Creative Gift Planning with Charitable Remainder Unitrusts

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INTRODUCTION TO CREATIVE GIFT PLANNING WITH CHARITABLE REMAINDER UNITRUSTS

Clients who have included, or plan to include, bequests to charities in their wills or living trusts often are better advised to "accelerate their bequests" through a charitable remainder unitrust that provides a gift at death, but additionally offers income tax deductions, minimization of capital gains and net investment income taxes, the assistance of a skilled trustee, the satisfaction (and recognition) of making a lifetime gift, plus a variety of other potential benefits.

Establishing inter vivos charitable remainder unitrusts can, in many cases, also be a solution to personal and family challenges. In recent years, unitrusts have been employed to supplement retirement savings, educate grandchildren, pay alimony, liquidate art collections, "rule from the grave," sell businesses and support disabled family members – all in the context of invaluable assistance to worthwhile causes and institutions and tax-saving charitable deductions.

From a purely tax and financial standpoint, charitable remainder unitrusts have the ability to:

1. Increase a donor's spendable income (or that of a family member) by converting low-yield or no-yield assets into a lifetime stream of variable payments (generally 5% to 7% of the value of the trust corpus, as revalued annually);
2. Provide favorably taxed income, if careful attention is given to how the trust is funded and invested;
3. Avoid capital gains taxes of 15%, 20%, 25% or 28%, plus 3.8% net investment income taxes, when the trust assets are sold and reinvested by the trustee;
4. Supply income tax and transfer tax charitable deductions (generally 30% to 50% of the amount transferred, depending on beneficiaries' ages or the length of the trust term);

All of these objectives are achievable in the context of significant personal satisfaction and recognition, including memorializing the life of the donor, a friend or family member.

Essentials of Charitable Remainder Unitrusts

Charitable remainder unitrusts are irrevocable trusts that donors establish for the benefit of designated income beneficiaries and one or more charitable remainder beneficiaries (IRC §664). Unitrusts last for the lifetimes of the income beneficiaries or for a term of years (20-year maximum) [IRC §664(d)] or sometimes a combination of lifetimes and a term of years.

Income tax, gift tax and estate tax charitable deductions (10% minimum) reduce the cost of benefitting charity and improve the donor's tax situation. Deductions depend on the ages and number of the income beneficiaries (or the term of years the trust is to last), the amount of income retained for the beneficiaries and the applicable federal (midterm) rates (§7520 rates) in effect at the time the trust is established. Donors can choose the current monthly interest rate or the rates from either of the previous two months, whichever is most favorable for deduction purposes.

Note: A less common, less flexible alternative to the unitrust is the charitable remainder annuity trust, which makes fixed payments to beneficiaries. According to recent IRS statistics, only 20% of CRTs are annuity trusts, and the trend in recent years has been for donors to establish unitrusts. Unitrusts are commonly set up in amounts from $100,000 to $1 million, although $10 million trusts and larger have been established.

Unitrusts (so called because trust principal and trust income generally are treated as a "unit" in calculating payouts) pay beneficiaries a percentage (minimum 5%, maximum 50%) of the value of the trust as revalued at least once a year [IRC §664(d)(2)(A)]. Payments will rise or decline according to the investment results experienced by the trustee. This arrangement is commonly called the "standard" unitrust (STANCRUT). Additional contributions may be made to unitrusts [Reg. §1.664-3(b)], if the trust instrument so provides.

Payouts can be limited to the lesser of the trust's net income or the unitrust percentage – a "net income" or "income exception" unitrust (NICRUT) – and provision also can be made for "make up" or "catch up" of deficiencies from years in which payouts were less than the payout percentage stated in the unitrust agreement (NIMCRUT) [Reg. §1.664-3(a)(1)(i)(b)]. The trustee may make up prior years' deficiencies in payouts to the extent current income of the trust exceeds the specified unitrust amount. Note: IRS has approved several trusts that defined realized capital gains as "income" for purposes of making payments and make ups from net income unitrusts (post-contribution gains only).

"Flip" Unitrusts Offer Planning Opportunities

"Flip" unitrusts are a fairly recent variation in unitrust design [Reg. §1.664-3(a)(1)(i)(c)]. Donors who fund trusts with real estate, closely held stock and other nonliquid assets historically have used a net-income or net-income with make up unitrust, which permitted the trustee to avoid or postpone income payments prior to the sale of the trust assets. Once property is sold, however, most donors prefer the fixed percentage payments offered by a standard unitrust.

Unitrusts created after December 9, 1998, may contain provisions allowing them to flip from a net-income trust to a standard unitrust upon the occurrence of a specific date or triggering event, which must be outside the control of the trustees or any other persons. Examples of permissible triggering events include a beneficiary achieving a particular age, marriage, divorce, death, birth of a child and sale of unmarketable assets, such as real estate. Impermissible events include sale of marketable assets or a request from a beneficiary to convert to fixed percentage payouts.

Conversion must occur at the start of the taxable year immediately following the year in which the triggering date or event occurs, and any make up amounts are forfeited. Unmarketable assets are defined as anything other than cash, cash equivalents or assets that can be readily converted to cash or cash equivalents. Originally, the flipCRUT merely seemed to be a "fix-up" measure that would ease the pain of donors who funded NIMCRUTs with vacant lots and later were saddled with low payouts. On closer examination, new or refined gift plans began to emerge. Examples include:

- Donor wants to make a gift today, obtain a tax deduction and receive lifetime income – but postpone most or all of the income until some future date (the year he or she retires, for example);

- Donor wants to help worthwhile causes and at the same time arrange for young grandchildren (or children) to receive payments when they start college – five, ten or 15 years in the future.

Taxation of Unitrusts and Beneficiaries

Unitrusts are tax exempt; however, any unrelated business taxable income (UBTI) will be taxed at a 100% tax rate (that is, UBTI will be confiscated). Rents and dividends from corporations generally are not considered unrelated business taxable income. UBTI also includes debt-financed income, which may occur if the trustee borrows funds to produce investment income or incurs debt to fix up real estate in the trust prior to selling. A portion of the eventual sale proceeds could be taxed at a 100% rate.

While CRTs are tax exempt, income beneficiaries are taxable on their payments, depending on the character of the income earned by the trust. Under this four-tier system: (1) the trust's current and accumulated "ordinary income" (usually taxed at the beneficiary's highest rates) is considered first, then

(2) current and accumulated capital gains (generally taxed at lower rates than ordinary income), (3) "other" (tax-exempt) income and (4) corpus (also tax free). It's sometimes called the "worst-in-first-out" system, or WIFO.

Tier One. The unitrust amount is deemed first to consist of ordinary income, to the extent the trust has any current or accumulated ordinary income, including interest, rents, royalties and dividends. Qualified dividends, which currently receive favored tax treatment, are considered to be distributed last.

Tier Two. If the unitrust amount exceeds the current and accumulated ordinary income of the trust, it is deemed to consist of capital gain, to the extent the trust has any net capital gain for the current year or carried over from a prior year. Note that short-term gain is distributed before long-term gain. After short-term gain comes long-term gain taxed at a maximum of 28% (collectibles), then 25% gain (from real estate as to which the donor claimed depreciation deductions), then gain taxed at a maximum rate of 20% – for taxpayers in the 39.6% tax bracket – and finally 15% or 10% for all others.

Tier Three. The third tier consists of tax-exempt income – for example, municipal bond interest.

Tier Four. The fourth tier consists of trust corpus. The trustee takes the donor's adjusted basis in gift assets, and any distribution of that basis or cash is always tax free.

Net Investment Income Tax. The latest wrinkle in the four-tier system is the net investment income (NII) tax, added as part of the Affordable Care Act. Taxpayers with adjusted gross income in excess of $200,000 (single filers) or $250,000 (joint filers) are subject to an additional 3.8% tax on interest, dividends, capital gains, rents, royalties, nonqualified annuities, income from businesses that are passive activities and income from trading financial instruments or commodities [Code §1411].

Although charitable remainder trusts are exempt from NII tax, proposed regulations provide that NII earned after 2012 will be passed through to beneficiaries as a subclass in each category of income.

Harvesting Investment Profits inside a Unitrust

For high-income investors, a capital gains tax rate of 20% plus the 3.8% NII tax means losing nearly 24% of their profits whenever they sell at a profit. Unitrust trustees, however, can sell capital gain property free of all taxes and reinvest 100% of the proceeds in income-producing assets. Capital gains tax avoidance may be an even greater incentive when funding trusts with tangible personal property (28% capital gains tax rate) and commercial real estate on which donors have taken depreciation deductions (25% capital gains tax rate). Commercial properties, such as apartments and office buildings, should be good candidates, so long as they are debt-free.

Unitrust Payout Options and Alternatives

Unitrusts generally make payments for the lifetimes of one or more individuals, but all of them must be alive at the time the trust is established. The income beneficiaries can be a class of persons, i.e., "all my children," but the class must be limited to living and ascertainable members. Charities can be named to receive some of the payout, but the trust must have at least one non-charitable beneficiary. Payments can be made for a fixed term of years to individuals, corporations or noncharitable trusts, or to non-charitable trusts for the lifetimes of "financially disabled" or incompetent persons. Term-of-years trusts can last no more than 20 years; trusts for the lives of beneficiaries may last much longer.

Payments can be made jointly to multiple income beneficiaries, then continue for the survivor(s), or be made to one person alone, then continue for a survivor: "Pay the unitrust amount to John for his life and then to Mary for her life." The trust document can provide that an independent trustee may sprinkle the yearly payment among a group of beneficiaries (Rev. Rul. 77-285). This power allows the trustee to vary the amount of payout to each beneficiary from year to year as situations change.

Payments can be made to one or more persons for life (a husband and wife, for example), then to others

(e.g., children), for a fixed term of years. Technically, the trust must pay children for their lifetimes or a term of years, whichever is shorter. Payouts must be made at least annually, but quarterly payments are the norm. In the case of a testamentary CRT, the payout may be deferred until a reasonable time after the close of the year in which the trust is fully funded.

Who Can Be Remainder Beneficiaries?

Both public charities and private foundations can be named as remainder beneficiaries of CRTs, but including private foundations may produce unfavorable deduction results. The trust document must provide that if the designated charitable remainderman is not a qualified charitable organization at the time any amount is to be paid to the remainderman, the payments will be made to either (1) stated alternative qualified organizations or (2) a qualified charitable organization chosen by the trustee. Donors may retain the right to revoke a charity as remainderman and name others.

Who Can Serve as Trustee?

The following can serve as trustee of a charitable remainder trust: (1) a commercial trustee, such as a bank trust department, but minimum required funding amounts are often $500,000 or more; (2) the charitable remainderman, if permitted by the organization's charter and bylaws; (3) an unrelated third person; (4) the donor – however this may be risky if the donor retains an inappropriate interest or power in the trust that would cause the trust to be disqualified as a grantor trust (a sprinkling power, for example).

Restrictions on Unitrusts

A charitable remainder trust is subject to special penalty taxes (private foundation excise taxes) if the trust engages in certain prohibited activities. The trust instrument must specifically prohibit the trustee from engaging in these activities or the trust will be treated as a taxable trust. The most important prohibition is self-dealing [IRC §4944(d)], which is generally defined as the use of trust assets to benefit the trust grantor or close family members (disqualified persons). Self-dealing includes a sale or lease of property between the grantor and the trust, or the transfer of mortgaged property to the trust. If a charity receives any part of the trust income, the trust is liable under rules prohibiting excess business holdings [IRC §4943(c)], jeopardizing investments [IRC §4944] and taxable expenditures [IRC §4945].

Gift and Estate Tax Aspects of Unitrusts

Donors who establish charitable remainder unitrusts and name another person as income beneficiary (or as a joint or survivor beneficiary) are actually making two gifts: one to charity and one to the other person. Charity's gift is nontaxable because of the gift tax charitable deduction. The gift to the income beneficiary is taxed based on the value of that person's income interest. The gift is eligible for the gift tax annual exclusion if payments start immediately. If the donor keeps the right to revoke a survivor beneficiary's income interest by will, the gift will be incomplete and nontaxable for gift tax purposes. It is not clear how the power of revocation would work if the donee is the sole income beneficiary or is a joint beneficiary.

Donors are required to file Form 709 (gift tax return) for all CRTs, even where the donor is the only income beneficiary. A spouse who establishes a charitable remainder trust for the other spouse (or as a joint and survivor arrangement for both spouses) escapes gift tax because of the unlimited gift tax marital and charitable deductions. Gift tax returns are required, nonetheless, and the marital deduction will not be available if the trust has another beneficiary who is not a spouse.

Charitable remainder trusts that make payments only to the donor pass free of estate tax, thanks to the estate tax charitable deduction. CRTs that include spouses as beneficiaries qualify for the unlimited estate tax marital deduction, but only where the surviving spouse is the sole noncharitable beneficiary [IRC §2056(b)]. A unitrust established during life

for a nonspouse gives rise to an adjusted taxable gift in the donor's estate. If the donor and a nonspouse are both beneficiaries, the entire trust value is included in the donor's estate, which is entitled to an estate tax charitable deduction measured by the surviving beneficiary's current age and the value of the trust assets. If a donor sets up a testamentary unitrust for a nonspouse, the estate gets a deduction based on the beneficiary's age at the donor's death, the payout amount and the value of the trust assets.

Selecting Assets to Fund Unitrusts

A donor desiring to create a charitable remainder trust should give careful thought to what kind of property to place in the trust. Generally speaking, donors should not use property that (1) will cause the trust to have unrelated business taxable income, or (2) could result in a private foundation excise tax to be imposed. Transfers of debt-encumbered real estate will disqualify a charitable remainder trust, and donors should be aware that deductions for gifts of tangible personal property will be reduced and postponed until the item is sold from the trust. Transfer of S corporation stock to a charitable remainder trust will terminate the company's S status.

Real estate that is not subject to a mortgage can be excellent for funding a unitrust or annuity trust. Office buildings and apartments that have been depreciated can be sold and reinvested within the trust without loss to capital gains taxes as high as 25% on the depreciation recapture portion.

A personal residence is suitable for transfer to a charitable remainder trust, but not if the grantor wishes to continue living in the house. The prohibition against self-dealing would be violated if the donor continued using the house rent free, and probably would be violated even if a reasonable rent were charged, because the regulations forbid a lease of property by a charitable remainder trust to a disqualified person [Reg. §53.4941(d)-2(b)].

Publicly traded securities that have appreciated in value are ideal for funding a charitable remainder trust. Unlike closely held stock, these shares are freely transferable and generally pose no problems under the private foundation rules. Donors do not realize capital gain upon the transfer to the trust because the transfer is not considered a "sale or exchange." The trustee may sell the stock without causing the donor or the trust to incur current capital gains tax, enabling the trustee to construct a diversified portfolio, invest for higher yield or tax-favored income, such as qualified dividends. Income beneficiaries eventually may report capital gain income from the sale of appreciated assets by the trust, under the four-tier system of trust taxation. But such gains typically are taxed at low rates.

Closely held stock may be transferred to a charitable remainder trust, but practical problems may arise: Is there a ready buyer for the shares? Is redemption of the stock from the corporation a possibility? Note that if charity is named to receive any portion of the trust income, the excess business holdings prohibition may apply.

PRACTICAL PLANNING OPPORTUNITIES

Financial help for a family member. Evelyn Jones is a 67-year-old widow. Her two adult children, Fritz and Julia, are professionals earning good incomes. They and their children were well provided for through a trust set up under the will of Evelyn's late husband, Henry, a victim of pancreatic cancer. Evelyn's sister, Angela, age 64, is not so well off. Angela's husband has suffered a series of financial setbacks, and Angela has little income of her own.

Evelyn would like to do something for Angela – and for the American Institute for Cancer Research in her husband's memory. Evelyn owns various properties, including some highly appreciated, low-yield stock worth about $290,000 and some highly appreciated, undeveloped real estate worth about

$120,000. She has contemplated leaving these assets to AICR at death. A number of personal and financial goals might be inferred from the foregoing description, many of which Evelyn can achieve through a charitable remainder unitrust.

■ Evelyn can fund a charitable remainder unitrust with the stocks and real estate and retain lifetime payments of 5%, 6% or higher – a significant increase in family income – which can be paid to someone in a low tax bracket, such as her sister Angela, and then to a survivor beneficiary (Evelyn, herself, for example), if desired. A trustee will provide skilled investment and management services, which can be important for many families.

■ The trustee can invest so that trust payments are taxed at low dividend or capital gains tax rates. Evelyn's sister might pay little or no tax on her trust income if she is in a 15% tax bracket. Payments consisting of trust principal or tax exempt interest escape taxation, irrespective of the beneficiary's tax bracket.

■ No erosion from capital gains taxes occurs when the trustee sells Evelyn's stocks and real estate, which leaves the full $410,000 available for reinvestment.

■ Evelyn can deduct roughly $154,000 on her next tax return if the trust is to pay Angela 6% for life. Gift taxes can be minimized, with proper planning.

■ Evelyn will name this arrangement "The Henry and Evelyn Jones Memorial Trust to Conquer Cancer" and become eligible for membership in AICR's League of Willful Cancer Fighters.

Converting savings bonds to income. Treasury Department policy limits lifetime transfers of U.S. savings bonds to family members and "personal estate trusts," such as revocable living trusts (31 CFR 315.47). As a result, savings bonds may not be reissued to a charity during an owner's lifetime. Seemingly, the only way to employ savings bonds for inter vivos giving is to redeem them and contribute the proceeds. Cashing bonds results in taxable income to the donor for any accrued interest not previously reported, but income tax charitable deductions are available.

Savings bonds make excellent charitable bequests, however, since any unreported interest (treated as income in respect of a decedent) can pass to an organization like AICR free of both income tax and federal estate tax. Bonds also can be left to testamentary charitable remainder trusts by will or as distributions from a donor's revocable living trust.

Funding testamentary CRTs with savings bonds is an excellent tax strategy, since bonds can be redeemed by the trustee without paying income taxes. But conversations with Treasury staff indicate that savings bonds also may be reissued in the name of the trustee of an inter vivos charitable remainder trust, if the owner of the bonds is both grantor and beneficiary of the trust. Unfortunately, the owner would be taxed on any unreported accrued interest on the bonds, according to Treasury officials. Charitable deductions can help, however.

A donor age 75 could transfer series EE or series I bonds worth $400,000 to a 5% charitable remainder unitrust and deduct about $240,000, which likely would shelter much or all of any reportable interest. The donor is able to "unlock" the income potential of the bonds at a minimum of tax and establish a 5% income stream.

Ruling from the grave, Part I. When hotel heiress Leona Helmsley died, her will established three charitable remainder unitrusts, one for her brother and one for each of her two grandchildren. Most interesting was a clause in the grandchildren's trusts that they would receive income for life – but only if they visited the grave of their father at least once a year for the rest of their lives. The clause was framed as a "qualified contingency" under IRC §664(f)(2), which permits CRTs to terminate early upon the happening of specified contingencies. Here, if a grandchild ever failed to make an annual cemetery visit, the trust would come to an end, with all assets passing immediately to charity.

Ruling from the grave, Part II. Can a donor control a beneficiary's behavior with a unitrust provision that is less extreme than ending the trust early (see above)? The question arose recently whether a mother could establish a unitrust that would withhold payments from her drug-abusing son at any time when he was not "clean and sober." "I don't

want trust payments going to his drug dealer," the mother explained.

Suppose the trust had an additional income beneficiary – which could be a charitable organization. Suppose further that an independent trustee has been given the power to sprinkle (apportion) trust income among the beneficiaries. Such a clause would not disqualify the trust [IRC §674(c), Rev. Rul. 77-73, PLR 9052038], although naming charity as an income beneficiary would not increase the donor's income tax charitable deduction [Reg. §1.664-3(d)].

A private letter ruling approved a payout arrangement in which the donor and the charitable remainderman were co-income beneficiaries of a CRT, with an independent trustee holding the power to sprinkle the trust's payout amount. At least 20% was required to be paid to the donor (PLR 9052038). The IRS might approve a similar income beneficiary arrangement in which the donor's son receives only 5% or 10% of the payout – more, at the trustee's discretion, if he can pass an annual drug test. If the son continues to use drugs, he would receive only minimum annuity or unitrust amounts from the trust, with the other beneficiary receiving the rest.

Supplementing retirement savings. Many high-income professionals and executives are looking for tax relief during their years of high income and for a supplementary retirement savings vehicle that permits tax-free growth of their nest egg. The "Retirement Unitrust," sometimes referred to as a "Charitable IRA," can be a useful planning tool for such individuals – assuming they also have a motivation to provide substantial benefit to a charitable organization. The tax laws do not recognize a creature called a deferred payment charitable remainder trust. But it is possible to set up such an arrangement (or a reasonable facsimile thereof) through a flip unitrust. Such a trust could provide:

- An income tax deduction for part of the funds or property transferred to the trust, based on the age of the grantor at the time of contribution and the amount of income retained (minimum 5%).

- Deferral of much – perhaps all – of the trust income until the grantor retires. Principal would grow quickly because the trust is tax-exempt.

- Payment of substantial income after retirement, reflecting rapid growth of principal within a tax-exempt trust – and perhaps make up of payment deficiencies during years the grantor was receiving little or no trust income.

- An important gift to the grantor's charity when the trust ends.

Supplementing College Funds. Unitrusts can be established to make payments to children or grandchildren who are in college – subject to taxation of parents under the "kiddie tax." The kiddie tax applies to children age 19 and below and to full-time college students under age 24, unless a student's earned income exceeds half of his or her support.

How would an education unitrust work? Donors with young grandchildren could establish term-of-years charitable remainder unitrusts equipped with sprinkling provisions that allow the trustee to bestow income only on those grandchildren who are attending college. (The donor cannot serve as trustee if there is a sprinkling power, or have the ability to change the trustee.) Donors receive income tax charitable deductions and avoid capital gains taxes if the trust is funded with appreciated assets.

The trust could be structured as a flip unitrust, with the trigger event being a particular event or date preceding the year the oldest child was expected to matriculate. So the trust might be established as a 20-year net income unitrust when grandchildren were ages two, five, eight and nine and invested primarily for growth until the oldest grandchild enters the 12th grade (a triggering event). The following year the trust would flip to become a standard payment unitrust, and start making unitrust payments to the oldest grandchild, then to other grandchildren, at the trustee's discretion.

Can the college unitrust still work, even if the kiddie tax results in substantial trust income being taxed to a child's parents? The answer should be yes, if the trust is invested to provide favorably taxed income. Recent IRS reports show that, on average, about 50% of all CRT distributions are taxed as long-term capital gains. A college unitrust, invested to generate primarily long-term capital gains and qualified dividends, can be extremely tax efficient even where the beneficiaries' parents are in a 35% or

39.6% federal tax bracket. Such a plan would enable beneficiaries to enjoy income taxed as low as 15% or 20%, under current law. In some cases, part of the beneficiaries' payout may be tax-free return of corpus, reducing tax rates on the unitrust amount to under 15%.

Note: This discussion assumes that the grandparent who funds a college unitrust has the twin goals of helping charitable organizations and supplementing grandchildren's college education. There are many other plans for funding college educations that provide more funds for college but do not benefit worthwhile causes.

Providing for "financially disabled" beneficiaries. A charitable remainder trust may pay income to a noncharitable trust for the life of an individual who is "financially disabled" (Rev. Ruls. 2002-20, 2002-17). The IRS has indicated that such arrangements are appropriate where the income beneficiary, by reason of a medically determinable physical or mental impairment, is unable to manage his or her own financial affairs. The trustee of the noncharitable trust could have broad discretion as to how much income or principal would be paid to the beneficiary, and could take into account government benefits to which the beneficiary may be entitled. The noncharitable trust could pass at the beneficiary's death either to charitable or noncharitable remaindermen.

Funding unitrusts with a business. A private ruling illustrates how closely held stock (often the most valuable asset owned by a donor) can be used to fund a charitable remainder trust. Morton funded a charitable remainder unitrust with stock in his company, and the unitrust now owns 62% of the shares, Morton has 5% and his company's employee stock ownership plan owns the remaining 33%. His company plans to redeem for cash a certain number of shares held by the shareholders (the company has only one class of stock). The stock will be redeemed at fair market value as determined by an independent appraiser. Will self-dealing occur when the unitrust trustee has its shares redeemed by Morton's company? The IRS said no, because all shareholders are subject to the same redemption offer and the trust will receive fair market value (PLR 200720021).

Cashing in on collectibles. Raymond has collected rare stamps for most of his lifetime – quite successfully, in fact. He's invested $100,000 over the years and the collection has grown in value to $600,000. Raymond is retiring soon and wants to sell his collection to augment his retirement income. His accountant tells him, however, that his $500,000 profit will be subject to a 28% "collectibles" capital gains tax, taking away $140,000 of his nest egg. Another $19,000 could be lost to 3.8% net investment income tax, if his modified AGI exceeds $200,000.

Raymond can transfer the stamp collection to a charitable remainder trust that pays him income for life, with eventual benefit to charity. No taxes will come due when the trustee sells. After the sale, Raymond will be entitled to a charitable deduction, calculated on his $100,000 cost basis. Most important, he can receive income from the full $600,000, not the $441,000 he would have kept had he sold the stamps himself. Collectibles subject to the 28% tax rate include any work of art, rug, antique, metal, gem, stamp, coin, alcoholic beverage or other tangible personal property specified by the IRS.

Retiring from the "landlord business." Eugene is 72 and owns a small apartment building worth $600,000 that he purchased many years ago for $200,000. Depreciation deductions have reduced his basis down to only $20,000. Eugene plans to move to a retirement community and wants to sell the apartment building and invest for a good retirement income – but capital gains taxes of $105,000 (including depreciation recapture taxed at 25%) are a challenge. Net investment income taxes may take another $22,040, depending on his other income.

Eugene can transfer the apartment to a charitable remainder unitrust that will pay him a 6% income for the rest of his life. The capital gains and net investment income taxes won't be payable when the trustee sells and reinvests, so Eugene will begin receiving trust income based on the full $600,000 – about $36,000 a year, to start. Based on his age and other factors, Eugene also will receive a charitable deduction of about $300,000.

FLEXIBILITY: HALLMARK OF THE UNITRUST

Donors who establish charitable remainder unitrusts have a broad array of choices as to the objectives, management and operation of their gift plan. They can:

■ Decide the payout amount or percentage, and how frequently payments will be made;

■ Name themselves and/or a spouse, or any other person as income beneficiaries;

■ Decide whether the trust will continue for one or more lives or a specific length of time (up to 20 years), or perhaps life plus a term of years;

■ Select the trustee (or serve as trustee themselves), fix the trustee's powers and give instructions (within certain limits) as to investments;

■ Choose the charitable beneficiary or beneficiaries, reserving the right to change charities, if desired, and describe the purposes of their gifts;

■ Choose a NIMCRUT or flipCRUT arrangement that has the potential to defer payment of some or all trust income until some future time;

■ Designate "qualified contingencies" that will terminate the trust early on the happening of specified events, with trust assets passing immediately to charity;

■ Provide that the trust will be continued (or established) upon their deaths, to provide financial security and money management for spouses, friends or family members;

■ Arrange for wealth replacement of assets transferred during life to a CRT, through the purchase of life insurance (an irrevocable life insurance trust should be considered where the donor has a taxable estate);

■ Select the assets to fund the trust, especially tax-burdened investments such as long-term capital gain property; for testamentary CRTs, income in respect of a decedent such as retirement accounts, U.S. savings bonds, stock options and accounts receivable can have favorable tax results.

The War Against Cancer

When you have the occasion to draft a trust or a bequest for a client who wants part of his or her estate to support the war against cancer, our correct legal name is:

"The American Institute for Cancer Research, a not-for-profit corporation located in Washington, DC."

Please feel free to contact our Office of Gift Planning for additional information about the mission and the future plans of the American Institute for Cancer Research.

Our Office of Gift Planning will be pleased to help you plan a trust or bequest that will accomplish the specific objectives of your client. We can also provide the exact tax consequences of any trust arrangement a client may want to consider. There is no other obligation for this service.

Information for the Attorney or Advisor

- AICR's official name:
  American Institute for Cancer Research
- AICR's mailing address:
  1759 R Street, NW
  Washington, DC 20009
- AICR's phone number:
  202-328-7744 or 800-843-8114
- AICR's identification:
  A not-for-profit organization under Section 501(c)(3)
  of the Internal Revenue Service Code
- AICR's tax-exempt IRS number:
  52-1238026

The information and examples provided in this booklet are for information and discussion purposes only. The examples are hypothetical, and the facts and tax consequences of individual transactions may vary from person to person. Each estate planning professional must independently determine and evaluate the tax and financial consequences of each individual situation.

Office of Gift Planning
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Washington, DC 20009
202-328-7744 or 1-800-843-8114
www.aicr.org/planned-giving/estate-planning

CGP-D45