

and § 1.7520-2(b) to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the transfer is made, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. For purposes of section 2055 or 2106, the valuation date is the date of death unless the alternate valuation date is elected in accordance with section 2032, in which event, and within the limitations set forth in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. If the decedent's estate elects the alternate valuation date under section 2032 and also elects, under section 7520 and § 1.7520-2(b), to use the interest rate component for one of the 2 months preceding the alternate valuation date, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. The present value of an annuity is computed under § 20.2031-7(d) of this chapter (Estate Tax Regulations) for transfers for which the valuation date is after April 30, 1999, or under § 20.2031-7A (a) through (e) of this chapter, whichever is applicable, for transfers for which the valuation date is before May 1, 1999. See, however, § 1.7520-3(b) (relating to exceptions to the use of prescribed tables under certain circumstances).

(d) *Deduction for transfers to a charitable remainder annuity trust.* For rules relating to a deduction for transfers to a charitable remainder annuity trust, see section 170, 2055, 2106, or 2522 and the regulations thereunder. Any claim for deduction on any return for the value of a remainder interest in a charitable remainder annuity trust must be supported by a full statement attached to the return showing the computation of the present value of such interest. The deduction allowed by section 170 is limited to the fair market value of the remainder interest of a charitable remainder annuity trust regardless of whether an organization described in section 170(c) also receives a portion of the annuity. For a special rule relating to the reduction of the amount of a charitable contribution deduction with respect to a contribution of certain or-

dinary income property or capital gain property, see section 170(e)(1)(A) or 170(e)(1)(B)(i) and the regulations thereunder. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and the regulations thereunder.

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§ 1.664-3 Charitable remainder unitrust.

(a) *Description.* A charitable remainder unitrust is a trust which complies with the applicable provisions of § 1.664-1 and meets all of the following requirements:

(1) *Required payment of unitrust amount—(i) Payment of fixed percentage at least annually—(a) General rule.* The governing instrument provides that the trust will pay not less often than annually a fixed percentage of the net fair market value of the trust assets determined annually to a person or persons described in paragraph (a)(3) of this section for each taxable year of the period specified in paragraph (a)(5) of this section. This paragraph (a)(1)(i)(a) is applicable for taxable years ending after April 18, 1997.

(b) *Income exception.* Instead of the amount described in (a) of this subdivision (i), the governing instrument may provide that the trust shall pay for any year either the amount described in (1) or the total of the amounts described in (1) and (2) of this subdivision (b).

(1) The amount of trust income for a taxable year to the extent that such amount is not more than the amount required to be distributed under paragraph (a)(1)(i)(a) of this section.

(2) An amount of trust income for a taxable year that is in excess of the amount required to be distributed under paragraph (a)(1)(i)(a) of this section for such year to the extent that (by reason of paragraph (a)(1)(i)(b)(1) of this section) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(3) For purposes of this paragraph (a)(1)(i)(b), trust income generally means income as defined under section 643(b) and the applicable regulations. However, trust income may not be determined by reference to a fixed percentage of the annual fair market value of the trust property, notwithstanding any contrary provision in applicable state law. Proceeds from the sale or exchange of any assets contributed to the trust by the donor must be allocated to principal and not to trust income at least to the extent of the fair market value of those assets on the date of their contribution to the trust. Proceeds from the sale or exchange of any assets purchased by the trust must be allocated to principal and not to trust income at least to the extent of the trust's purchase price of those assets. Except as provided in the two preceding sentences, proceeds from the sale or exchange of any assets contributed to the trust by the donor or purchased by the trust may be allocated to 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 state statute permits the trustee to make adjustments between income and principal to treat beneficiaries impartially.

(4) The rules in paragraph (a)(1)(i)(b)(1) and (2) of this section are applicable for taxable years ending after April 18, 1997. The rule in the first sentence of paragraph (a)(1)(i)(b)(3) is applicable for taxable years ending after April 18, 1997. The rules in the second, fourth, and fifth sentences of paragraph (a)(1)(i)(b)(3) are applicable for taxable years ending after January 2, 2004. The rule in the third sentence of paragraph (a)(1)(i)(b)(3) is applicable for sales or exchanges that occur after April 18, 1997. The rule in the sixth sentence of paragraph (a)(1)(i)(b)(3) is applicable for trusts created after January 2, 2004.

(c) *Combination of methods.* Instead of the amount described in paragraph (a)(1)(i)(a) or (b) of this section, the governing instrument may provide that the trust will pay not less often

than annually the amount described in paragraph (a)(1)(i)(b) of this section for an initial period and then pay the amount described in paragraph (a)(1)(i)(a) of this section (calculated using the same fixed percentage) for the remaining years of the trust only if the governing instrument provides that—

(1) The change from the method prescribed in paragraph (a)(1)(i)(b) of this section to the method prescribed in paragraph (a)(1)(i)(a) of this section 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;

(2) The change from the method prescribed in paragraph (a)(1)(i)(b) of this section to the method prescribed in paragraph (a)(1)(i)(a) of this section occurs at the beginning of the taxable year that immediately follows the taxable year during which the date or event specified under paragraph (a)(1)(i)(c)(1) of this section occurs; and

(3) Following the trust's conversion to the method described in paragraph (a)(1)(i)(a) of this section, the trust will pay at least annually to the permissible recipients the amount described only in paragraph (a)(1)(i)(a) of this section and not any amount described in paragraph (a)(1)(i)(b) of this section.

(d) *Triggering event.* For purposes of paragraph (a)(1)(i)(c)(1) of this section, a triggering event based on the sale of unmarketable assets as defined in § 1.664-1(a)(7)(ii), or the marriage, divorce, death, or birth of a child with respect to any individual will not be considered discretionary with, or within the control of, the trustees or any other persons.

(e) *Examples.* The following examples illustrate the rules in paragraph (a)(1)(i)(c) of this section. For each example, assume that the governing instrument of charitable remainder unitrust Y provides that Y will initially pay not less often than annually the amount described in paragraph (a)(1)(i)(b) of this section and then pay the amount described in paragraph (a)(1)(i)(a) of this section (calculated using the same fixed percentage) for the remaining years of the trust and that the requirements of paragraphs

(a)(1)(i)(c)(2) and (3) of this section are satisfied. The examples are as follows:

Example 1. Y is funded with the donor's former personal residence. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the trust sells the residence. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 2. Y is funded with cash and an unregistered security for which there is no available exemption permitting public sale under the Securities and Exchange Commission rules. The governing instrument of Y provides that the change in method for computing the annual unitrust amount is triggered on the earlier of the date when the stock is sold or at the time the restrictions on its public sale lapse or are otherwise lifted. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 3. Y is funded with cash and with a security that may be publicly traded under the Securities and Exchange Commission rules. The governing instrument of Y provides that the change in method for computing the annual unitrust amount is triggered when the stock is sold. Y does not provide for a combination of methods that satisfies the requirements of paragraph (a)(1)(i)(c) of this section because the sale of the publicly-traded stock is within the discretion of the trustee.

Example 4. S establishes Y for her granddaughter, G, when G is 10 years old. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which G turns 18 years old. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 5. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the donor is married. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 6. The governing instrument of Y provides that if the donor divorces, the change in method for computing the annual unitrust amount will occur as of the first day of the year following the year of the divorce. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 7. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's first child is born. Y provides for a combination of

methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 8. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's father dies. Y provides for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 9. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's financial advisor determines that the beneficiary should begin receiving payments under the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, Y does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

Example 10. The governing instrument of Y provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary submits a request to the trustee that the trust convert to the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, Y does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(c) of this section.

(f) *Effective date—(1) General rule.* Paragraphs (a)(1)(i)(c), (d), and (e) of this section are applicable for charitable remainder trusts created on or after December 10, 1998.

(2) *General rule regarding reformations of combination of method unitrusts.* If a trust is created on or after December 10, 1998, and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(c) of this section, the trust will qualify as a charitable remainder unitrust only if it is amended or reformed to use the initial method for computing the unitrust amount throughout the term of the trust, or is reformed in accordance with paragraph (a)(1)(i)(f)(3) of this section. If a trust was created before December 10, 1998, and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(c) of this section, the trust may be reformed

to use the initial method for computing the unitrust amount throughout the term of the trust without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664-1(a)(4), or may be reformed in accordance with paragraph (a)(1)(i)(f)(3) of this section. Except as provided in paragraph (a)(1)(i)(f)(3) of this section, a qualified charitable remainder unitrust will not continue to qualify as a charitable remainder unitrust if it is amended or reformed to add a provision allowing a change in the method for calculating the unitrust amount.

(3) *Special rule for reformations of trusts that begin by June 8, 1999.* Notwithstanding paragraph (a)(1)(i)(f)(2) of this section, if a trust either provides for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(c) of this section, or provides for payment of the unitrust amount under only the method prescribed in paragraph (a)(1)(i)(b) of this section, then the trust may be reformed to allow for a combination of methods permitted under paragraph (a)(1)(i)(c) of this section without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664-1(a)(4) or to engage in an act of self-dealing under section 4941 if the trustee begins legal proceedings to reform by June 8, 1999. The triggering event under the reformed governing instrument may not occur in a year prior to the year in which the court issues the order reforming the trust, except for situations in which the governing instrument prior to reformation already provided for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(c) of this section and the triggering event occurred prior to the reformation.

(g) *Payment under general rule for fixed percentage trusts.* When the unitrust amount is computed under paragraph (a)(1)(i)(a) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the

meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664-1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the entire unitrust amount in the hands of the recipient is characterized only as income from the categories described in section 664(b)(1), (2), or (3), except to the extent it is characterized as corpus described in section 664(b)(4) because—

(1) The trust pays the unitrust amount by distributing property (other than cash) that it owned at the close of the taxable year, and the trustee elects to treat any income generated by the distribution as occurring on the last day of the taxable year in which the unitrust amount is due;

(2) The trust pays the unitrust amount by distributing cash that was contributed to the trust (with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522); or

(3) The trust pays the unitrust amount by distributing cash received as a return of basis in any asset that was contributed to the trust (with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522), and that is sold by the trust during the year for which the unitrust amount is due.

(h) *Special rule for fixed percentage trusts created before December 10, 1998.* When the unitrust amount is computed under paragraph (a)(1)(i)(a) of this section, a trust created before December 10, 1998, will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664-1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the fixed percentage to be paid each year as the unitrust amount is 15 percent or

less of the net fair market value of the trust assets as determined under paragraph (a)(1)(iv) of this section.

(i) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(g) of this section:

Example. X is a charitable remainder unitrust that calculates the unitrust amount under paragraph (a)(1)(i)(a) of this section. X was created after December 10, 1998. The prorated unitrust amount payable from X for Year 1 is \$100. The trustee does not pay the unitrust amount to the recipient by the end of the Year 1. At the end of Year 1, X has only \$95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b)(2) or (3), respectively. By April 15 of Year 2, in addition to \$95 in cash, the trustee distributes to the unitrust recipient a capital asset with a \$5 fair market value and a \$2 adjusted basis to pay the \$100 unitrust amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664-1(d)(5), the distribution is treated as a sale by X, resulting in X recognizing a \$3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664-1(d)(1), the character of the unitrust amount for Year 1 in the recipient's hands is \$95 of ordinary income, \$3 of capital gain income, and \$2 of trust corpus. For Year 1, X satisfied paragraph (a)(1)(i)(g) of this section.

(j) *Payment under income exception.* When the unitrust amount is computed under paragraph (a)(1)(i)(b) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664-1(a)(4)) merely because payment of the unitrust amount is made after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year.

(k) *Reasonable time.* For paragraphs (a)(1)(i)(g), (h), and (j) of this section, a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, "Split-Interest Trust Information Return," (including extensions) for the taxable year.

(l) *Effective date.* Paragraphs (a)(1)(i)(g), (h), (i), (j), and (k) of this section are applicable for taxable years ending after April 18, 1997. Paragraphs (a)(1)(i)(g)(2) and (3) apply only to distributions made on or after January 5, 2001.

(ii) *Definition of fixed percentage.* The fixed percentage may be expressed either as a fraction or as a percentage and must be payable each year in the period specified in subparagraph (5) of this paragraph. A percentage is fixed if the percentage is the same either as to each recipient or as to the total percentage payable each year of such period. For example, provision for a fixed percentage which is the same every year to A until his death and concurrently a fixed percentage which is the same every year to B until his death, the fixed percentage to each recipient to terminate at his death, would satisfy the rule. Similarly, provision for a fixed percentage to A and B for their joint lives and then to the survivor would satisfy the rule. In the case of a distribution to an organization described in section 170(c) at the death of a recipient or the expiration of a term of years, the governing instrument may provide for a reduction of the fixed percentage payable after such distribution *Provided That*:

(a) The reduced fixed percentage is the same either as to each recipient or as to the total amount payable for each year of the balance of such period, and

(b) The requirements of subparagraph (2)(ii) of this paragraph are met.

(iii) *Rules applicable to incorrect valuations.* The governing instrument provides that in the case where the net fair market value of the trust assets is incorrectly determined by the fiduciary, the trust shall pay to the recipient (in the case of an undervaluation) or be repaid by the recipient (in the case of an overvaluation) an amount equal to the difference between the amount which the trust should have paid the recipient if the correct value were used and the amount which the trust actually paid the recipient. Such payments or repayments must be made within a reasonable period after the final determination of such value. Any payment due to a recipient by reason of such incorrect valuation shall be

considered to be a payment required to be distributed at the time of such final determination for purposes of paragraph (d)(4)(ii) of §1.664-1. See paragraph (d)(4) of §1.664-1 for rules relating to the year of inclusion of such payments and the allowance of a deduction for such repayments. See paragraph (b) of this section for rules relating to additional contributions.

(iv) *Rules applicable to valuation.* In computing the net fair market value of the trust assets there shall be taken into account all assets and liabilities without regard to whether particular items are taken into account in determining the income of the trust. The net fair market 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 valuation methods are used each year. If the governing instrument does not specify the valuation date or dates, the trustee must select such date or dates and indicate the selection on the first return on Form 5227, "Split-Interest Trust Information Return," that the trust must file. The amount described in subdivision (i)(a) of this subparagraph which must be paid each year must be based upon the valuation for such year.

(v) *Computation of unitrust amount in certain circumstances—(a) Short taxable years.* The governing instrument provides that, in the case of a taxable year which is for a period of less than 12 months other than the taxable year in which occurs the end of the period specified in subparagraph (5) of this paragraph:

(1) The amount determined under subdivision (i)(a) of this subparagraph shall be the amount otherwise determined under that subdivision multiplied by a fraction the numerator of which is the number of days in the taxable year of the trust and the denominator of which is 365 (366 if February 29 is a day included in the numerator),

(2) The amount determined under subdivision (i)(b) of this subparagraph shall be computed by using the amount determined under subdivision (a)(1) of this subdivision (v), and

(3) If no valuation date occurs before the end of the taxable year of the trust, the trust assets shall be valued as of the last day of the taxable year of the trust.

(b) *Last taxable year of period.* (1) The governing instrument provides that, in the case of the taxable year in which occurs the end of the period specified in subparagraph (5) of this paragraph:

(i) The unitrust amount which must be distributed under subdivision (i)(a) of this subparagraph shall be the amount otherwise determined under that subdivision multiplied by a fraction the numerator of which is the number of days in the period beginning on the first day of such taxable year and ending on the last day of the period specified in subparagraph (5) of this paragraph and the denominator of which is 365 (366 if February 29 is a day included in the numerator),

(ii) The amount determined under subdivision (i)(b) of this subparagraph shall be computed by using the amount determined under (b)(1)(i) of this subdivision (v), and

(iii) If no valuation date occurs before the end of such period, the trust assets shall be valued as of the last day of such period.

(2) See subparagraph (5) of this paragraph for a special rule allowing termination of payment of the unitrust amount with the regular payment next preceding the termination of the period specified therein.

(2) *Minimum unitrust amount—(i) General rule.* The fixed percentage described in subparagraph (1)(i) of this paragraph with respect to all beneficiaries taken together is not less than 5 percent.

(ii) *Reduction of unitrust amount in certain cases.* A trust will not fail to meet the requirements of this subparagraph by reason of the fact that it provides for a reduction of the fixed percentage payable upon the death of a recipient or the expiration of a term of years *Provided That:*

(a) A distribution is made to an organization described in section 170(c) at the death of such recipient or the expiration of such term of years, and

(b) The total of the percentage payable under subparagraph (1) of this

paragraph after such distribution is not less than 5 percent.

(3) *Permissible recipients*—(i) *General rule.* The amount described in subparagraph (1) of this paragraph is payable to or for the use of a named person or persons, at least one of which is not an organization described in section 170(c). If the amount described in subparagraph (1) of this paragraph is to be paid to an individual or individuals, all such individuals must be living at the time of creation of the trust. A named person or persons may include members of a named class except in the case of a class which includes any individual, all such individuals must be alive and ascertainable at the time of the creation of the trust unless the period for which the unitrust amount is to be paid to such class consists solely of a term of years. For example, in the case of a testamentary trust, the testator's will may provide that the required amount shall be paid to his children living at his death.

(ii) *Power to alter amount paid to recipients.* A trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in section 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code were applicable to such trust. See paragraph (a)(4) of this section for a rule permitting the retention by a grantor of a testamentary power to revoke or terminate the interest of any recipient other than an organization described in section 170(c). For example, the governing instrument may not grant the trustee the power to allocate the fixed percentage among members of a class unless such power falls within one of the exceptions to section 674(a).

(4) *Other payments.* No amount other than the amount described in subparagraph (1) of this paragraph may be paid to or for the use of any person other than an organization described in section 170(c). An amount is not paid to or for the use of any person other than an organization described in section 170(c) if the amount is transferred for full and adequate consideration. The trust may

not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c). Notwithstanding the preceding sentence, the grantor may retain the power exercisable only by will to revoke or terminate the interest of any recipient other than an organization described in section 170(c). The governing instrument may provide that any amount other than the amount described in subparagraph (1) of this paragraph shall be paid (or may be paid in the discretion of the trustee) to an organization described in section 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. For example, the governing instrument may provide that a portion of the trust assets may be distributed currently, or upon the death of one or more recipients, to an organization described in section 170(c).

(5) *Period of payment of unitrust amount*—(i) *General rules.* The period for which an amount described in subparagraph (1) of this paragraph is payable begins with the first year of the charitable remainder trust and continues either for the life or lives of a named individual or individuals or for a term of years not to exceed 20 years. Only an individual or an organization described in section 170(c) may receive an amount for the life of an individual. If an individual receives an amount for life, it must be solely for his life. Payment of the amount described in subparagraph (1) of this paragraph may terminate with the regular payment next preceding the termination of the period described in this subparagraph. The fact that the recipient may not receive such last payment shall not be taken into account for purposes of determining the present value of the remainder interest. In the case of an amount payable for a term of years, the length of the term of years shall be ascertainable with certainty at the time of the creation of the trust, except that the term may be terminated by the death of the recipient or by the grantor's exercise by will of a retained

power to revoke or terminate the interest of any recipient other than an organization described in section 170(c). In any event, the period may not extend beyond either the life or lives of a named individual or individuals or a term of years not to exceed 20 years. For example, the governing instrument may not provide for the payment of a unitrust amount to A for his life and then to B for a term of years because it is possible for the period to last longer than either the lives of recipients in being at the creation of the trust or a term of years not to exceed 20 years. On the other hand, the governing instrument may provide for the payment of a unitrust amount to A for his life and then to B for his life or a term of years (not to exceed 20 years), whichever is shorter (but not longer), if both A and B are in being at the creation of the trust because it is not possible for the period to last longer than the lives of recipients in being at the creation of the trust.

(ii) *Relationship to 5 percent requirement.* The 5 percent requirement provided in subparagraph (2) of this paragraph must be met until the termination of all of the payments described in subparagraph (1) of this paragraph. For example, the following provisions would satisfy the above rules:

(a) A fixed percentage of at least 5 percent to A and B for their joint lives and then to the survivor for his life;

(b) A fixed percentage of at least 5 percent to A for life or for a term of years not longer than 20 years, whichever is longer (or shorter);

(c) A fixed percentage of at least 5 percent to A for life or for a term of years not longer than 20 years and then to B for life (provided B was living at the creation of the trust);

(d) A fixed percentage to A for his life and concurrently a fixed percentage to B for his life (the percentage to each recipient to terminate at his death) if the percentage given to each individual is not less than 5 percent;

(e) A fixed percentage to A for his life and concurrently an equal percentage to B for his life, and at the death of the first to die, the trust to distribute one-half of the then value of its assets to an organization described in section 170(c) if the total of the percentages is

not less than 5 percent for the entire period described in this subparagraph.

(6) *Permissible remaindermen—(i) General rule.* At the end of the period specified in subparagraph (5) of this paragraph, the entire corpus of the trust is required to be irrevocably transferred, in whole or in part, to or for the use of one or more organizations described in section 170(c) or retained, in whole or in part, for such use.

(ii) *Treatment of trust.* If all of the trust corpus is to be retained for such use, the taxable year of the trust shall terminate at the end of the period specified in subparagraph (5) of this paragraph and the trust shall cease to be treated as a charitable remainder trust for all purposes. If all or any portion of the trust corpus is to be transferred to or for the use of such organization or organizations, the trustee shall have a reasonable time after the period specified in subparagraph (5) of this paragraph to complete the settlement of the trust. During such time, the trust shall continue to be treated as a charitable remainder trust for all purposes, such as section 664, 4947(a)(2), and 4947(b)(3)(B). Upon the expiration of such period, the taxable year of the trust shall terminate and the trust shall cease to be treated as a charitable remainder trust for all purposes. If the trust continues in existence, it will be subject to the provisions of section 4947(a)(1) unless the trust is exempt from taxation under section 501(a). For purposes of determining whether the trust is exempt under section 501(a) as an organization described in section 501(c)(3), the trust shall be deemed to have been created at the time it ceases to be treated as a charitable remainder trust.

(iii) *Concurrent or successive remaindermen.* Where interests in the corpus of the trust are given to more than one organization described in section 170(c) such interests may be enjoyed by them either concurrently or successively.

(iv) *Alternative remaindermen.* The governing instrument shall provide that if an organization to or for the use of which the trust corpus is to be transferred or for the use of which the trust corpus is to be retained is not an organization described in section 170(c) at

the time any amount is to be irrevocably transferred to or for the use of such organization, such amount shall be transferred to or for the use of or retained for the use of one or more alternative organizations which are described in section 170(c) at such time. Such alternative organization or organizations may be selected in any manner provided by the terms of the governing instrument.

(b) *Additional contributions.* A trust is not a charitable remainder annuity trust unless its governing instrument either prohibits additional contributions to the trust after the initial contribution or provides that for the taxable year of the trust in which the additional contribution is made:

(1) Where no valuation date occurs after the time of the contribution and during the taxable year in which the contribution is made, the additional property shall be valued as of the time of contribution; and

(2) The amount described in paragraph (a)(1)(i)(a) of this section shall be computed by multiplying the fixed percentage by the sum of (i) the net fair market value of the trust assets (excluding the value of the additional property and any earned income from and any appreciation on such property after its contribution), and (ii) that proportion of the value of the additional property (that was excluded under subdivision (i) of this paragraph), which the number of days in the period which begins with the date of contribution and ends with the earlier of the last day of such taxable year or the last day of the period described in paragraph (a)(5) of this section bears to the number of days in the period which begins with the first day of such taxable year and ends with the earlier of the last day of such taxable year or the last day of the period described in paragraph (a)(5) of this section.

For purposes of this section, all property passing to a charitable remainder unitrust by reason of death of the grantor shall be considered one contribution. The application of the preceding rules may be illustrated by the following examples:

Example 1. On March 2, 1971, X makes an additional contribution of property to a charitable remainder unitrust. The taxable

year of the trust is the calendar year and the regular valuation date is January 1 of each year. For purposes of computing the required payout with respect to the additional contribution for the year of contribution, the additional contribution is valued on March 2, 1971, the time of contribution. The property had a value on that date of \$5,000. Income from such property in the amount of \$250 was received on December 31, 1971. The required payout with respect to the additional contribution for the year of contribution is \$208 (5 percent \times \$5,000 \times 305/365). The income earned after the date of the contribution and after the regular valuation date does not enter into the computation.

Example 2. On July 1, 1971, X makes an additional contribution of \$10,000 to a charitable remainder unitrust. The taxable year of the trust is the calendar year and the regular valuation date is December 31 of each year. The fixed percentage is 5 percent. Between July 1, 1971, and December 31, 1971, the additional property appreciates in value to \$12,500 and earns \$500 of income. Because the regular valuation date for the year of contribution occurs after the date of the additional contribution, the additional contribution including income earned by it is valued on the regular valuation date. Thus, the required payout with respect to the additional contribution is \$325.87 (5 percent \times [\$12,500 + \$500] \times 183/365).

(c) *Calculation of the fair market value of the remainder interest of a charitable remainder unitrust.* See § 1.664-4 for rules relating to the calculation of the fair market value of the remainder interest of a charitable remainder unitrust.

(d) *Deduction for transfers to a charitable remainder unitrust.* For rules relating to a deduction for transfers to a charitable remainder unitrust, see section 170, 2055, 2106, or 2522 and the regulations thereunder. The deduction allowed by section 170 for transfers to charity is limited to the fair market value of the remainder interest of a charitable remainder unitrusts regardless of whether an organization described in section 170(c) also receives a portion of the amount described in § 1.664-3(a)(1). For a special rule relating to the reduction of the amount of a charitable contribution deduction with respect to a contribution of certain ordinary income property or capital gain property, see section 170(e)(1)(A) or (B)(i) and the regulations thereunder. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal

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property, see section 170(a)(3) and the regulations thereunder.

[T.D. 7202, 37 FR 16920, Aug. 23, 1972, as amended by T.D. 8791, 63 FR 68192, Dec. 10, 1998; T.D. 8926, 66 FR 1038, Jan. 5, 2001; T.D. 9102, 69 FR 20, Jan. 2, 2004]

§ 1.664-4 Calculation of the fair market value of the remainder interest in a charitable remainder unitrust.

(a) *Rules for determining present value.* For purposes of sections 170, 2055, 2106, and 2522, the fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664-3) is its present value determined under paragraph (d) of this section. The present value determined under this section shall be computed on the basis of—

(1) Life contingencies determined as to each life involved, from the values of *lx* set forth in Table 90CM contained in § 20.2031-7(d)(7) of this chapter in the case of transfers for which the valuation date is after April 30, 1999; or from Table 80CNSMT contained in § 20.2031-7A(e)(4) of this chapter in the case of transfer for which the valuation date is after April 30, 1989, and before May 1, 1999. See § 20.2031-7A(a) through (d) of this chapter, whichever is applicable, for transfers for which the valuation date is before May 1, 1989;

(2) Interest at the section 7520 rate in the case of transfers for which the valuation date is after April 30, 1989, or 10 percent in the case of transfers to charitable remainder unitrusts made after November 30, 1983, for which the valuation date is before May 1, 1989. See § 20.2031-7A (a) through (c) of this chapter, whichever is applicable, for transfers for which the valuation date is before December 1, 1983; and

(3) The assumption that the amount described in § 1.664-3(a)(1)(i)(a) is distributed in accordance with the payout sequence described in the governing instrument. If the governing instrument does not prescribe when the distribution is made during the period for which the payment is made, for purposes of this section, the distribution is considered payable on the first day of the period for which the payment is made.

(b) *Actuarial Computations by the Internal Revenue Service.* The regulations

in this and in related sections provide tables of actuarial factors and examples that illustrate the use of the tables in determining the value of remainder interests in property. Section 1.7520-1(c)(2) refers to government publications that provide additional tables of factors and examples of computations for more complex situations. If the computation requires the use of a factor that is not provided in this section, the Commissioner may supply the factor upon a request for a ruling. A request for a ruling must be accompanied by a recitation of the facts including the date of birth of each measuring life, and copies of the relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(b) of this chapter) and include payment of the required user fee. If the Commissioner furnishes the factor, a copy of the letter supplying the factor should be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the taxpayer must furnish a factor computed in accordance with the principles set forth in this section.

(c) *Statement supporting deduction required.* Any claim for a deduction on any return for the value of a remainder interest in a charitable remainder unitrust must be supported by a full statement attached to the return showing the computation of the present value of such interest.

(d) *Valuation.* The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664-3) for transfers for which the valuation date is after April 30, 1999, is its present value determined under paragraph (e) of this section. The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664-3) for transfers for which the valuation date is before May 1, 1999, is its present value determined under the following sections:

Valuation dates		Applicable Regulations
After	Before	
12-31-51	01-01-52	1.664-4A(a)
12-31-51	01-01-71	1.664-4A(b)
12-31-70	12-01-83	1.664-4A(c)