and those which were deductible in such year under section 170(d)(2), which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without regard to any of the modifications referred to in section 172(d), for the deduction year.

(5) *Year contribution is made.* For purposes of this paragraph, contributions made by a corporation in a contribution year include contributions which, in accordance with the provisions of section 170(a)(2) and paragraph (b) of this section, are considered as paid during such contribution year.

(d) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(2) with respect to contributions paid, or treated under section 170(a)(2) as paid, in a taxable year beginning before January 1, 1970, subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

[T.D. 7207, 37 FR 20793, Oct. 4, 1972, as amended by T.D. 7807, 47 FR 4512, Feb. 1, 1982; T.D. 9100, 68 FR 70704, Dec. 19, 2003; T.D. 9300, 71 FR 71041, Dec. 8, 2006]

### § 1.170A–12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

(a) *In general.* (1) Section 170(f)(4) provides that, in determining the value of a remainder interest in real property for purposes of section 170, depreciation and depletion of such property shall be taken into account. Depreciation shall be computed by the straight line method and depletion shall be computed by the cost depletion method. Section 170(f)(4) and this section apply only in the case of a contribution, not made in trust, of a remainder interest in real property made after July 31, 1969, for which a deduction is otherwise allowable under section 170.

(2) In the case of the contribution of a remainder interest in real property consisting of a combination of both depreciable and nondepreciable property, or of both depletable and nondepletable property, and allocation of the fair market value of the property at the time of the contribution shall be made between the depreciable and nondepreciable property, or the depletable and nondepletable property, and depreciation or depletion shall be taken into account only with respect to the depreciable or depletable property. The expected value at the end of its "estimated useful life" (as defined in paragraph (d) of this section) of that part of the remainder interest consisting of depreciable property shall be considered to be nondepreciable property for purposes of the required allocation. In the case of the contribution of a remainder interest in stock in a cooperative housing corporation (as defined in section 216(b)(1)), an allocation of the fair market value of the stock at the time of the contribution shall be made to reflect the respective values of the depreciable and nondepreciable property underlying such stock, and depreciation on the depreciable part shall be taken into account for purposes of valuing the remainder interest in such stock.

(3) If the remainder interest that has been contributed follows only one life, the value of the remainder interest shall be computed under the rules contained in paragraph (b) of this section. If the remainder interest that has been contributed follows a term for years, the value of the remainder interest shall be computed under the rules contained in paragraph (c) of this section. If the remainder interest that has been contributed is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, the provisions of paragraph (e) of this section shall apply. In every case where it is provided in this section that the rules contained in § 25.2512–5 (or, for certain prior periods, § 25.2512–5A) of this chapter (Gift Tax Regulations) apply, such rules shall apply notwithstanding the general effective date for such rules contained in paragraph (a) of such section. Except as provided in § 1.7520–3(b) of this chapter, for transfers of remainder interests after April 30, 1989, the present value of the remainder interest is determined under § 25.2512–5 of this chapter by use of the interest rate component on the date the interest is transferred unless an election is made under section 7520 and § 1.7520–2 of this chapter to compute the

present value of the interest transferred by use of the interest rate component for either of the 2 months preceding the month in which the interest is transferred. In some cases, a reduction in the amount of a charitable contribution of a remainder interest, after the computation of its value under section 170(f)(4) and this section, may be required. See section 170(e) and §1.170A–4.

(b) *Valuation of a remainder interest following only one life*—(1) *General rule.* The value of a remainder interest in real property following only one life is determined under the rules provided in §20.2031–7 (or for certain prior periods, §20.2031–7A) of this chapter (Estate Tax Regulations), using the interest rate and life contingencies prescribed for the date of the gift. See, however, §1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, the special factor determined under paragraph (b)(2) of this section shall be used in valuing the remainder interest in that part. Further, if any part of the property is subject to depletion of its natural resources, such depletion is taken into account in determining the value of the remainder interest.

(b)(2) and (b)(3) [Reserved] For further guidance, see §1.170A–12T(b)(2) and (b)(3).

(c) *Valuation of a remainder interest following a term for years.* The value of a remainder interest in real property following a term for years shall be determined under the rules provided in §25.2512–5 (or, for certain prior periods, §25.2512–5A) of this chapter (Gift Tax Regulations) using Table B provided in §20.2031–7(d)(6) of this chapter. However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, in valuing the remainder interest in that part the value of such part is adjusted by subtracting from the value of such part the amount determined by multiplying such value by a fraction, the numerator of which is the number of years in the term or, if less, the estimated useful life of the property, and the denominator of which is the estimated useful life of the

property. The resultant figure is the value of the property to be used in §25.2512–5 (or, for certain prior periods, §25.2512–5A) of this chapter (Gift Tax Regulations). Further, if any part of the property is subject to depletion of its natural resources, such depletion shall be taken into account in determining the value of the remainder interest. The provisions of this paragraph as it relates to depreciation are illustrated by the following example:

*Example.* In 1972, B donates to Z University a remainder interest in his personal residence, consisting of a house and land, subject to a 20 year term interest provided for his sister. At such time the house has a value of $60,000, and an expected useful life of 45 years, at the end of which time it is expected to have a value of $10,000, and the land has a value of $8,000. The value of the portion of the property considered to be depreciable is $50,000 (the value of the house ($60,000) less its expected value at the end of 45 years ($10,000)), and this is multiplied by the fraction 20/45. The product, $22,222.22, is subtracted from $68,000, the value of the entire property, and the balance, $45,777.78, is multiplied by the factor .311805 (see §25.2512–5A(c)). The result, $14,273.74, is the value of the remainder interest in the property.

(d) *Definition of estimated useful life.* For the purposes of this section, the determination of the estimated useful life of depreciable property shall take account of the expected use of such property during the period of the life estate or term for years. The term "estimated useful life" means the estimated period (beginning with the date of the contribution) over which such property may reasonably be expected to be useful for such expected use. This period shall be determined by reference to the experience based on any prior use of the property for such purposes if such prior experience is adequate. If such prior experience is inadequate or if the property has not been previously used for such purposes, the estimated useful life shall be determined by reference to the general experience of persons normally holding similar property for such expected use, taking into account present conditions and probable future developments. The estimated useful life of such depreciable property is not limited to the period of the life estate or term for years preceding the remainder interest. In determining the

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expected use and the estimated useful life of the property, consideration is to be given to the provisions of the governing instrument creating the life estate or term for years or applicable local law, if any, relating to use, preservation, and maintenance of the property during the life estate or term for years. In arriving at the estimated useful life of the property, estimates, if available, of engineers or other persons skilled in estimating the useful life of similar property may be taken into account. At the option of the taxpayer, the estimated useful life of property contributed after December 31, 1970, for purposes of this section, shall be an asset depreciation period selected by the taxpayer that is within the permissible asset depreciation range for the relevant asset guideline class established pursuant to § 1.167(a)–11(b) (4)(ii). For purposes of the preceding sentence, such period, range, and class shall be those which are in effect at the time that the contribution of the remainder interest was made. At the option of the taxpayer, in the case of property contributed before January 1, 1971, the estimated useful life, for purposes of this section, shall be the guideline life provided in Revenue Procedure 62–21 for the relevant asset guideline class.

(e) *Valuation of a remainder interest following more than one life or a term certain concurrent with one or more lives.* (1)(i) If the valuation of the remainder interest in the real property is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used.

(ii) The special factor is to be computed on the basis of—

(A) Interest at the rate prescribed under § 25.2512–5 (or, for certain prior periods, § 25.2512–5A) of this chapter, compounded annually;

(B) Life contingencies determined from the values that are set forth in the mortality table in § 20.2031–7 (or, for certain prior periods, § 20.2031–7A) of this chapter; and

(C) If depreciation is involved, the assumption that the property depreciates on a straight-line basis over its estimated useful life.

(iii) If any part of the property is subject to depletion of its natural resources, such depletion must be taken into account in determining the value of the remainder interest.

(2) In the case of the valuation of a remainder interest following two lives, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1}V^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)\left(1-\frac{l_{y+t+1}}{l_y}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\left(1-\frac{l_{y+t}}{l_y}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

n=the estimated number of years of useful life,

i=the applicable interest rate under section 7520 of the Internal Revenue Code,

v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x and y=the ages of the life tenants, and

lx and ly=the number of persons living at ages x and y as set forth in Table 2000CM in § 20.2031–7T (or, for prior periods, in § 20.2031–7A) of this chapter.

(3) Notwithstanding that the taxpayer may be able to compute the special factor in certain cases under para-

graph (2), if a special factor is required in the case of an actual contribution, the Commissioner will furnish the factor to the donor upon request. The request must be accompanied by a statement of the sex and date of birth of each person the duration of whose life may affect the value of the remainder interest, copies of the relevant instruments, and, if depreciation is involved, a statement of the estimated useful life of the depreciable property. However, since remainder interests in that part of any property which is depletable cannot be valued on a purely actuarial

basis, special factors will not be furnished with respect to such part. Requests should be forwarded to the Commissioner of Internal Revenue, Attention: OP:E:EP:A:1, Washington, DC 20224.

(f) *Effective/applicability date.* This section applies to contributions made after July 31, 1969.

[T.D. 7370, 40 FR 34337, Aug. 15, 1975, as amended by T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, 30104, June 10, 1994; T.D. 8819, 64 FR 23228, Apr. 30, 1999; T.D. 8886, 65 FR 36909, 36943, June 12, 2000; T.D. 9448, 74 FR 21439, 21518, May 7, 2009; 74 FR 27079, June 8, 2009]

### § 1.170A–12T Valuation of a remainder interest in real property for contributions made after July 31, 1969 (temporary).

(a) through (b)(1) [Reserved] For further guidance see §1.170A–12(a) through (b)(1).

(b)(2) *Computation of depreciation factor.* If the valuation of the remainder interest in depreciable property is dependent upon the continuation of one life, a special factor must be used. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in §20.2031–7T (or for periods before May 1, 2009, §20.2031–7A) and on the assumption that the property depreciates on a straight-line basis over its estimated useful life. For transfers for which the valuation date is on or after May 1, 2009, special factors for determining the present value of a remainder interest following one life and an example

describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Valuations Version 3C'' (2009). This publication will be available beginning May 1, 2009, at no charge, electronically via the IRS Internet site at *http://www.irs.gov.* For transfers for which the valuation date is after April 30, 1999, and before May 1, 2009, special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Values, Book Gimel,'' (7–99). For transfers for which the valuation date is after April 30, 1989, and before May 1, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, ''Actuarial Values, Gamma Volume,'' (8–89). These publications are no longer available for purchase from the Superintendent of Documents, United States Government Printing Office. However, they may be obtained by requesting a copy from: CC:PA:LPD:PR (IRS Publication 1459), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. See, however, §1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Otherwise, in the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1}v^{t+1}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

n = the estimated number of years of useful life,

i = the applicable interest rate under section 7520 of the Internal Revenue Code,

v = 1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x = the age of the life tenant, and

lx = number of persons living at age x as set forth in Table 2000CM of §20.2031–7T (or, for periods before May 1, 2009, the tables set forth under §20.2031–7A).

(3) The following example illustrates the provisions of this paragraph

*(b): Example.* A, who is 62, donates to Y University a remainder interest in a personal