

Revision of Charitable Remainder Trust Sample Forms

Notice 2000-37

PURPOSE

This notice invites suggestions from the public for updating the charitable remainder annuity trust and unitrust sample forms and provisions previously published by the Internal Revenue Service.

BACKGROUND

If interests in the same property are transferred for both charitable and non-charitable purposes, the charitable interest will qualify for the charitable deduction for federal income, gift, and estate tax purposes only if the interest is in a certain prescribed form. If the charitable interest is a remainder interest, §§ 170, 2522, and 2055 of the Internal Revenue Code generally require that the charitable interest be in the form of a charitable remainder annuity trust (CRAT) described in § 664(d)(1), a charitable remainder unitrust (CRUT) described in § 664(d)(2) and (3), or a pooled income fund described in § 642(c)(5).

A CRAT is a trust that pays a sum certain to one or more beneficiaries (at least one of whom is noncharitable), for a specified term of years, or for the life or lives of named individuals. On termination of these payments, the remainder interest in the trust passes to or for the benefit of charity. A CRUT is a trust that pays a unitrust amount to one or more beneficiaries (at least one of whom is noncharitable), with the remainder interest passing to or for the benefit of charity. The unitrust amount can be calculated under one of three methods. Under the first method, the unitrust amount is a fixed percentage of the net fair market value of the trust assets valued annually (fixed percentage method). Under the second 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 annual net income of the trust (net income method). Under the third method, the unitrust amount is the amount determined under the net income method, but in any year where the trust income exceeds the

fixed percentage amount, the excess trust income is paid to make up for any shortfall in payments in prior years when the trust income was less than the fixed percentage amount (net income with make-up method).

The Service has issued a series of revenue procedures providing sample forms for one and two life inter vivos and testamentary CRATs and CRUTs. Rev. Proc. 89-20, 1989-1 C.B. 841; Rev. Proc. 89-21, 1989-1 C.B. 842; Rev. Proc. 90-30, 1990-1 C.B. 534; Rev. Proc. 90-31, 1990-1 C.B. 539; Rev. Proc. 90-32, 1990-1 C.B. 546. In addition, Rev. Rul. 72-395, 1972-2 C.B. 340, and later clarifications by Rev. Rul. 80-123, 1980-1 C.B. 205, Rev. Rul. 82-165, 1982-2 C.B. 117, and Rev. Rul. 88-81, 1988-2 C.B. 127, provide substantive rules and sample provisions for CRATs and CRUTs.

Since the publication of this guidance, there have been several changes to the statutory and regulatory provisions governing CRATs and CRUTs. For example, § 1089 of the Taxpayer Relief Act of 1997 (the 1997 Act), 1997-4 (Vol. 1) C.B. 1, amended § 664(d)(1)(A) and (d)(2)(A) to limit the annuity or unitrust amount to 50% of the fair market value of the trust assets. In addition, § 1089 of the 1997 Act added § 664(d)(1)(D) and (d)(2)(D) to require that the actuarial value of the charitable remainder interest be at least 10% of the initial net fair market value of the property transferred to the trust.

Under recently promulgated regulations, the governing instrument of a net income or net income with make-up CRUT may provide that the CRUT can convert to the fixed percentage method for calculating the unitrust amount under certain circumstances. See § 1.664-3(a)(1)(i)(c) of the Income Tax Regulations. The recently promulgated regulations also impose new rules for payment of the annuity or unitrust amount after the close of the taxable year in which the payment is due. See § 1.664-2(a)(1)(i)(a) and (b) and § 1.664-3(a)(1)(i)(g) and (h).

The regulations, as amended, provide that the proceeds from the sale of the assets of a net income or net income with make-up CRUT, at least to the extent of the fair market value of the assets when contributed to the trust, must be allocated

to trust principal. However, the governing instrument, if permitted under applicable local law, may allow the allocation of post-contribution capital gain to trust income. *See* § 1.664-3(a)(1)(i)(b)(4).

REQUEST FOR PUBLIC COMMENT

The Internal Revenue Service and the Treasury Department intend to revise the aforementioned published guidance to reflect the changes in the statutory and regulatory provisions governing CRATs and CRUTs. The current sample forms contain self-contained trust documents that address different factual situations. The Service and Treasury are considering whether the revised forms should be more generic with optional provisions to address the different situations. Comments are invited on possible revisions to the

sample forms and trust provisions, including comments on the type of format that would be most useful.

Taxpayers may submit comments in writing to:

Internal Revenue Service
Attn: CC:DOM:CORP:R (Notice
2000-37, Room 5226)
PO Box 7604
Ben Franklin Station
Washington, DC 20044

or hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R (Notice
2000-37, Room 5226)
1111 Constitution Ave., NW
Washington, DC 20224

Alternatively, taxpayers may submit comments electronically at:

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Comments and suggestions should be received by December 1, 2000. All comments and suggestions submitted will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Caroline Watson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Caroline Watson or George Masnik at (202) 622-3090 (not a toll-free call).