paragraph 6, 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 6(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 6(i) for the year], but only to the extent that the aggregate of the amounts paid in prior years, whether to the Initial Recipient or to the Successor Recipient, was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 2(i) and under (a) of paragraph 6(i). 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 6(i) and shall not pay any amount of income described in the second sentence of paragraph 6(i).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 4 of Rev. Proc. 90–30 and section 5 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).

26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 170, 664, 2055, 2522; 1.170A–6, 1.664–1, 1.664–3, 1.664–4, 20.2055–2, 25.2522(c)–3.)

Rev. Proc. 2005–55

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 payable concurrently and consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 payable concurrently and consecutively for two measuring lives, samples are provided in other separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005–52, superseding Rev. Proc. 89–20, 1989–1 C.B. 841, and section 4 of Rev. Proc. 90–31, 1990–1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005–53);
- (c) 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);
- (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 having concurrent and consecutive unitrust interests for two measuring lives that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of 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) a retained right to revoke the interest of the survivor recipient; (.04) the last unitrust payments to the recipients; (.05) the restriction of the charitable remainderman to a public charity; (.06) a retained right to substitute the charitable remainderman; (.07) a power of appointment to designate the charitable remainderman; (.08) the net income method of calculating the unitrust amount; (.09) the net income with make-up method of calculating the unitrust amount; and (.10) 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 and having concurrent and consecutive unitrust interests for two measuring lives 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 — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

On this _____ day of _____, 20____, I, _____ (hereinafter “the Donor”), desiring to establish a charitable remainder unitrust within the meaning of Rev. Proc. 2005–55 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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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”) and, upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor 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 Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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. *Payment of Federal Estate Taxes and State Death Taxes.* The lifetime unitrust interest of the Survivor Recipient will take effect upon the death of the Predeceasing Recipient only if the Survivor Recipient furnishes the funds for payment of any federal estate taxes and state death taxes for which the Trustee may be liable upon the death of the Predeceasing Recipient. If the funds are not furnished by the Survivor Recipient, the unitrust period shall terminate on the death of the Predeceasing Recipient, notwithstanding any other provision in this instrument to the contrary.

4. *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 6. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

5. *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 Predeceasing Recipient and/or the Survivor 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.

6. *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.

7. *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 6 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an underpayment) or receive from the Predeceasing Recipient and/or the Survivor 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.

8. *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.

9. *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.

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

11. *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.

12. *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.

13. *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.

14. *Definition of Predeceasing Recipient and Survivor Recipient.* References to the Predeceasing Recipient and/or the Survivor Recipient in this trust instrument shall be deemed to include the estate of the Predeceasing Recipient and/or the Survivor Recipient with regard to all provisions in this trust instrument that describe amounts payable to and/or due from the Predeceasing Recipient and/or the Survivor 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 — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

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

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 170, § 2055, or § 2522 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E), but in no event prior to the time property is first transferred to the trust. Neither the donor nor the donor's spouse shall be treated as the owner of the trust under subpart E merely because he or she is named as a recipient of the 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 5.08 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 6.05 of this revenue procedure for an alternate provision that restricts the charitable remainderman to a public charity (as defined therein).
- (4) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee's duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.
- (5) *Identity of donor.* For purposes of qualification under this revenue procedure, the donor may be an individual or a husband and wife. Appropriate adjustments should be made to the introductory paragraph if a husband and wife are the donors. Terms such as "grantor" or "settlor" may be substituted for "donor."

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

- (1) *Permissible recipients.* For a CRUT with a unitrust period based on the lives of two individuals, the unitrust amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the 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 6.08 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.09 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.10 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) *Division of unitrust amount between recipients.* The sample trust provides that while both recipients are alive they will share the unitrust amount equally and, upon the death of the predeceasing recipient, the survivor recipient will receive all of the unitrust amount, subject to any proration in paragraph 4. However, the unitrust amount may be divided other than equally during the joint lives of the recipients. In addition, the share of the predeceasing recipient may be made payable to an organization described in § 170(c) for the rest of the survivor recipient's life.
- (4) *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).
- (5) *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 recipients 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.
- (6) *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 5.06(4) for further guidance related to the valuation date and additional contributions.
- (7) *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 5.07(2) of this revenue procedure for additional information regarding the deferral of the unitrust payment allocable to a testamentary transfer.
- (8) *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.
- (9) *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 Annotation for Paragraph 3, Payment of Federal Estate Taxes and State Death Taxes, of the Sample Trust.

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

.04 Annotations for Paragraph 4, Proration of 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 each recipient's death.* Paragraph 4, Proration of Unitrust Amount, of the sample trust specifies that, upon the death of the predeceasing recipient, the next regular unitrust payment due shall be prorated on a daily basis between the estate of the predeceasing recipient and the survivor recipient. See section 6.04 of this revenue procedure for an alternate provision that terminates the payment of the predeceasing recipient's share of the unitrust amount with the last regular payment preceding his or her death and/or terminates the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(4) 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 6.06 of this revenue procedure for an alternate provision in which the donor retains the right to substitute the charitable remainderman. See section 6.07 of this revenue procedure for an alternate provision in which a 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 5.09(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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 6, 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 during which the unitrust period ends, the unitrust amount computed under paragraph 6 of the sample trust must be prorated pursuant to paragraph 4, 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 6, 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 6 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 6 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 6, 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 6 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 6 must be removed from the sample trust and paragraph 7, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust should be deleted.

.07 Annotations for Paragraph 7, 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 makes an additional contribution at his or her 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 7 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.

.08 Annotations for Paragraph 8, 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.

.09 Annotations for Paragraph 9, Prohibited Transactions, of the Sample Trust.

- (1) *Payment of the unitrust amount.* Payment of the unitrust amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust 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 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 9 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 — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

.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 recipients and to the charitable organization described in §§ 170(c), 2522(a), and, if needed, § 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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] and [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives and, upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay that entire percentage of the unitrust amount to the survivor (hereinafter “the Survivor Recipient”). In each taxable year of the trust during the unitrust period, the Trustee shall pay [the percentage of 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 Survivor Recipient’s death. If the Charitable Recipient is not an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any 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 Predeceasing Recipient and/or the Survivor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 5, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Predeceasing Recipient and/or the Survivor Recipient and the Charitable Recipient under the terms of this trust)

- (c) Replace each reference to “the Predeceasing Recipient and/or Survivor Recipient” in paragraph 7, Deferral of the Unitrust Payment Allocable to Testamentary Transfer, of the sample trust with a reference to “the Predeceasing Recipient and/or Survivor Recipient and the Charitable Recipient.”
- (d) Add the following sentence after the first and only sentence in paragraph 9, 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 survivor 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 Survivor Recipient’s death or, if earlier, the date on which occurs the [qualified contingency].

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

- (1) *Explanation.* The donor may retain the right to revoke or terminate the interest of a noncharitable recipient. This right is exercisable only by the donor’s last will and testament. Section 1.664–3(a)(4). The retention of this right may have gift and estate tax consequences. It will affect the value of the unitrust interests transferred. It may also cause a portion of the trust to be included in the donor’s gross estate for federal estate tax purposes, even if it would otherwise not be includible. The following alternate provision provides for the donor’s retention of the right to revoke the interest of the survivor recipient when the donor is also a recipient.
- (2) *Instructions for use.* To retain the right to revoke the interest of the survivor recipient by the donor’s last will and testament:
 - (a) Designate the donor as a recipient in paragraph 2, Payment of Unitrust Amount, of the sample trust.
 - (b) Replace the second sentence of paragraph 2, Payment of Unitrust Amount, of the sample trust with the following two sentences:
The Donor hereby expressly reserves the power, exercisable only by the Donor’s last will and testament, to revoke and terminate the interest of [the name of permissible recipient who is not the Donor] under this trust. The first day of the 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 Survivor Recipient’s death or, if the power to revoke the interest of [the name of permissible recipient who is not the Donor] is exercised, the earlier date of the Donor’s death.

.04 Last Unitrust Payments to the Recipients.

- (1) *Explanation.* As an alternative to prorating the unitrust amount in the taxable year of the predeceasing recipient’s death, the obligation to pay the predeceasing recipient’s share of the unitrust amount may terminate with the last regular payment preceding the predeceasing recipient’s death. Similarly, as an alternative to prorating the unitrust amount in the taxable year of the survivor recipient’s death, the obligation to pay the unitrust amount may terminate with the last regular payment preceding the survivor recipient’s death. However, the fact that a 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 or, in the case of the predeceasing recipient, a share of the unitrust amount, to a recipient may terminate with the last regular payment preceding that recipient’s death, the trustee must pay a 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.*
 - (a) To add an alternate provision to terminate the payment of the predeceasing recipient’s share of the unitrust amount with the last regular payment preceding his or her death, replace paragraph 4, 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 unitrust amount described in paragraph 2, or, if an additional contribution is made to the trust, the unitrust amount described in paragraph 6. Upon the death of the Predeceasing Recipient, the obligation of the Trustee to pay a share of the unitrust amount to the Predeceasing Recipient shall terminate with the

last regular quarterly installment preceding the death of the Predeceasing Recipient, and the Predeceasing Recipient's share of the unitrust amount shall thereafter be added to and paid as part of the share of the Survivor Recipient.

- (b) To add an alternate provision to terminate the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, replace paragraph 4, 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 6. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Survivor Recipient.

- (c) To add an alternate provision terminating the payment of the predeceasing recipient's share of the unitrust amount with the last regular payment preceding his or her death, and terminating the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, replace paragraph 4, Proration of Annuity 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 6. Upon the death of the Predeceasing Recipient, the obligation of the Trustee to pay a share of the unitrust amount to the Predeceasing Recipient shall terminate with the last regular quarterly installment preceding the death of the Predeceasing Recipient, and the Predeceasing Recipient's share of the unitrust amount shall thereafter be added to and paid as part of the share of the Survivor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Survivor Recipient.

.05 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."

.06 Retaining the Right to Substitute the Charitable Remainderman.

- (1) *Explanation.* The donor may retain the right to substitute another charitable remainderman for the charitable remainderman named in the trust instrument. See Rev. Rul. 76-8, 1976-1 C.B. 179. Note, however, that the retention of this right will cause the gift of the remainder interest to be incomplete for gift tax purposes. See § 25.2511-2(c) and Rev. Rul. 77-275, 1977-2 C.B. 346.
- (2) *Instructions for use.* Insert the following sentence between the first and last sentences of paragraph 5, Distribution to Charity, of the sample trust:

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

.07 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *Instructions for use.* Replace paragraph 5, 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 Predeceasing Recipient and/or the Survivor 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 [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by

inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

.08 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*] and to [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their joint lives, 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. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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 Survivor 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 4, 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 6. 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 6 to determine the unitrust amount payable for that year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.
 - (d) Replace paragraph 6, 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 6”) 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.

.09 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 6.08 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 recipients in prior years was less than the amounts that would have been paid to the recipients 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 6.08(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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 Recipients 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 6. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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 Survivor 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 4, 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 6. 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 6 to determine the unitrust amount payable for that year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.
 - (d) Replace paragraph 6, 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 6”) 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 Recipients 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.

.10 Combination of Methods for Calculating the Unitrust Amount.

- (1) *Explanation.* The net income method (described in section 6.08 of this revenue procedure) or the net income with make-up method (described in section 6.09 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 predeceasing recipient and/or the survivor 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 predeceasing recipient and/or the survivor 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*] and to [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their joint lives, 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. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Recipients in equal shares during their joint lives 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, and, upon the death of the Predeceasing Recipient, the Trustee shall pay the entire unitrust amount to the Survivor Recipient. 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 Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 4, 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 6(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 6(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 6(ii).
- (iii) *Proration of unitrust amount between Predeceasing Recipient and Survivor Recipient.* Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.
- (d) Replace paragraph 6, 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 6(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 6(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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 Recipients 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 6(i). Upon the death of one of the Recipients (herein “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (herein “the Survivor Recipient”). 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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Recipients in equal shares during their joint lives 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 and, upon the death of the Predeceasing Recipient, the Trustee shall pay the entire unitrust amount to the Survivor Recipient. 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 Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 4, 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 6(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 6(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 6(ii).

(iii) *Proration of unitrust amount between Predeceasing Recipient and Survivor Recipient.* Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

(d) Replace paragraph 6, 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 6(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 6(i) for the year], but only to the extent that the aggregate of the amounts paid to the Recipients 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 6(i). 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 6(i) and shall not pay any amount of income described in the second sentence of paragraph 6(i).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 5 of Rev. Proc. 90–30 and section 6 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).

Rev. Proc. 2005-56

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 a testamentary 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 a testamentary 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 one measuring life (see Rev. Proc. 2005-52), superseding Rev. Proc. 89-20, 1989-1 C.B. 841, and section 4 of Rev. Proc. 90-31, 1990-1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-53);
- (c) 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);
- (d) 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);
- (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 a testamentary 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) a power of appointment to designate the charitable remainderman; (.05) the net income method of calculating the unitrust amount; (.06) the net income with make-up method of calculating the unitrust amount; and (.07) 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 § 2055(e)(2)(A) for estate tax purposes if the other requirements of § 2055(e)(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 a testamentary 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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — ONE LIFE

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005–56 and § 664(d)(2) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Unitrust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *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 of my death 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.

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

3. *Proration of 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 1.

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) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

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

6. *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.

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

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

9. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder unitrust under § 664(d)(2) of the Code and the corresponding regulations.

10. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

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

12. *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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — ONE LIFE

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). 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 5.06 of this revenue procedure for further guidance related to the valuation of unmarketable assets.
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

.02 Annotations for Paragraph 1, Payment of 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 1, 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 6.05 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.06 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.07 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 1, 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 1, 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; and (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period. See § 1.664-3(a)(1)(v).

- (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 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the unitrust amount until the end of the taxable year in which the trust is completely funded.
- (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 2, Deferral Provision, of the Sample Trust.

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

.04 Annotations for Paragraph 3, Proration of 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.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(3) of this revenue procedure, the value 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 finally determined for federal estate tax purposes. 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) and 2055(a) at the time of the transfer to the CRUT. See § 664(d)(2)(C). The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.04 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 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 5.07(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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.

.07 Annotations for Paragraph 7, 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 an estate tax charitable deduction is 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 7 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the unitrust period when the trust continues in existence for the benefit of the charitable remainderman.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY 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 an estate tax charitable deduction is 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) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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 1, 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) and 2055(a) of the Code] (hereinafter “the Charitable Recipient”). The first day of the unitrust period shall be the date of my death 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) and 2055(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) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The 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 each reference to “the Recipient” in paragraph 2, Deferral Provision, of the sample trust with a reference to “the Recipient and the Charitable Recipient.”
- (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Recipient and the Charitable Recipient under the terms of this trust)
- (d) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust 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 1, Payment of Unitrust Amount, of the sample trust with the following sentence:

The first day of the unitrust period shall be the date of my death 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.
- (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 1. 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 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) and 2055(a) of the Code as the Recipient shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent the Recipient fails to effectively exercise the power of appointment, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the

Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

.05 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 1 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 1, 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 1”) 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 of my death 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year.

.06 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 1 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 6.05 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 6.05(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 1, 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 1”) 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. 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 of my death 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year.

.07 Combination of Methods for Calculating the Unitrust Amount.

- (1) *Explanation.* The net income method (described in section 6.05 of this revenue procedure) or the net income with make-up method (described in section 6.06 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 1, 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 1(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 1(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 1(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 1(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 of my death 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 1(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 1(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 1(ii).

(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 1, 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 1(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 1(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 1(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 1(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 1(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 1(i) and shall not pay any amount of trust income described in the second sentence of paragraph 1(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 of my death 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 1(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 1(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 1(ii).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 6 of Rev. Proc. 90–30 and section 7 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).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055; 1.170A–6, 1.664–1, 1.664–3, 1.664–4, 20.2055–2.)

Rev. Proc. 2005–57

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 a testamentary charitable remainder unitrust (CRUT) providing for unitrust payments for a term of years followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 a testamentary CRUT providing for unitrust payments for a term of years, samples are provided in separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005–52, superseding Rev. Proc. 89–20, 1989–1 C.B. 841, and section 4 of Rev. Proc. 90–31, 1990–1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005–53);
- (c) 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);
- (d) 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);
- (e) 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);
- (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 a testamentary CRUT that is created by an individual who is a citizen or resident of the United States and that provides for a term of years unitrust period. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) the payment of part of the unitrust amount to an organization described in § 170(c); (.02) the apportionment of the unitrust amount among members of a named class in the discretion of the trustee; (.03) a qualified contingency; (.04) a power of appointment to designate the charitable remainderman; (.05) the net income method of calculating the unitrust amount;

(.06) the net income with make-up method of calculating the unitrust amount; and (.07) 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 § 2055(e)(2)(A) for estate tax purposes if the other requirements of § 2055(e)(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 a testamentary trust created by an individual and having a term of years unitrust period 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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — TERM OF YEARS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this Code to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005-57 and § 664(d)(2) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Unitrust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *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 unitrust period shall be a period of [*a number not more than 20*] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [*ordinal number corresponding to the length of the unitrust period*] anniversary of that date. 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.

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

3. *Proration of 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 1.

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) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

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

6. *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.

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

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

9. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder unitrust under § 664(d)(2) of the Code and the corresponding regulations.

10. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

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

12. *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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — TERM OF YEARS

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). 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 5.06 of this revenue procedure for further guidance related to the valuation of unmarketable assets.
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder. Note that certain powers given to certain persons serving as the trustee may cause the trustee to be treated as the owner of the trust under subpart E and thus disqualify the trust as a charitable remainder trust. See § 1.664-1(a)(4).

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

- (1) *Permissible term.* The period for which the unitrust amount is payable must not exceed 20 years. Section 1.664-3(a)(5). Thus, for example, the unitrust period of a CRUT for a term of 20 years will end on the day preceding the twentieth anniversary of the date the trust was created.
- (2) *Permissible recipients.* For a CRUT having a term of years unitrust period, the unitrust amount must generally be paid to a named person or persons (within the meaning of § 7701(a)(1)). If the unitrust amount is to be paid to an individual or individuals, all the individuals must be living at the time of the creation of the trust. The unitrust amount may be payable to the estate or heirs of a named recipient who dies prior to the expiration of the term of years. See Rev. Rul. 74-39, 1974-1 C.B. 156. The unitrust amount may be payable to members of a named class and, because the unitrust period is for a term of years, all of the members of the class need not be living or ascertainable at the creation of the trust. An organization described in § 170(c) may receive part, but not all, of the 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).

- (3) *Multiple noncharitable recipients.* Generally, if the unitrust amount is payable to more than one person, the trust instrument should describe the interest of each person. See section 6.02 of this revenue procedure for an alternate provision providing for the apportionment of the unitrust amount among members of a named class in the discretion of the trustee.
- (4) *Fixed percentage method.* Paragraph 1, 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 6.05 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.06 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.07 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).
- (5) *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).
- (6) *Payment of unitrust amount in installments.* Paragraph 1, 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.
- (7) *Rules applicable to valuation.* Paragraph 1, 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; and (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period. See § 1.664-3(a)(1)(v).
- (8) *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 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the unitrust amount until the end of the taxable year in which the trust is completely funded.
- (9) *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.
- (10) *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 2, Deferral Provision, of the Sample Trust.

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

.04 Annotations for Paragraph 3, Proration of 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.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(5) of this revenue procedure 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 as finally determined for federal estate tax purposes. 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) and 2055(a) at the time of the transfer to the CRUT. See § 664(d)(2)(C). The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.04 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 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 5.07(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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.

.07 Annotations for Paragraph 7, 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 an estate tax charitable deduction is 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 7 of the sample trust, the trust instrument may limit the application

of the provisions of § 508(e) to the period after the termination of the unitrust period when the trust continues in existence for the benefit of the charitable remainderman.

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

.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 an estate tax charitable deduction is 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) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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 1, 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) and 2055(a) of the Code] (hereinafter “the Charitable Recipient”). The unitrust period shall be a period of [a number not more than 20 years] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any 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) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The 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 each reference to “the Recipient” in paragraph 2, Deferral Provision, of the sample trust with a reference to “the Recipient and the Charitable Recipient.”
 - (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical:

(other than any amount due the Recipient and the Charitable Recipient under the terms of this trust)
 - (d) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust:

The Trustee shall not make any investments that jeopardize the exempt purpose of the trust 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 Apportionment of the Unitrust Amount Among Members of a Named Class in the Discretion of the Trustee.

- (1) *Explanation.* A trust is not a CRUT if any person has the power to alter the amount to be paid to any named person other than an organization described in § 170(c) if the power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E were applicable to the trust. Section 1.664-3(a)(3)(ii). See Rev. Rul. 77-73, 1977-1 C.B. 175. A trustee’s discretionary power, exercisable solely by that trustee, to allocate the unitrust amount among the members of a class would cause the trustee to be treated as the owner of all or a portion of the trust under § 678(a) if the trustee is a member of the class, if the trustee may apply trust income or corpus to satisfy the trustee’s own legal obligation, or if the trustee actually exercises the power to satisfy a support obligation owed by the trustee. Therefore, if any trustee is given the discretionary power exercisable solely by that trustee to allocate the unitrust amount among members of a class, the trust

instrument must provide that such trustee must be: (i) not a member of the recipient class; and (ii) prohibited from applying any part of the unitrust payment in satisfaction of the trustee's own legal obligation.

(2) *Instructions for use.*

(a) Add the following sentence to the sample trust:

Any trustee who is authorized in the trustee's sole discretion to allocate the unitrust amount among members of a Recipient class must be independent within the meaning of § 674(c) of the Code and must not be a member of the Recipient class.

(b) Replace the first sentence of paragraph 1, Payment of Unitrust Amount, of the sample trust with the following three sentences:

In each taxable year of the trust during the unitrust period, the Trustee shall pay to a member or members of a class of persons comprised of [*designated members of class*] (hereinafter collectively "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 Trustee may pay the unitrust amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, from time to time may deem advisable. The Trustee may not, however, apply any payment for the Trustee's own benefit, or in satisfaction of any support or other legal obligation of the Trustee.

.03 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 expiration of the term of years unitrust period. 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 and third sentences of paragraph 1, Payment of Unitrust Amount, of the sample trust with the following two sentences:

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

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

.05 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 1 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 five sentences of paragraph 1, 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 1”) 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 unitrust period shall be a period of [*a number not more than 20 years*] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [*ordinal number corresponding to the length of the unitrust period*] anniversary of that date. 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year.

.06 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 1 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 6.05 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 6.05(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 five sentences of paragraph 1, 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 1”) 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. The valuation date is the first day of each taxable year of the trust. The unitrust period shall be a period of [*a number not more than 20 years*] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [*ordinal number corresponding to the length of the unitrust period*] anniversary of that date. 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year.

.07 Combination of Methods for Calculating the Unitrust Amount.

- (1) *Explanation.* The net income method (described in section 6.05 of this revenue procedure) or the net income with make-up method (described in section 6.06 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 1, 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 1(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 1(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 1(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 1(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 unitrust period shall be a period of [a number not more than 20] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 1(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 1(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 1(ii).
- (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 1, 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 1(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 1(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 1(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 1(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 1(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 1(i) and shall not pay any amount of trust income described in the second sentence of paragraph 1(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 unitrust period shall be a period of [a number not more than 20] years. The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the day preceding the [ordinal number corresponding to the length of the unitrust period] anniversary of that date. 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 1(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 1(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 1(ii).

DRAFTING INFORMATION

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Rev. Proc. 2005-58

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 a testamentary charitable remainder unitrust (CRUT) providing for unitrust payments payable consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 a testamentary CRUT providing for unitrust payments payable consecutively for two measuring lives, samples are provided in other separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005-52, superseding Rev. Proc. 89-20, 1989-1 C.B. 841, and section 4 of Rev. Proc. 90-31, 1990-1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-53);
- (c) 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);
- (d) 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);
- (e) 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);
- (f) a testamentary CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005-57); 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 a testamentary CRUT with consecutive interests for two measuring lives that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of 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 payments to the recipients; (.04) a power of appointment to designate the charitable remainderman; (.05) the net income method of calculating the unitrust amount; (.06) the net income with make-up method of calculating the unitrust amount; and (.07) 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 § 2055(e)(2)(A) for estate tax purposes if the other requirements of § 2055(e)(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 a testamentary trust created by an individual and with consecutive interests for two measuring lives 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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — TWO LIVES, CONSECUTIVE INTERESTS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005–58 and § 664(d)(2) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Unitrust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *Payment of Unitrust Amount.* In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor Recipient”), 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 of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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.

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

3. *Proration of 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 1. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

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 Initial Recipient and/or the Successor 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) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

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

6. *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.

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

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

9. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder unitrust under § 664(d)(2) of the Code and the corresponding regulations.

10. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

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

12. *Definition of Initial Recipient and Successor Recipient.* References to the Initial Recipient and/or the Successor Recipient in this trust instrument shall be deemed to include the estate of the Initial Recipient and/or the Successor Recipient with regard to

all provisions in this trust instrument that describe amounts payable to and/or due from the Initial Recipient and/or the Successor Recipient. The prior sentence shall not apply to the determination of the last day of the unitrust period.

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

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). 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 5.06 of this revenue procedure for further guidance related to the valuation of unmarketable assets.
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

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

- (1) *Permissible recipients.* For a CRUT with a unitrust period based on the lives of two individuals, the unitrust amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the 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 1, 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 6.05 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.06 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.07 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 1, 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 a 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 1, 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; and (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period. See § 1.664-3(a)(1)(v).

- (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 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the unitrust amount until the end of the taxable year in which the trust is completely funded.
- (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 2, Deferral Provision, of the Sample Trust.

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

.04 Annotations for Paragraph 3, Proration of 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 each recipient's death.* Paragraph 3, Proration of Unitrust Amount, of the sample trust specifies that, upon the death of the initial recipient, the next regular unitrust payment due shall be prorated on a daily basis between the estate of the initial recipient and the successor recipient. See section 6.03 of this revenue procedure for an alternate provision that terminates the payment of the initial recipient's share of the unitrust amount with the last regular payment preceding his or her death and/or terminates the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(3) of this revenue procedure, the value 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 finally determined for federal estate tax purposes. 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) and 2055(a) at the time of the transfer to the CRUT. See § 664(d)(2)(C). The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.04 of this revenue procedure for an alternate provision in which a 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 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 5.07(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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.

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

- (1) *Payment of the unitrust amount.* Payment of the unitrust amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust 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 an estate tax charitable deduction is 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 7 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the unitrust period when the trust continues in existence for the benefit of the charitable remainderman.

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

.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 an estate tax charitable deduction is 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 recipients and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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 1, 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 Initial Recipient”), until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor Recipient”). In each taxable year of the trust during the unitrust period, the Trustee shall pay [*the percentage of unitrust amount payable to the charitable recipient*] percent of the unitrust amount to [*an organization described in §§ 170(c) and 2055(a) of the Code*] (hereinafter “the Charitable Recipient”). The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any 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) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The 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 Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor Recipient and the Charitable Recipient (in the case of an overvaluation) an amount equal to the difference between the unitrust amount(s) properly payable and the unitrust amount(s) actually paid.

- (b) Replace each reference to “the Initial Recipient and/or Successor Recipient” in paragraph 2, Deferral Provision, of the sample trust with a reference to “the Initial Recipient and/or Successor Recipient and the Charitable Recipient.”
- (c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical: (other than any amount due the Initial Recipient and/or the Successor Recipient and the Charitable Recipient under the terms of this trust)
- (d) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust: The Trustee shall not make any investments that jeopardize the exempt purpose of the trust 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 survivor of the initial recipient and the successor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).
- (2) *Instructions for use.* Replace the second sentence of paragraph 1, Payment of Unitrust Amount, of the sample trust with the following sentence:

The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient or, if earlier, the date on which occurs the [*qualified contingency*].

.03 Last Unitrust Payment to the Recipients.

- (1) *Explanation.* As an alternative to prorating the unitrust amount in the taxable year of the initial recipient’s death, the obligation to pay the unitrust amount to the initial recipient may terminate with the last regular payment preceding the initial recipient’s death. Similarly, as an alternative to prorating the unitrust amount in the taxable year of the successor recipient’s death, the obligation to pay the unitrust amount may terminate with the last regular payment preceding the successor recipient’s death. However, the fact that a 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 to a recipient may terminate with the last regular payment preceding that recipient’s death, the trustee must pay a 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.
- (2) *Instructions for use.*
 - (a) To add an alternate provision to terminate the payment of the unitrust amount to the initial recipient with the last regular payment preceding his or her death, 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 unitrust amount described in paragraph 1. If the Successor Recipient survives the Initial Recipient, the obligation of the Trustee to pay the unitrust amount to the Initial Recipient shall

- terminate with the last regular quarterly installment preceding the death of the Initial Recipient, and the entire amount of the first regular quarterly installment after the death of the Initial Recipient shall be paid to the Successor Recipient.
- (b) To add an alternate provision to terminate the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, 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 1. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the survivor of the Initial Recipient and the Successor Recipient.

- (c) To add an alternate provision terminating the payment of the unitrust amount to the initial recipient with the last regular payment preceding his or her death, and terminating the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, 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 1. If the Successor Recipient survives the Initial Recipient, the obligation of the Trustee to pay the unitrust amount to the Initial Recipient shall terminate with the last regular quarterly installment preceding the death of the Initial Recipient, and the entire amount of the first regular quarterly installment after the death of the Initial Recipient shall be paid to the Successor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the survivor of the Initial Recipient and the Successor Recipient.

.04 Power of Appointment to Designate the Charitable Remainderman.

- (1) *Explanation.* The trust instrument may grant a recipient a power of appointment to designate the charitable remainderman. See Rev. Rul. 76-7, 1976-1 C.B. 179.
- (2) *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 Initial Recipient and/or the Successor Recipient under the terms of this trust) to one or more charitable organizations described in §§ 170(c) and 2055(a) of the Code as [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

.05 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 1 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)(I). 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 1, 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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor 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 1”) 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 of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

.06 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 1 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 6.05 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 recipients in prior years was less than the amounts that would have been paid to the recipients 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 6.05(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 1, 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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor 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 1”) 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 in prior years, whether to the Initial Recipient or to the Successor Recipient, was less than the aggregate of the amounts determined for all prior years under (a) of this paragraph. 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 of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. 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 1. In such

a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year. If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

.07 Combination of Methods for Calculating the Unitrust Amount.

- (1) *Explanation.* The net income method (described in section 6.05 of this revenue procedure) or the net income with make-up method (described in section 6.06 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 initial recipient and/or the successor 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 initial recipient and/or successor 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 1, 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 Initial Recipient”) until the Initial Recipient's death, and thereafter to [permissible recipient] (hereinafter “the Successor 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 1(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 1(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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Initial Recipient until his or her death, and thereafter to the Successor Recipient, a unitrust amount equal to [same percentage used in (a) of paragraph 1(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 1(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 of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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 1(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 1(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 1(ii).
 - (iii) *Proration of unitrust amount between Initial Recipient and Successor Recipient.* If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.
- (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 1, 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 Initial Recipient”) until the Initial Recipient’s death, and thereafter to [*permissible recipient*] (hereinafter “the Successor 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 1(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 1(i) for the year*], but only to the extent that the aggregate of the amounts paid in prior years, whether to the Initial Recipient or to the Successor Recipient, was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 1(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 1(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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Initial Recipient until his or her death, and thereafter to the Successor Recipient, a unitrust amount equal to [*same percentage used in (a) of paragraph 1(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 1(i) and shall not pay any amount of trust income described in the second sentence of paragraph 1(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 of my death and the last day of the unitrust period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient. 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 Initial Recipient and/or the Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or the Successor 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 1(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 1(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 1(ii).

- (iii) *Proration of unitrust amount between Initial Recipient and Successor Recipient.* If the Successor Recipient survives the Initial Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Initial Recipient between the estate of the Initial Recipient and the Successor Recipient.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 7 of Rev. Proc. 90–30 and section 8 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).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 170, 664, 2055; 1.170A–6, 1.664–1, 1.664–3, 1.664–4, 20.2055–2.)

Rev. Proc. 2005–59

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 a testamentary charitable remainder unitrust (CRUT) providing for unitrust payments payable concurrently and consecutively for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

SECTION 2. BACKGROUND

Previously, the Internal Revenue Service issued sample trust instruments for certain types of 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 a testamentary CRUT providing for unitrust payments payable concurrently and consecutively for two measuring lives, samples are provided in other separate revenue procedures for:

- (a) an inter vivos CRUT providing for unitrust payments for one measuring life (see Rev. Proc. 2005–52, superseding Rev. Proc. 89–20, 1989–1 C.B. 841, and section 4 of Rev. Proc. 90–31, 1990–1 C.B. 539);
- (b) an inter vivos CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005–53);
- (c) 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);
- (d) 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);
- (e) 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);
- (f) a testamentary CRUT providing for unitrust payments for a term of years (see Rev. Proc. 2005–57); and
- (g) 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).

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CRUT having concurrent and consecutive unitrust interests for two measuring lives that is created by an individual who is a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of 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 payments to the recipients; (.04) a power of appointment to designate the charitable remainderman; (.05) the net income method of calculating the unitrust amount; (.06) the net income with make-up method of calculating the unitrust amount; and (.07) 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 § 2055(e)(2)(A) for estate tax purposes if the other requirements of § 2055(e)(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 a testamentary trust created by an individual and having concurrent and consecutive unitrust interests for two measuring lives 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 TESTAMENTARY CHARITABLE REMAINDER UNITRUST — TWO LIVES, CONCURRENT AND CONSECUTIVE INTERESTS

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005–59 and § 664(d)(2) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the _____ Charitable Remainder Unitrust and I hereby designate _____ as the initial trustee (hereinafter “the Trustee”).

1. *Payment of Unitrust Amount.* In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*permissible recipient*] and to [*permissible recipient*] (hereinafter “the Recipients”) in equal shares during their joint lives, 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”) and, upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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.

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

3. *Proration of 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 1. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

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 Predeceasing Recipient and/or the Survivor 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) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

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

6. *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.

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

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

9. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder unitrust under § 664(d)(2) of the Code and the corresponding regulations.

10. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

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

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

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

.01 Annotations for Introductory Paragraph of the Sample Trust.

- (1) *Factors concerning qualification of trust.* A deduction must be allowable under § 2055 for property contributed to the trust. Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations. The trust must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(4). Solely for purposes of § 664, a trust is deemed created at the earliest time that no person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). For purposes of § 2055, a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay this amount is deferred in accordance with § 1.664-1(a)(5)(i). 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 5.06 of this revenue procedure for further guidance related to the valuation of unmarketable assets.
- (3) *Trustee provisions.* Alternate or successor trustees may be designated in the trust instrument. In addition, the trust instrument may contain other administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing charitable remainder trusts under § 664 and the regulations thereunder.

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

- (1) *Permissible recipients.* For a CRUT with a unitrust period based on the lives of two individuals, the unitrust amount must generally be paid to those individuals and both must be living at the time of the creation of the trust. See Rev. Rul. 2002-20, 2002-1 C.B. 794, for situations in which the 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 1, 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 6.05 of this revenue procedure for an alternate provision that uses the net income method for calculating the unitrust amount. See section 6.06 of this revenue procedure for an alternate provision that uses the net income with make-up method for calculating the unitrust amount. See section 6.07 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) *Division of unitrust amount between recipients.* The sample trust provides that while both recipients are alive they will share the unitrust amount equally and, upon the death of the predeceasing recipient, the survivor recipient will receive all

of the unitrust amount, subject to any proration in paragraph 3. However, the unitrust amount may be divided other than equally during the joint lives of the recipients. In addition, the share of the predeceasing recipient may be made payable to an organization described in § 170(c) for the rest of the survivor recipient's life.

- (4) *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).
- (5) *Payment of unitrust amount in installments.* Paragraph 1, 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 recipients 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.
- (6) *Rules applicable to valuation.* Paragraph 1, 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; and (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period. See § 1.664-3(a)(1)(v).
- (7) *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 5.03(1) of this revenue procedure for additional information regarding the deferral of the payment of the unitrust amount until the end of the taxable year in which the trust is completely funded.
- (8) *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.
- (9) *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 2, Deferral Provision, of the Sample Trust.

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

.04 Annotations for Paragraph 3, Proration of 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 each recipient's death.* Paragraph 3, Proration of Unitrust Amount, of the sample trust specifies that, upon the death of the predeceasing recipient, the next regular unitrust payment due shall be prorated on a daily basis between the estate of the predeceasing recipient and the survivor recipient. See section 6.03 of this revenue procedure for an alternate provision that terminates the payment of the predeceasing recipient's share of the unitrust amount with the last regular payment preceding his or her death and/or terminates the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period.

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

- (1) *Minimum value of remainder.* As noted in section 5.02(4) of this revenue procedure, the value 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 finally determined for federal estate tax purposes. 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) and 2055(a) at the time of the transfer to the CRUT. See § 664(d)(2)(C). The trust instrument may restrict the charitable remainderman to an organization described in §§ 170(c) and 2055(a), but grant to a trustee or other person the power to designate the actual charitable remainderman. See section 6.04 of this revenue procedure for an alternate provision in which a 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 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 5.07(3) of this revenue procedure for certain governing instrument requirements that apply when the trust continues in existence for charity.

.06 Annotations for Paragraph 6, 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.

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

- (1) *Payment of the unitrust amount.* Payment of the unitrust amount to the recipients is not considered an act of self-dealing within the meaning of § 4941(d), as modified by § 4947(a)(2)(A), or a taxable expenditure within the meaning of § 4945(d), as modified by § 4947(a)(2)(A). Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations.
- (2) *Prohibitions against certain investments and excess business holdings.* Prohibitions against investments that jeopardize the exempt purpose of the trust 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 an estate tax charitable deduction is 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 7 of the sample trust, the trust instrument may limit the application of the provisions of § 508(e) to the period after the termination of the unitrust period when the trust continues in existence for the benefit of the charitable remainderman.

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

.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 an estate tax charitable deduction is 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 recipients and to the charitable organization described in §§ 170(c) and 2055(a). Second, the trust instrument must contain a means for selecting an alternative qualified charitable organization if the designated organization is not a qualified organization at the time when any 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 1, 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] and [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives and, upon the death of one (hereinafter “the Predeceasing Recipient”), the Trustee shall pay that entire percentage of the unitrust amount to the survivor (hereinafter “the Survivor Recipient”). In each taxable year of the trust during the unitrust period, the Trustee shall pay [the percentage of unitrust amount payable to the charitable recipient] percent of the unitrust amount to [an organization described in §§ 170(c) and 2055(a) of the Code] (hereinafter “the Charitable Recipient”). The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the Survivor Recipient’s death. If the Charitable Recipient is not an organization described in §§ 170(c) and 2055(a) of the Code at the time when any 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) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion. The 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 Predeceasing Recipient and/or the Survivor Recipient and the Charitable Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 each reference to “the Predeceasing Recipient and/or Survivor Recipient” in paragraph 2, Deferral Provision, of the sample trust with a reference to “the Predeceasing Recipient and/or Survivor Recipient and the Charitable Recipient.”

(c) Replace the first parenthetical in paragraph 4, Distribution to Charity, of the sample trust with the following parenthetical:
(other than any amount due the Predeceasing Recipient and/or the Survivor Recipient and the Charitable Recipient under the terms of this trust)

(d) Add the following sentence after the first and only sentence in paragraph 7, Prohibited Transactions, of the sample trust:
The Trustee shall not make any investments that jeopardize the exempt purpose of the trust 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 survivor recipient. The amount of the charitable deduction, however, will be determined without regard to a qualified contingency. See § 664(f)(2).

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

The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the Survivor Recipient's death or, if earlier, the date on which occurs the [qualified contingency].

.03 Last Unitrust Payment to the Recipients.

- (1) *Explanation.* As an alternative to prorating the unitrust amount in the taxable year of the predeceasing recipient's death, the obligation to pay the predeceasing recipient's share of the unitrust amount may terminate with the last regular payment preceding the predeceasing recipient's death. Similarly, as an alternative to prorating the unitrust amount in the taxable year of the survivor recipient's death, the obligation to pay the unitrust amount may terminate with the last regular payment preceding the survivor recipient's death. However, the fact that a 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 or, in the case of the predeceasing recipient, a share of the unitrust amount to a recipient, may terminate with the last regular payment preceding that recipient's death, the trustee must pay a 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.

- (2) *Instructions for use.*

- (a) To add an alternate provision to terminate the payment of the predeceasing recipient's share of the unitrust amount with the last regular payment preceding his or her death, 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 unitrust amount described in paragraph 1. Upon the death of the Predeceasing Recipient, the obligation of the Trustee to pay a share of the unitrust amount to the Predeceasing Recipient shall terminate with the last regular quarterly installment preceding the death of the Predeceasing Recipient, and the Predeceasing Recipient's share of the unitrust amount shall thereafter be added to and paid as part of the share of the Survivor Recipient.

- (b) To add an alternate provision to terminate the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, 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 1. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Survivor Recipient.

- (c) To add an alternate provision terminating the payment of the predeceasing recipient's share of the unitrust amount with the last regular payment preceding his or her death, and terminating the payment of the unitrust amount with the last regular payment preceding the termination of the unitrust period, 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 1. Upon the death of the Predeceasing Recipient, the obligation of the Trustee to pay a share of the unitrust amount to the Predeceasing Recipient shall terminate with the last regular quarterly installment preceding the death of the Predeceasing Recipient, and the Predeceasing Recipient's share of the unitrust amount shall thereafter be added to and paid as part of the share of the Survivor Recipient. In the taxable year of the trust during which the unitrust period ends, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Survivor Recipient.

.04 Power of Appointment to Designate the Charitable Remainderman.

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

- (2) *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 Predeceasing Recipient and/or the Survivor Recipient under the terms of this trust) to one or more charitable organizations described in §§ 170(c) and 2055(a) of the Code as [one of the named permissible recipients] shall appoint and direct by specific reference to this power of appointment by inter vivos or testamentary instrument. To the extent this power of appointment is not effectively exercised, the principal and

income not effectively appointed shall be distributed to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion. If an organization fails to qualify as an organization described in §§ 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§ 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee's sole discretion.

.05 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 1 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)(I). 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 1, 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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 1”) or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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 of my death and the last day of the unitrust period shall be the date of the Survivor 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

.06 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 1 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 6.05 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 recipients in prior years was less than the amounts that would have been paid to the recipients 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 6.05(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 1, 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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 1”) 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 Recipients in prior years was less than the aggregate of the amounts determined for all prior years under (a) of this paragraph. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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 of my death and the last day of the unitrust period shall be the date of the Survivor 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 1. In such a year, this prorated fixed percentage amount shall be used in place of the fixed percentage amount described in (a) of paragraph 1 to determine the unitrust amount payable for that year. Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

.07 Combination of Methods for Calculating the Unitrust Amount.

(1) *Explanation.* The net income method (described in section 6.05 of this revenue procedure) or the net income with make-up method (described in section 6.06 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 predeceasing recipient and/or the survivor 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 predeceasing recipient and/or the survivor 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 1, 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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 1(i)”) or (b) the trust income for the taxable year as defined in § 643(b) of the Code and the applicable regulations. Upon the death of one of the Recipients (hereinafter “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (hereinafter “the Survivor Recipient”). 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 1(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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Recipients in equal shares during their joint lives a unitrust amount equal to [same percentage used in (a) of paragraph 1(i)] percent of the net fair market value of the trust assets as of the valuation date, and, upon the death of the Predeceasing Recipient, the Trustee shall pay the entire unitrust amount to the Survivor Recipient. 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 1(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 of my death and the last day of the unitrust period shall be the date of the Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 1(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 1(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 1(ii).

(iii) *Proration of unitrust amount between Predeceasing Recipient and Survivor Recipient.* Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

(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 1, 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] and to [permissible recipient] (hereinafter “the Recipients”) in equal shares during their joint lives, 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 1(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 1(i) for the year], but only to the extent that the aggregate of the amounts paid to the Recipients in prior years was less than the aggregate of the amounts determined for all prior years under (a) of paragraph 1(i). Upon the death of one of the Recipients (herein “the Predeceasing Recipient”), the Trustee shall pay the entire unitrust amount to the survivor (herein “the Survivor Recipient”). 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 1(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”), in each remaining taxable year of the trust during the unitrust period, the Trustee shall pay to the Recipients in equal shares during their joint lives a unitrust amount equal to [same percentage used in (a) of paragraph 1(i)] percent of the net fair market value of the trust assets as of the valuation date and, upon the death of the Predeceasing Recipient, the Trustee shall pay the entire unitrust amount to the Survivor Recipient. 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 1(i) and shall not pay any amount of trust income described in the second sentence of paragraph 1(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 of my death and the last day of the unitrust period shall be the date of the Survivor 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 Predeceasing Recipient and/or the Survivor Recipient (in the case of an undervaluation) or receive from the Predeceasing Recipient and/or the Survivor 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 1(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 1(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 1(ii).
 - (iii) *Proration of unitrust amount between Predeceasing Recipient and Survivor Recipient.* Upon the death of the Predeceasing Recipient, the Trustee shall prorate on a daily basis the next regular unitrust payment due after the death of the Predeceasing Recipient between the estate of the Predeceasing Recipient and the Survivor Recipient.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Section 8 of Rev. Proc. 90-30 and section 9 of Rev. Proc. 90-31 are superseded.

DRAFTING INFORMATION

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Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2005–27 through 2005–34

Announcements:

2005-46, 2005-27 I.R.B. 63
2005-47, 2005-28 I.R.B. 71
2005-48, 2005-29 I.R.B. 111
2005-49, 2005-29 I.R.B. 119
2005-50, 2005-30 I.R.B. 152
2005-51, 2005-32 I.R.B. 283
2005-52, 2005-31 I.R.B. 257
2005-53, 2005-31 I.R.B. 258
2005-54, 2005-32 I.R.B. 283
2005-55, 2005-33 I.R.B. 317
2005-56, 2005-33 I.R.B. 318
2005-57, 2005-33 I.R.B. 318
2005-58, 2005-33 I.R.B. 319

Notices:

2005-48, 2005-27 I.R.B. 9
2005-49, 2005-27 I.R.B. 14
2005-50, 2005-27 I.R.B. 14
2005-51, 2005-28 I.R.B. 74
2005-52, 2005-28 I.R.B. 75
2005-53, 2005-32 I.R.B. 263
2005-54, 2005-30 I.R.B. 127
2005-55, 2005-32 I.R.B. 265
2005-56, 2005-32 I.R.B. 266
2005-57, 2005-32 I.R.B. 267
2005-58, 2005-33 I.R.B. 295

Proposed Regulations:

REG-130241-04, 2005-27 I.R.B. 18
REG-138362-04, 2005-33 I.R.B. 299

Revenue Procedures:

2005-35, 2005-28 I.R.B. 76
2005-36, 2005-28 I.R.B. 78
2005-37, 2005-28 I.R.B. 79
2005-38, 2005-28 I.R.B. 81
2005-39, 2005-28 I.R.B. 82
2005-40, 2005-28 I.R.B. 83
2005-41, 2005-29 I.R.B. 90
2005-42, 2005-30 I.R.B. 128
2005-43, 2005-29 I.R.B. 107
2005-44, 2005-29 I.R.B. 110
2005-45, 2005-30 I.R.B. 141
2005-46, 2005-30 I.R.B. 142
2005-47, 2005-32 I.R.B. 269
2005-48, 2005-32 I.R.B. 271
2005-49, 2005-31 I.R.B. 165
2005-50, 2005-32 I.R.B. 272
2005-51, 2005-33 I.R.B. 296
2005-52, 2005-34 I.R.B. 326
2005-53, 2005-34 I.R.B. 339

Revenue Procedures— Continued:

2005-54, 2005-34 I.R.B. 353
2005-55, 2005-34 I.R.B. 367
2005-56, 2005-34 I.R.B. 383
2005-57, 2005-34 I.R.B. 392
2005-58, 2005-34 I.R.B. 402
2005-59, 2005-34 I.R.B. 412

Revenue Rulings:

2005-38, 2005-27 I.R.B. 6
2005-39, 2005-27 I.R.B. 1
2005-40, 2005-27 I.R.B. 4
2005-41, 2005-28 I.R.B. 69
2005-42, 2005-28 I.R.B. 67
2005-43, 2005-29 I.R.B. 88
2005-44, 2005-29 I.R.B. 87
2005-45, 2005-30 I.R.B. 123
2005-46, 2005-30 I.R.B. 120
2005-47, 2005-32 I.R.B. 261
2005-48, 2005-32 I.R.B. 259
2005-49, 2005-30 I.R.B. 125
2005-50, 2005-30 I.R.B. 124
2005-51, 2005-31 I.R.B. 163
2005-54, 2005-33 I.R.B. 289
2005-55, 2005-33 I.R.B. 284

Tax Conventions:

2005-47, 2005-28 I.R.B. 71

Treasury Decisions:

9208, 2005-31 I.R.B. 157
9209, 2005-31 I.R.B. 153
9210, 2005-33 I.R.B. 290
9211, 2005-33 I.R.B. 287

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2005–27 through 2005–34

Notices:

2005-51

Modified and superseded by
Notice 2005-57, 2005-32 I.R.B. 267

Proposed Regulations:

REG-142686-01

Withdrawn by
Ann. 2005-55, 2005-33 I.R.B. 317

REG-100420-03

Corrected by
Ann. 2005-57, 2005-33 I.R.B. 318

REG-102144-04

Corrected by
Ann. 2005-56, 2005-33 I.R.B. 318

Revenue Procedures:

64-54

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

66-33

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

69-13

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

70-8

Modified by
Rev. Proc. 2005-46, 2005-30 I.R.B. 142

71-1

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

72-22

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

87-8

Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

87-9

Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

89-20

Superseded by
Rev. Proc. 2005-52, 2005-34 I.R.B. 326

90-11

Modified by
Rev. Proc. 2005-40, 2005-28 I.R.B. 83

Revenue Procedures— Continued:

90-30

Section 4 superseded by
Rev. Proc. 2005-54, 2005-34 I.R.B. 353
Section 5 superseded by
Rev. Proc. 2005-55, 2005-34 I.R.B. 367
Section 6 superseded by
Rev. Proc. 2005-56, 2005-34 I.R.B. 383
Section 7 superseded by
Rev. Proc. 2005-58, 2005-34 I.R.B. 402
Section 8 superseded by
Rev. Proc. 2005-59, 2005-34 I.R.B. 412

90-31

Section 4 superseded by
Rev. Proc. 2005-52, 2005-34 I.R.B. 326
Section 5 superseded by
Rev. Proc. 2005-54, 2005-34 I.R.B. 353
Section 6 superseded by
Rev. Proc. 2005-55, 2005-34 I.R.B. 367
Section 7 superseded by
Rev. Proc. 2005-56, 2005-34 I.R.B. 383
Section 8 superseded by
Rev. Proc. 2005-58, 2005-34 I.R.B. 402
Section 9 superseded by
Rev. Proc. 2005-59, 2005-34 I.R.B. 412

93-22

Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. 110

98-18

Obsoleted by
Rev. Proc. 2005-45, 2005-30 I.R.B. 141

2000-49

Superseded by
Rev. Proc. 2005-41, 2005-29 I.R.B. 90

2001-16

Superseded by
Rev. Proc. 2005-42, 2005-30 I.R.B. 128

2002-9

Modified and amplified by
Rev. Rul. 2005-42, 2005-28 I.R.B. 67
Rev. Proc. 2005-35, 2005-28 I.R.B. 76
Rev. Proc. 2005-43, 2005-29 I.R.B. 107
Rev. Proc. 2005-47, 2005-32 I.R.B. 269

2004-50

Superseded by
Rev. Proc. 2005-49, 2005-31 I.R.B. 165

Revenue Rulings:

65-109

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

68-549

Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. 88

Revenue Rulings— Continued:

82-29

Modified and clarified by
Rev. Proc. 2005-39, 2005-28 I.R.B. 82

2005-41

Corrected by
Ann. 2005-50, 2005-30 I.R.B. 152

Treasury Decisions:

9186

Corrected by
Ann. 2005-53, 2005-31 I.R.B. 258

9206

Corrected by
Ann. 2005-49, 2005-29 I.R.B. 119

9207

Corrected by
Ann. 2005-52, 2005-31 I.R.B. 257

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.