

[4830-01-P]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR parts 1, 20 and 25

TD 9068

RIN 1545-A031

Definition of Guaranteed Annuity and Lead Unitrust Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the income, estate, and gift tax regulations to conform to the Tax Court's decision in Estate of Boeshore v. Commissioner, 78 T.C. 523 (1982), acq. in result, 1987-2 C.B. 1. In Estate of Boeshore, the Tax Court held § 20.2055-2(e)(2)(vi)(e) of the Estate Tax Regulations invalid to the extent that it disallows a deduction for the value of a charitable unitrust interest if the charitable interest is preceded by a noncharitable interest that is in the form of a unitrust interest. This action is necessary to conform the income, estate, and gift tax regulations to the Tax Court's decision in Estate of Boeshore. The effect of these regulations is to allow an income, estate, or gift tax charitable deduction for charitable annuity or unitrust interests that are preceded by a noncharitable unitrust or annuity interest.

Dates: The regulations are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

On July 23, 2002, the Treasury Department and the IRS published in the **Federal Register** (67 FR 48070) a notice of proposed rulemaking (REG-115781-01) conforming the income, gift, and estate tax regulations to the Tax Court's decision in Estate of Boeshore v. Commissioner, 78 T.C. 523 (1982), acq. in result, 1987-2 C.B. 1.

Specifically, the existing regulations under section 170, 2055, and 2522 governing charitable guaranteed annuity and unitrust interests were proposed to be amended to eliminate the requirement that the charitable interest commence no later than the commencement of a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations will continue to require that any amounts payable for a private purpose before the expiration of the charitable annuity or unitrust interest either must be in the form of a guaranteed annuity or unitrust interest or must be payable from a separate group of assets devoted exclusively to private purposes.

No public hearing was requested or held, but one written comment was received. The commentator suggested that any charitable lead interest in a charitable remainder trust should be taken into account along with the remainder interest for purposes of satisfying the 10 percent test contained in sections 664(d)(1)(D) and (d)(2)(D) of the Internal Revenue Code. Among the requirements for a trust to qualify as a charitable remainder trust, sections 664(d)(1)(D) and (d)(2)(D) provide that the present value of the remainder interest must be equal to at least 10 percent of the initial fair market value of all property placed in the trust. Because the statutory requirement is based solely on the value of the remainder interest, it is not possible to take into account any lead interests that pass to charity for purposes of satisfying this requirement. Accordingly, this document

adopts final regulations with respect to the notice of proposed rulemaking without any changes.

### **Effect on Other Documents**

The following publication is revoked as of July 7, 2003:

Rev. Rul. 76-225 (1976-1 C.B. 281)

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

### **Drafting Information**

The principal author of these proposed regulations is Susan Hurwitz of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects for parts 1, 20, and 25

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 20, and 25 are amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.170A-6 is amended as follows:

1. Paragraph (c)(2)(i)(E) is revised and the example following paragraph (c)(2)(i)(E) is removed.

2. Paragraph (c)(2)(ii)(D) is revised.

The revisions read as follows:

§1.170A-6 Charitable contributions in trust.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section

4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(ii) \* \* \*

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16,  
1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \* \*

Par. 4. Section 20.2055-2 is amended as follows:

1. Paragraph (e)(2)(vi)(f) is revised.
2. Paragraph (e)(2)(vii)(e) is revised.
3. In paragraph (f)(2)(iv), Example (4) is removed.

The revisions read as follows:

§20.2055-2 Transfers not exclusively for charitable purposes.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(f) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's

governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vi)(f), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(vii) \* \* \*

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vii)(e), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in

money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

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#### PART 25--GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 6. Section 25.2522(c)-3 is amended as follows:

1. Paragraph (c)(2)(vi)(f) is revised.
2. Paragraph (c)(2)(vii)(e) is revised.
3. In paragraph (d)(2)(iv), Example (4) is removed.

The revisions read as follows:

§25.2522(c)-3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(f) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity

interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(f), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(vii) \* \* \*

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are

devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(e), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See §53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

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Deputy Commissioner for Services and Enforcement

Approved:

Assistant Secretary of the Treasury