

**Includes New
IRS-Approved
Sample Trust Forms**

Planning and Drafting Charitable Lead Trusts

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American
Institute for
Cancer
Research

Major Gifts, Trusts and Bequests to the American Institute for Cancer Research

The American Institute for Cancer Research is devoted to the task of conquering our nation's most dreaded illness. Each year, the Institute sponsors important research projects at universities and research facilities across America on the cause and prevention of cancer. And it has long been a leader in providing effective educational programs on the prevention of cancer – directed to both health care professionals and the general public.

The primary focus of the American Institute for Cancer Research – in both its research projects and its educational programs – has been the role of diet and nutrition in the development and prevention of cancer. (There is scientific evidence that diet and lifestyle changes could reduce incidence of cancer by 30 to 40%.)

We are winning the war against cancer. But there is still a great need for additional scientific research on the cause, prevention and treatment of cancer. And as we learn more about the role of nutrition in the cause and prevention of cancer, our educational programs become more and more important and rewarding.

Millions of Americans provide financial support to our programs – often through tax-planned gifts, trusts and bequests. To encourage, facilitate and recognize this very important financial support, the Institute has created the League of Willful Cancer Fighters. We will be pleased to enroll in the League any client who has made or intends to make a bequest to the Institute or to name the Institute as the beneficiary of a trust, a life insurance policy, a retirement death benefit or other form of estate gift. We invite you or your client to call us at your convenience.

To encourage generous gifts to the Institute and other charities, we have prepared this booklet to help attorneys and other financial advisors understand all the important tax and financial rewards Congress has provided. Our staff can provide the exact tax and financial consequences of any gift, trust or bequest your clients may want to consider. And because we are so active in this specialized field, we can provide whatever technical and practical information you may request for planning and drafting a charitable gift arrangement that will provide your clients both the greatest personal satisfaction and the greatest tax and financial rewards.

Please feel free to call the Gift Planning Department at any time. Our toll-free telephone number is 1-800-843-8114. And please . . . if the opportunity presents itself, inform your clients about how a gift, trust or bequest to the American Institute for Cancer Research can further the fight against cancer and also enhance their personal tax, investment, retirement and estate plans.

PLANNING AND DRAFTING CHARITABLE LEAD TRUSTS

Charitable lead trusts – which can be roughly defined as trusts that make annual payments to charitable organizations for a specified period of time and then pass to individual beneficiaries – come in a wide variety of forms. In many cases, one or more forms of this unusual trust arrangement can provide an effective tool for achieving a client’s tax, financial, philanthropic or estate planning goals and objectives.

It is called a “charitable lead trust” because the charitable interest leads or precedes the noncharitable interest.

The most popular form of lead trust is the so-called *qualified non-grantor trust*. This trust arrangement, which can be created during life or at death, is typically used to minimize a client’s federal gift and estate taxes and to fulfill his or her philanthropic objectives. It can be especially helpful for the client who owns a farm or small business interest that he or she wants to pass to family members, or to the client who has significant real property holdings or growth-oriented investments.

Another form of lead trust is a *qualified grantor trust*. This form of lead trust will enable a client to provide a temporary stream of income for one or more qualified charitable organizations and receive the gift property back at some later time. It can also be an effective technique for reducing a client’s current income taxes.

The third form of lead trust discussed in this booklet, the so-called *intentionally defective grantor trust*, is an arrangement that can give rise to an immediate income tax deduction for the value of the income right given to charity and also minimize federal gift and estate taxes.

Finally, a lead trust can be drafted so that it is not a qualified trust. This *non-qualified lead trust* is generally created as a practical and flexible technique for making annual charitable contributions.

What Is a Qualified Charitable Lead Trust?

The law is clear that a charitable lead trust can qualify for a gift, estate or income tax charitable deduction only if it provides for the annual payment of a specified dollar amount (an annuity) or a specified percentage of the value of the trust assets (a unitrust amount) to qualified charities for a specified number of years or for the life of a designated individual (or the lives of two or more designated individuals). There are other requirements for a qualified lead trust that will be pointed out later in this booklet.

Example One: A trust instrument directs the trustee to pay \$40,000 to the American Institute for Cancer Research each year for 15 years and to distribute the principal to designated individuals at the end of the 15-year period. This is a *qualified lead annuity trust* and the present value of the annuity interest given to the Institute can qualify for an estate or gift tax charitable deduction and, with special provisions, for an income tax charitable deduction.

Example Two: A trust instrument directs the trustee to determine the value of the trust assets on the first day of every year and to pay 7% of this value to the American Institute for Cancer Research every year for 15 years. The principal of the trust is to be paid to designated individuals after the end of the 15-year period. This is a *qualified charitable lead unitrust* and the present value of the unitrust interest given to the Institute can qualify for a charitable deduction.

Example Three: A trust instrument provides that all trust income is to be paid to the American Institute for Cancer Research every year for ten years with the principal to be paid to individual beneficiaries at the end of the ten-year period. This is a *non-qualified charitable lead trust* and the value of the interest given to the Institute will not qualify for a gift, estate or income tax charitable deduction.

The Distinction Between a Grantor Trust and a Non-Grantor Trust

As pointed out earlier, a qualified charitable lead trust can be a “grantor trust” or a “non-grantor trust.” An income tax charitable deduction is allowed for the present value of the charitable interest only for a qualified grantor trust. A non-grantor charitable lead trust can qualify for a gift and estate tax charitable deduction but cannot qualify for an income tax charitable deduction.

A lead trust will be a grantor trust if the settlor is treated as the owner of the trust and is taxable on all the income and gains of the trust. In short, the settlor of a grantor lead trust will qualify for an immediate income tax charitable deduction but all the income and gains of the trust will be taxable to him or her. (The settlor of a trust is treated as the owner if he or she has reserved a reversionary interest valued at more than 5% or if he or she has reserved certain other rights in the trust.)

THE QUALIFIED NON-GRANTOR CHARITABLE LEAD TRUST

A qualified non-grantor charitable lead trust must direct that a specified annuity or unitrust amount be paid annually to one or more qualified charitable organizations, such as the American Institute for Cancer Research, for a specified period of years (or for the lives of designated individuals). The principal of the trust must be payable to individual beneficiaries other than the settlor (or the settlor’s spouse) when the annuity or unitrust amount payments end.

For example, a client could transfer property worth \$1,000,000 to an irrevocable trust that would pay \$80,000 to the American Institute for Cancer Research every year for ten years. The trust instrument could direct that the principal be paid to his daughter at the end of the ten-year period.

The client would file a federal gift tax return reporting a gift of \$1,000,000 but claiming a gift tax charitable deduction for the present value of the annuity interest given to the Institute (approximately \$650,000). There would be a taxable gift of approximately \$350,000 but no gift tax would be due unless the client had previously exhausted his gift tax credit.

The property transferred to the lead trust would not be part of the client’s gross estate at his death but the amount of the taxable gift (\$350,000) would be added to the value of his estate in computing the estate tax rate. *Assuming a 45% estate tax bracket, the charitable deduction provided by the lead trust would save \$292,500 in estate taxes for the*

client’s intended beneficiaries. It would also provide major financial support for the important cancer prevention programs of the American Institute for Cancer Research.

No income tax charitable deduction would be allowable for the present value of the annuity interest given to the Institute but no part of the income of the trust would be taxable to the client.

The lead trust itself would be taxed as a complex trust and the full amount of the annuity paid to the Institute during the year would qualify as an income tax charitable deduction for the trust.

Lead Annuity Trusts and Lead Unitrusts

A lead trust that pays a specified dollar amount to the charitable beneficiary every year is a lead annuity trust. Unlike the charitable remainder annuity trust, there is no floor or ceiling on the amount the charitable lead annuity trust is required to pay to the charitable beneficiary. A trust funded with \$1,000,000 could direct that the American Institute for Cancer Research be paid \$10,000, \$100,000 or \$200,000 a year for whatever number of years the donor might want to designate. The payments to the Institute could be for any period of years specified by the donor or it could be for the life or lives of designated individuals.

A lead trust that requires the trustee to determine the fair market value of the trust each year and to pay a specified percentage of that value to the charitable

beneficiaries is a charitable lead unitrust. Again, there is no floor or ceiling on the percentage of value that must be paid to the charity each year. There can be one annual valuation date or the trust may be valued at the average value on several designated dates.

A qualified lead trust cannot provide that charity is to be paid the lesser of a specified percentage of value or trust income. Neither can it provide that charity is to be paid the lesser of an annuity or a specified percentage of value.

An IRS private letter ruling (PLR 9801013) shows how flexible a lead annuity trust or lead unitrust can be. In that ruling, the IRS approved a charitable lead annuity trust that was required to pay 3% of the initial value of the trust to designated charities for a period that would not end until 20 years after the death of the last to die of the settlor's issue. (She had two grandchildren who were not yet one year old and the trust was expected to last more than 100 years.)

Although there are no cases or rulings on additional contributions to lead trusts, most practitioners feel that additional contributions can be made to a lead unitrust. The IRS sample trust forms prohibit additional contributions, however, to a lead annuity trust.

Designating the Charitable Income Beneficiaries

Although the typical qualified lead trust names one or more specific charitable organizations to receive the annuity or unitrust amounts, the choice of charitable beneficiaries can be left to the discretion of an independent trustee. The trust instrument must direct that annuity or unitrust amount distributions can be made only to charitable organizations that are qualified under sections 170(c), 2055(d) and 2522(a) of the code.

The settlor should not retain the power to choose the charitable beneficiaries because this power could cause the value of the trust to be included in his or her gross estate for federal estate tax purposes.

The trust agreement can direct that income in excess of the annuity or unitrust amount be paid to the charitable beneficiaries, but no additional charitable deduction will be allowed.

Additional Requirements of a Qualified Charitable Lead Trust

There are several technical requirements for a qualified non-grantor charitable lead trust.

1. The trust must be irrevocable.
2. The taxable year of the trust must be a calendar year.
3. Additional contributions must be prohibited, or in the case of a unitrust, specifically authorized.
4. As a general rule there can be no payments from the trust other than the annuity or unitrust amount paid to the charitable beneficiary or beneficiaries.
5. The annuity or unitrust amount must be paid from principal if income is not sufficient.
6. The trust instrument must prohibit self dealing and taxable expenditures. In addition, if the value of the charitable interest exceeds 60% of the value of the trust, excess business holdings and jeopardizing investments must also be prohibited.
7. Each of the designated charitable beneficiaries must qualify as a charitable organization under IRC sections 170(c), 2055 and 2522.
8. The trust instrument cannot authorize the commutation (prepayment) of the charitable interest at a discount, but the IRS has approved early termination where charities received the face amount of all future payments, without discount.
9. The trust must be specifically exempted from any obligation to pay estate, inheritance or other death taxes.

Computing the Charitable Deduction For a Charitable Lead Trust

We noted before that a client who creates a qualified non-grantor lead trust during his or her life could claim a federal gift tax charitable deduction for the present value of the interest given to the charitable beneficiaries. (An estate tax charitable deduction will be available if the lead trust is created at the death of the client.)

The IRS has prescribed rigid and somewhat complex rules for determining the amount of the gift or estate tax deduction. In the typical case, the amount of the allowable charitable deduction will depend on: (a) the annual annuity or the unitrust amount to be paid to the

charity every year; (b) the frequency of the annuity or unitrust amount payments (monthly, quarterly, semi-annually or annually); (c) the value of the property given to the trust; (d) the period of time the annuity or unitrust amount will be paid and (e) the federal midterm rate in the month the trust is funded or in either of the two preceding months. Selecting the *lowest* available midterm rate produces the largest charitable deductions.

Tables published by the IRS (IRS Publications 1457 and 1458) must be used to determine the present value of both an annuity interest and a unitrust amount interest. (There are separate tables for each form of trust.) Before using the Tables, it is necessary to determine what the assumed earnings of the trust will be. For all valuation purposes it is assumed that the trust will have earnings equal to 120% of the federal midterm interest rate (the §7520 rate) in the month of the gift or in either of the two preceding months. The examples that follow assume a rate of 5.0% and annual payments at the end of each year.

Here are some examples of the approximate percentage of the value of a lead trust that will qualify for a gift tax or estate tax charitable deduction:

Charitable Lead Annuity Trust

Term of Years	Percentage Paid to Charity		
	4%	6%	8%
5	17%	26%	35%
8	26	39	52
10	31	46	62
15	42	62	83
20	50	75	100

Charitable Lead Unitrust

Term of Years	Percentage Paid to Charity		
	4%	6%	8%
5	18%	25%	33%
8	27	38	47
10	32	44	55
15	44	59	70
20	54	69	80

For example, if a client transferred \$2,000,000 to an annuity trust that was to pay \$120,000 a year (6% of the initial value of the trust) to the American Institute for Cancer Research for 15 years and then

pass to his children, the gift tax charitable deduction would be approximately \$1,240,000. The taxable gift would be only \$760,000. A unitrust would provide a charitable deduction of \$1,180,000, making the taxable gift \$820,000.

Note: a unitrust will provide the larger tax deduction when the percentage of value is less than the assumed earnings of the trust. An annuity trust will provide the larger deduction when the percentage of initial value paid to the charity is more than the assumed earnings of the trust.

The Gift Planning Office of The American Institute for Cancer Research will be pleased to provide you with the charitable deduction for any charitable lead trust your clients may want to consider. You can call us toll free at 1-800-843-8114.

We can also provide additional information about the planning and drafting of a charitable lead trust. There is no cost or obligation for this service.

A Lead Trust Is a Taxable Entity

Unlike charitable remainder trusts, a charitable lead trust does not enjoy a tax exemption. Rather, every qualified non-grantor lead trust is taxed as a complex trust. The trust must report all its income and gains for the year. It can deduct reasonable and necessary expenses as well as all amounts paid to the charitable beneficiaries.

To assure a charitable deduction for the trust, the trust agreement should specify that annuity or unitrust amounts are to be paid first from ordinary income, then from short-term capital gains, next from long-term capital gains, then from unrelated business income and nontaxable income and finally from trust corpus.

From a practical viewpoint, the trust income paid to the American Institute for Cancer Research (or other qualified charitable organization) is never taxed because it is deductible by the trust and is not taxed to the Institute (which is a tax exempt organization).

Inter Vivos or Testamentary Charitable Lead Trusts

A client can create a qualified non-grantor char-

itable lead trust during his or her life or the trust can be created at the death of the client through his or her will or revocable living trust.

The client creating an inter vivos trust will gain a gift tax charitable deduction for the present value of the charitable interest. The property transferred to the trust will not be part of the client's gross estate and only the value of the taxable gift will be added to the client's estate tax computation base. As a result, all post-gift appreciation in the value of the property given to the trust will escape gift and estate taxes.

Example: A client transfers property worth \$500,000 to a qualified non-grantor charitable lead trust. His cost basis for the property is \$300,000. The present value of the charitable interest is \$270,000. At the client's death, the trust has a value of \$900,000. Clearly, the lead trust has reduced the value of the client's taxable estate – compared to retaining the trust property – by \$630,000.

The downside of an inter vivos lead trust is that the trust will take the client's adjusted cost basis for property given to the trust. If the trust sells the property, the resulting capital gain will be taxed to the trust. If the property is not sold by the trust, the remainder beneficiary will take the client's adjusted cost basis and will realize a capital gain when he or she sells the property.

Property bequeathed or given to a testamentary lead trust will be includable in the client's gross estate and an estate tax charitable deduction will be allowed for the present value of the charitable interest. A possible advantage of a testamentary trust, of course, is that the trust generally will take a stepped-up cost basis in the property equal to its fair market value at the time of death.

In the above example, a testamentary trust would take a stepped-up basis of \$900,000 whereas an inter vivos trust would take a carryover basis of \$300,000. Thus, a testamentary trust could sell its assets and avoid a \$600,000 capital gain.

Example of a Qualified Non-Grantor Charitable Lead Trust

Frank W. owned farm land, valued at about \$1,500,000, that he wanted to pass to his son. Frank also wanted to minimize estate taxes on the distri-

bution of his estate. Importantly, he also wanted to support practical and promising programs aimed at the prevention of cancer.

Frank transferred the farm property, which is currently leased to another farmer, to an irrevocable charitable lead annuity trust that would pay \$90,000 a year to the American Institute for Cancer Research for ten years. He felt certain the lease would be sufficient to make these payments, but the payments would be made from principal if income was not sufficient. The trust instrument directed that the farm property be distributed to his son, free and clear, after ten years.

Even though the farm property had appreciated in value, Frank did not realize a capital gain when he transferred the property to the lead trust.

Frank filed a federal gift tax return reporting a gift of a ten-year annuity interest to the Institute (valued at approximately \$695,000) and a gift of the remainder interest to his son (valued at approximately \$805,000). He claimed a charitable deduction for the value of the annuity interest, so his taxable gift was only \$805,000. (The remainder interest was a gift of a future interest and did not qualify for a gift tax annual exclusion.)

The lead trust, of course, was a taxable entity. But because it could deduct the \$90,000 paid to the Institute every year as a charitable contribution, it had very little taxable income and paid only a very modest amount in taxes.

The value of the farm will not be includable in Frank's gross estate at his death. Only the \$805,000 taxable gift will be added to the value of his estate. Assuming that the farm will appreciate in value to \$2,000,000 at Frank's death, the lead trust will reduce potential estate taxes by at least \$537,750, assuming a 45% estate tax rate.

Frank, of course, will lose an after-tax income of about \$60,000 a year. But through his lead trust he will provide \$900,000 for research and educational programs that may help thousands of people avoid the tragedy of cancer. And he will accomplish his objective of passing the farm to his son.

Funding a Non-Grantor Charitable Lead Trust

Just about any type of property can be transferred

to a charitable lead trust. In many cases, it is most advantageous to fund an inter vivos trust with property that is likely to appreciate in value over the term of the trust. Property that has already appreciated substantially in value may be less attractive to transfer to an inter vivos lead trust because the trust will take the settlor's low cost basis. It may be wise to use a testamentary trust for property that is highly appreciated because the trust will take a stepped-up basis that will pass to the trust.

In deciding whether a particular property can be effectively transferred to a lead trust, it may be important to determine whether the property will produce the income – and the cash flow – that will be needed to pay the annuity or unitrust amount to the charitable beneficiaries. This can be an essential

consideration where the trust is to be funded with a farm or business interest that the settlor wants to pass on to his or her children.

Should a “Defective” Grantor Trust Be Considered?

Several private letter rulings – and the IRS sample trust forms indicate that a grantor lead trust can be drafted that will give rise to an immediate income tax charitable deduction and still provide the estate and gift tax savings discussed in this section of the booklet. This can be accomplished by making the trust a “grantor” trust and will require that all the income and gains of the trust be taxed to the settlor.

This option is discussed more fully on page 9.

THE QUALIFIED GRANTOR CHARITABLE LEAD TRUST

A client can create a qualified charitable lead trust and name himself or herself as the remainder reversionary beneficiary. This is a so-called “grantor lead trust.” The present value of the charitable annuity or unitrust interest will be deductible for income tax purposes as well as for gift tax purposes. And because the client will be treated as the “owner” of the trust, all the income and capital gains of the trust will be taxable to him or her.

In reporting the trust income and gains, the client will not be permitted to claim an income tax charitable deduction for the annuity or unitrust amounts paid to the charitable beneficiaries each year.

Example: A client transfers property worth \$2,000,000 to a trust that will pay \$120,000 to the American Institute for Cancer Research every year for ten years. The trust property will revert back to the client after the ten-year term of the trust. In year one, the trust has a capital gain of \$50,000 and dividend income of \$40,000. Principal in the amount of \$30,000 is used to pay the \$120,000 annuity. In year two, the trust has a capital gain of \$110,000 and dividend income of \$60,000.

The client will be taxed on the \$90,000 income

and gain of the first year and on the \$170,000 income and gain of the second year.

The creation of a reversionary grantor lead trust will not result in a taxable gift because the only gift will be the present value of the annuity or unitrust amount interest and that full value will qualify for a gift tax charitable deduction. If the client dies during the term of the trust, the full value of the trust at the time of death will be includible in his or her gross estate and an estate tax charitable deduction will be allowed for the current value of the charitable interest.

The Income Tax Charitable Deduction

The income tax charitable deduction for a grantor lead trust is computed in exactly the same manner as the gift tax charitable deduction is computed for a non-grantor lead trust. (See page 6 for tables showing approximate charitable deductions.)

For income tax purposes, a gift to a qualified grantor charitable lead trust is treated as a gift “for the use of charity” and the charitable deduction is limited to 30% of the donor's adjusted gross income. Any excess amount can be carried over for up to five additional years.

There are special rules governing the income tax charitable deduction when “ordinary income property” or tangible personal property is given to the lead trust. If a sale of the property transferred to the trust would have produced ordinary income or short-term capital gain, the amount of the charitable deduction must be reduced by the short-term gain or ordinary income allocable to the charitable annuity or unitrust interest.

When tangible personal property is transferred to a lead trust, the charitable deduction is generally based on the donor’s cost basis rather than the present fair market value of the property.

An immediate income tax charitable deduction is allowed under the assumption that all the income thereafter paid to the charitable beneficiary will be

taxed to the settlor of the trust. In keeping with this assumption, the Code provides that, if the settlor ceases to be an “owner” of the lead trust (e.g. by reason of death), a portion of the charitable deduction must be recaptured by reporting it as income to the settlor or to his or her estate.

Taxation of the Grantor Lead Trust

The qualified grantor lead trust generally will not have any taxable income or gain because all the income and gains will be taxed to the settlor. After the death of the settlor (or if the settlor ceases to be an owner during his or her life) the trust will be taxed as a complex trust and an unlimited charitable deduction will be allowed for all income paid to the charitable beneficiaries.

THE INTENTIONALLY DEFECTIVE GRANTOR QUALIFIED CHARITABLE LEAD TRUST

The term “intentionally defective grantor charitable lead trust” means a qualified lead trust, created during life, that names persons other than the settlor (or his or her spouse) as remainder beneficiaries and is drafted in a way that makes the settlor the “owner” of the trust for income tax purposes but does not cause the trust to be part of the settlor’s gross estate for estate tax purposes.

Example: A client transfers property worth \$3,000,000 to a trust that is to pay the American Institute for Cancer Research a specified annuity every year for ten years. The trust property is to be distributed to his daughter at the end of the ten-year term of the trust. Assume that the present value of the Institute’s annuity interest is \$1,500,000 and that the trust is drafted as a “defective” lead trust.

The client reports a gift of \$1,500,000 to the Institute and a gift of \$1,500,000 to his daughter. The gift to the Institute qualifies for a gift tax charitable deduction so there is a taxable gift of only \$1,500,000. The client can claim an immediate income tax charitable deduction of \$1,500,000 and, at his death, no part of the value of the trust will be includable in his gross estate for federal

estate tax purposes.

As noted earlier, there is a downside to gaining an immediate income tax charitable deduction – all the income and gains of the trust will be taxed to the settlor and no deduction will be allowed for the annuity or unitrust amounts paid to the charitable beneficiaries.

Tax Deduction Now and Taxable Income Later

Gaining an immediate income tax charitable deduction and paying a tax on subsequent trust income is, in the typical case, a fairly even tradeoff.

But creating a “defective” trust may be advantageous if the settlor is currently in a high income tax bracket and expects to be in a lower bracket in future years. A “defective” trust may also be advantageous if the trust invests in such a way that it has little or no taxable income (e.g. investing in municipal bonds).

In determining whether a defective grantor trust is advantageous, the age and health of the client should also be considered. The settlor must recapture a portion of the charitable deduction if he or she

dies during the term of the trust or otherwise ceases to be the owner of the trust. The IRS sample forms pro-

vide an alternative trust clause that will cause a lead annuity trust to be treated as “intentionally defective.”

REDUCING GENERATION-SKIPPING TRANSFER TAXES

Charitable lead trusts became almost fashionable following the death of Jacqueline Onassis in 1994, when it was revealed that her estate plan included a charitable lead trust that, if it had been implemented, would have paid an 8% annuity to various charities for 24 years and then passed the trust corpus (estimated at \$100 million) to grandchildren. The trust would have eliminated both estate tax and generation-skipping transfer taxes on the \$100 million, in large part because Mrs. Onassis died in a month when the §7520 rate (AFR) was a relatively low 6.4%.

Interest rates have dipped even lower recently, and grandparents can lock in sizable gift tax charitable deductions with lifetime lead trusts that reduce or eliminate generation-skipping transfer taxes where grandchildren or other “skip persons” are the remaindermen. Here is an example:

Sylvia transfers \$5 million in stock to a charitable lead unitrust that will pay 7% annually to AICR and her house of worship for 20 years, then distribute all the trust assets to her grandchildren. The present value of the remainder interest gift to the grandchil-

dren is reduced to about \$1 million, assuming an interest rate of 5.0% (donors can elect to use the §7520 rate in effect for the month of the gift, or choose the best available rate from either of the two prior months). Sylvia will pay little or no gift tax or generation-skipping tax under the applicable credits/exemptions. If estate taxes have been repealed at her death, that’s the end of it. If not, the \$1 million would be an adjusted taxable gift that enters into her estate tax computation. Nonetheless, \$4 million will have been removed from her estate. If the trust earns at least 7% annually, \$5 million (possibly more) will ultimately pass to the grandchildren. Incidentally, roughly \$7 million will go to cancer research and other worthwhile purposes.

Note: Because of the uncertainty of future trust investments, planners typically employ the charitable lead unitrust where grandchildren are remaindermen, which permits calculation of the GST rate upon funding of the trust. Annuity payouts create uncertain tax results because the GST tax “inclusion ratio” is not calculated until the trust terminates.

IRS SAMPLE CHARITABLE LEAD ANNUITY TRUST FORMS

In June 2007, the IRS released annotated sample declarations of trust and alternative provisions for inter vivos charitable lead annuity trusts (CLATs), with examples of both the grantor and nongrantor trust options (Rev. Proc. 2007-45, 26 CFR 601.201). Grantor lead trusts provide donors with income tax charitable deductions, but trust income is taxable to the donor. Nongrantor lead trusts offer gift tax charitable deductions only, but donors avoid income tax on all trust income. The tax benefits of the two

forms can be combined by drafting “intentionally defective” grantor lead trusts that pass trust corpus to remainder beneficiaries at reduced gift tax, but also create income tax charitable deductions for grantors, without inclusion of trust assets in the donor’s gross estate, as would happen with a reversionary trust. (Reversionary lead trusts are the most common way to provide donors with income tax charitable deductions.) The IRS has provided detailed annotations for inter vivos lead annuity

trusts at the following address: http://www.irs.gov/irb/2007-29_irb/ar10.html. An IRS annotation to the grantor CLAT form approves “intentionally defective” CLATs and discusses trust clauses that include the power to substitute trust assets, or other powers and provisions, that will cause a CLAT to be a grantor trust – but without the trust assets being included in the grantor’s gross estate. Additionally, the IRS released an annotated sample trust form for a testamentary CLAT, along with alternative provisions (Rev. Proc. 2007-46). Optional language allows a choice of trusts that last for a term of years or for the lifetimes of one or more individuals. The IRS has provided detailed annotations for testamentary lead annuity trusts at the following address: http://www.irs.gov/irb/2007-29_irb/ar11.html.

Charitable Lead Unitrust Forms

The IRS is expected to issue sample charitable lead unitrust forms at some time in the future, but until then the lead annuity trust forms generally can be adapted for unitrust-style payments by substituting “unitrust” for “annuity” wherever those words appear. For example, the opening sentence of Section 2 of the charitable lead annuity trust forms can be adapted as follows:

2. *Payment of Unitrust Amount.* In each taxable year of the trust during the unitrust period, the Trustee shall pay to [*designated charitable recipient*] a unitrust amount equal to [*number representing the annual unitrust percentage to be paid to the designated charitable recipient*] percent of the net fair market value of the trust assets valued as of the first day of each taxable year of the trust.

While additional contributions to charitable lead annuity trusts are prohibited, private letter rulings indicate they are permissible for lead unitrusts. If the trust agreement is going to permit additional contributions, the trust agreement must include a provision for computing the unitrust amount in a year when an additional contribution is made, which can be imported from the charitable remainder unitrust forms that permit additional contributions.

Additional Contributions. If any additional contributions are made to the trust after the initial contribution, the unitrust amount for the year in which any additional contribution is made shall be [same percentage used in paragraph 2] percent of the sum of (a) the net fair market value of the trust assets as of the valuation date (excluding the assets so added and any post-contribution income from, and appreciation on, such assets during that year) and (b) for each additional contribution during the year, the fair market value of the assets so added as of the valuation date (including any post-contribution income from, and appreciation on, such assets through the valuation date) multiplied by a fraction the numerator of which is the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the last day of the unitrust period and the denominator of which is the number of days in the period that begins with the first day of such taxable year and ends with the earlier of the last day in such taxable year or the last day of the unitrust period. In a taxable year in which an additional contribution is made on or after the valuation date, the assets so added shall be valued as of the date of contribution, without regard to any post-contribution income or appreciation, rather than as of the valuation date.

SAMPLE INTER VIVOS NON-GRANTOR CHARITABLE LEAD ANNUITY TRUST

On this ___ day of _____, 20___, I, (hereinafter “the Donor”), desiring to establish a charitable lead annuity trust within the meaning of Rev. Proc. 2007-45, hereby enter into this trust agreement with _____ as the initial trustee (hereinafter “the Trustee”). This trust shall be known as the _____ Non-grantor Charitable Lead Annuity Trust. All references to “section” or “§” in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. §1, et seq.

1. *Funding of Trust.* The Donor hereby transfers and irrevocably assigns to the Trustee on the above date the property described in Schedule A, and the Trustee accepts the property and agrees to hold, manage, and distribute the property under the terms set forth in this trust instrument.

2. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [designated charitable recipient] an annuity amount equal to [number representing the annual annuity percentage to be paid to the designated charitable recipient] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. If [designated charitable recipient] is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion. The term “the Charitable Organization” shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of [number of years of annuity period] years. The first day of the annuity period shall be the date the property is transferred to the trust, and the last day of the annuity period shall be the day preceding the [ordinal number corresponding to the length of the annuity period] anniversary of that date. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income and, to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. In the taxable year in which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

4. *Distribution Upon Termination of Annuity Period.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due to the Charitable Organization under the provisions above) to [remainder beneficiary].

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution.

6. *Prohibited Transactions.* The Trustee shall not engage in any act of self-dealing within the meaning of §4941(d), as modified by §4947(a)(2), and shall not make any taxable expenditures within the meaning of §4945(d), as modified by §4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under §4943, as modified by §§4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3).

7. *Taxable Year.* The taxable year of the trust shall be the calendar year.

8. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the requirements for the charitable deductions available to a charitable lead annuity trust or for contributions to a charitable lead annuity trust.

9. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the annuity interest passing to the Charitable Organization is a guaranteed annuity interest under §§2055(e)(2)(B) and 2522(c)(2)(B) and the regulations thereunder and that payments of the annuity amount to the Charitable Organization will be deductible from the gross income of the trust to the extent provided by §642(c)(1) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

11. *Retained Powers and Interests.* Notwithstanding any other provision of this trust instrument to the contrary, no person shall hold any power or possess any interest that would cause the Donor to be treated as the owner of any portion of the trust under the provisions of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code.

This agreement executed the _____ day of _____, 20 _____.

Donor

Trustee

ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS NON-GRANTOR CHARITABLE LEAD ANNUITY TRUST

Annuity Period for the Life of One Individual.

1. *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a non-grantor CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in §170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries if there is a less than 15 percent probability at the time of the contribution to the trust that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in §20.2031-7. Sections 20.2055-2(e)(2)(vi)(a) and 25.2522(c)-3(c)(2)(vi)(a).

2. *Instruction for use.* Replace the fifth and sixth sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the date of death of [*designated measuring life*].

Retention of the Right to Substitute the Charitable Lead Beneficiary.

1. *Explanation.* The donor to a non-grantor CLAT may retain the right to substitute another charitable beneficiary for the charitable beneficiary named in the trust instrument. Note, however, that the retention of this right will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending upon the date of the donor's death) to be included in the donor's gross estate. See §§2035(a), 2036(a)(2), and 2038(a)(1) and §25.2511-2(c).

2. *Instruction for use.* Replace the third sentence of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

Notwithstanding the preceding sentence, the Donor reserves the right to designate as the charitable annuity recipient, at any time and from time to time, in lieu of [*designated charitable recipient*], one or more organizations described in §§170(c), 2055(a), and 2522(a) and shall make any such designation by giving written notice to the Trustee. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient.

Apportionment of the Annuity Amount in the Discretion of the Trustee.

1. *Explanation.* The donor or the trustee of a nongrantor charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries. See §674(b)(4). A power to apportion the annuity amount among a class of qualifying charitable beneficiaries that is retained by the donor or the donor's spouse will not cause the donor to be treated as the owner of the trust for income tax purposes. Section 674(b)(4). Note, however, that a retained power of apportionment by the donor, but not the donor's spouse, will cause the gift of the annuity interest to be incomplete for gift tax purposes and will cause some or all of the trust property to be included in the donor's gross estate. See §§2035(a), 2036(a)(2), and 2038(a)(1) and §25.2511-2(c).

2. *Instruction for use.* Replace the first three sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§170(c), 2055(a), and 2522(a) (hereinafter, collectively "the Charitable Organization") an annuity amount equal to [*number representing the annual annuity percentage to be paid to the Charitable Organization*] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. The Trustee may pay the annuity amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, from time to time may deem advisable.

Annuity Amount as a Specific Dollar Amount.

1. *Explanation.* As an alternative to stating the annuity amount as a percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may instead be stated as a specific dollar amount.

2. *Instructions for use.*

a. Replace the first sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following sentence:

In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*the stated dollar amount*].

b. Delete the last sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 concerning the incorrect valuation of trust assets.

Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

1. *Explanation.* The sample trust in section 4 provides that in the event the charitable beneficiary designated in the trust instrument is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries.

2. *Instruction for use.* Replace the second sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 4 with the following two sentences:

If [*designated charitable recipient*] is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [*designated substitute charitable recipient*]. If neither [*designated charitable recipient*] nor [*designated substitute charitable recipient*] is an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion.

SAMPLE INTER VIVOS GRANTOR CHARITABLE LEAD ANNUITY TRUST

On this ___ day of _____, 20___, I, (hereinafter "the Donor"), desiring to establish a charitable lead annuity trust within the meaning of Rev. Proc. 2007-45 hereby enter into this trust agreement with _____ as the initial trustee (hereinafter "the Trustee"). This trust shall be known as the _____ Grantor Charitable Lead Annuity Trust. All references to "section" or "§" in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. §1, et seq.

1. *Funding of Trust.* The Donor hereby transfers and irrevocably assigns to the Trustee on the above date, the property described in Schedule A, and the Trustee accepts the property and agrees to hold, manage, and distribute the property under the terms set forth in this trust instrument.

2. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*number representing the annual annuity percentage to be paid to the designated charitable recipient*] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. If [*designated charitable recipient*] is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of [*number of years of annuity period*] years. The first day of the annuity period shall be the date the property is transferred to the trust, and the last day of the annuity period shall be the day preceding the [*ordinal number corresponding to the length of the annuity period*] anniversary of that date. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income and, to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (in the case

of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. In the taxable year in which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

4. *Distribution Upon Termination of Annuity Period.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due to the Charitable Organization under the provisions above) to [remainder beneficiary].

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution.

6. *Prohibited Transactions.* The Trustee shall not engage in any act of self-dealing within the meaning of §4941(d), as modified by §4947(a)(2), and shall not make any taxable expenditures within the meaning of §4945(d), as modified by §4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under §4943, as modified by §§4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3).

7. *Taxable Year.* The taxable year of the trust shall be the calendar year.

8. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the requirements for the charitable deductions available for contributions to a charitable lead annuity trust.

9. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the annuity interest passing to the Charitable Organization is a guaranteed annuity interest under §§170(f)(2)(B), 2055(e)(2)(B), and 2522(c)(2)(B) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

11. *Retained Powers and Interests.* During the Donor's life, [individual other than the donor, the trustee, or a disqualified person as defined in §4946(a)(1)] shall have the right, exercisable only in a nonfiduciary capacity and without the consent or approval of any person acting in a fiduciary capacity, to acquire any property held in the trust by substituting other property of equivalent value.

This agreement executed the _____ day of _____, 20 _____.

Donor

Trustee

ALTERNATE PROVISIONS FOR SAMPLE INTER VIVOS GRANTOR CHARITABLE LEAD ANNUITY TRUST

Annuity Period for the Life of One Individual.

1. *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a grantor CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in §170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries if there is a less than 15 percent probability at the time of the contribution to the trust that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in §20.2031-7. Sections 1.170A-6(c)(2)(i)(A), 20.2055-2(e)(2)(vi)(a), and 25.2522(c)-3(c)(2)(vi)(a).

2. *Instruction for use.* Replace the fifth and sixth sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. The first day of the annuity period shall be the date the property is transferred to the trust, and the last day of the annuity period shall be the date of death of [*designated measuring life*].

Retention of the Right to Substitute the Charitable Lead Beneficiary.

1. *Explanation.* The donor to a grantor CLAT may retain the right to substitute another charitable beneficiary for the charitable beneficiary named in the trust instrument and still claim a deduction under §170(a) in the year of the transfer to the CLAT. Note, however, that the retention of this right will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property (depending on the date of the donor's death) to be included in the donor's gross estate. See §§2035, 2036(a)(2), and 2038(a)(1) and §25.2511-2(c). See section 8.01(3) for a discussion of the income tax deductibility limitations applicable to contributions to a grantor CLAT.

2. *Instruction for use.* Replace the third sentence of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

Notwithstanding the preceding sentence, the Donor reserves the right to designate as the charitable annuity recipient, at any time and from time to time, in lieu of [*designated charitable recipient named above*], one or more organizations described in §§170(c), 2055(a), and 2522(a) and shall make any such designation by giving written notice to the Trustee. The term "the Charitable Organization" shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient.

Apportionment of the Annuity Amount in the Discretion of the Trustee.

1. *Explanation.* The donor or the trustee of a grantor charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries. Note that a retained power of apportionment by the donor will cause the gift of the annuity interest to be incomplete for gift tax purposes and may cause some or all of the trust property to be included in the donor's gross estate. See §§2035(a), 2036(a)(2), and 2038(a)(1) and §25.2511-2(c).

2. *Instruction for use.* Replace the first three sentences of paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§170(c), 2055(a), and 2522(a) (hereinafter, collectively “the Charitable Organization”) an annuity amount equal to [*number representing the annual annuity percentage to be paid to the Charitable Organization*] percent of the initial net fair market value of all property transferred to the trust, valued as of the date of the transfer. The Trustee may pay the annuity amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee’s sole discretion, from time to time may deem advisable.

Annuity Amount as a Specific Dollar Amount.

1. *Explanation.* As an alternative to stating the annuity amount as a percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may be stated as a specific dollar amount.

2. *Instructions for use.*

- a. Replace the first sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following sentence:

In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*the stated dollar amount*].

- b. Delete the last sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 concerning the incorrect valuation of trust assets.

Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

1. *Explanation.* The sample trust in section 7 provides that if the charitable beneficiary designated in the trust instrument is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries. See section 8.01(3) for a discussion of the income tax deductibility limitations applicable to contributions to a grantor CLAT.

2. *Instruction for use.* Replace the second sentence in paragraph 2, Payment of Annuity Amount, of the sample trust in section 7 with the following two sentences:

If [*designated charitable recipient*] is not an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [*designated substitute charitable recipient*]. If neither [*designated charitable recipient*] nor [*designated substitute charitable recipient*] is an organization described in §§170(c), 2055(a), and 2522(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c), 2055(a), and 2522(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion.

Restriction of the Charitable Beneficiary to a Public Charity.

1. *Explanation.* Because the charitable lead interest of a grantor charitable lead trust is considered to be made “for the use of” the charitable beneficiary, the income tax charitable deduction available to an individual taxpayer is generally limited as set forth in §170(b)(1)(B) to 30 percent of the taxpayer’s contribution base as defined in §170(b)(1)(G). However, if the property contributed to the CLAT is capital gain property as defined in §170(b)(1)(C)(iv) and the charitable beneficiary (including any alternate charitable beneficiaries named in the trust instrument or selected by the trustee) is not limited to a public charity, the individual taxpayer’s income tax charitable deduction generally is limited as set forth in §170(b)(1)(D) to 20 percent of the taxpayer’s contribution base. Section 170(b)(1)(D). See §§1.170A-8(c) and (d). In addition, the amount of a charitable contribution of certain types of property may be reduced under §170(e). See §1.170A-4.

2. *Instructions for use.* To restrict the charitable beneficiary to a public charity, each and every time the phrase “an organization described in §§170(c), 2055(a), and 2522(a) of the Code” appears in the sample trust, replace it with the phrase “an organization described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code.”

SAMPLE TESTAMENTARY CHARITABLE LEAD ANNUITY TRUST

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable lead annuity trust, within the meaning of Rev. Proc. 2007-46. This trust shall be known as the Charitable Lead Annuity Trust, and I hereby designate as the initial trustee (hereinafter “the Trustee”). All references to “section” or “§” in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. §1, et seq.

1. *Payment of Annuity Amount.* In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*number representing the annual annuity percentage to be paid to the designated charitable recipient*] percent of the initial net fair market value of all property passing to this trust, as finally determined for federal estate tax purposes. If [*designated charitable recipient*] is not an organization described in §§170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c) and 2055(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion. The term “the Charitable Organization” shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The annuity period is a term of [*number of years of annuity period*] years. The first day of the annuity period shall be the date of my death, and the last day of the annuity period shall be the day preceding the [*ordinal number corresponding to the length of the annuity period*] anniversary of that date. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income and, to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal estate tax purposes, the Trustee shall pay to the Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

2. *Deferral Provision.* The obligation to pay the annuity amount shall commence with the date of my death, but payment of the annuity amount may be deferred from this date until the end of the taxable year in which the trust is completely funded. Within a reasonable time after the end of the taxable year in which the trust is completely funded, the Trustee must pay to the Charitable Organization the difference between any annuity amounts actually paid and the annuity amounts payable, plus interest. The interest for any period shall be computed at the §7520 rate of interest in effect for the date of my death. All interest shall be compounded annually.

3. *Proration of Annuity Amount.* The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. In the taxable year in which the annuity period ends, the Trustee shall prorate the annuity amount on a daily basis for the number of days of the annuity period in that taxable year.

4. *Distribution Upon Termination of Annuity Period.* At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due to the Charitable Organization under the provisions above) to [*remainder beneficiary*].

5. *Additional Contributions.* No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

6. *Prohibited Transactions.* The Trustee shall not engage in any act of self-dealing within the meaning of §4941(d), as modified by §4947(a)(2), and shall not make any taxable expenditures within the meaning of §4945(d), as modified by §4947(a)(2). The Trustee shall not retain any excess business holdings that would subject the trust to tax under §4943, as modified by §§4947(a)(2) and 4947(b)(3). In addition, the Trustee shall not acquire any assets that would subject the trust to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3), or retain assets which, if acquired by the Trustee, would subject the Trustee to tax under §4944, as modified by §§4947(a)(2) and 4947(b)(3).

7. *Taxable Year.* The taxable year of the trust shall be the calendar year.

8. *Governing Law.* The operation of the trust shall be governed by the laws of the State of _____. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the requirements for the charitable deductions available to a charitable lead annuity trust or for contributions to a charitable lead annuity trust.

9. *Limited Power of Amendment.* This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the annuity interest passing to the Charitable Organization is a guaranteed annuity interest under §2055(e)(2)(B) and the regulations thereunder and that payments of the annuity amount to the Charitable Organization will be deductible from the gross income of the trust to the extent provided by §642(c)(1) and the regulations thereunder.

10. *Investment of Trust Assets.* Except as provided in paragraph 6 herein, nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE LEAD ANNUITY TRUST

Annuity Period for the Life of One Individual.

1. *Explanation.* As an alternative to establishing a CLAT for a term of years, the trust instrument of a testamentary CLAT may provide for payment of the annuity amount for the life or lives of an individual or individuals. However, only one or more of the following individuals may be used as measuring lives: the decedent's spouse and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in §170 or 2055), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. A trust will satisfy the requirement that each measuring life is a lineal ancestor (or the spouse of a lineal ancestor) of all noncharitable remainder beneficiaries, if on decedent's date of death there is a less than 15 percent probability that individuals who are not lineal descendants of an individual who is a measuring life will receive any trust principal. The probability must be computed under the applicable tables in §20.2031-7. Section 20.2055-2(e)(2)(vi)(a).

2. *Instruction for use.* Replace the fifth and sixth sentences of paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentences:

The annuity period is the lifetime of [*designated measuring life*]. The first day of the annuity period shall be the date of my death, and the last day of the annuity period shall be the date of death of [*designated measuring life*].

Apportionment of the Annuity Amount in the Discretion of the Trustee.

1. *Explanation.* The trustee of a testamentary charitable lead trust may be granted the power to apportion the annuity payment from time to time among a class of qualifying charitable beneficiaries.

2. *Instruction for use.* Replace the first three sentences of paragraph 1, Payment of Annuity Amount, of the sample trust with the following two sentences:

In each taxable year of the trust during the annuity period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§170(c) and 2055(a) (hereinafter, collectively “the Charitable Organization”) an annuity amount equal to [*number representing the annual annuity percentage to be paid to the Charitable Organization*] percent of the initial net fair market value of all property passing to this trust, as finally determined for federal tax purposes. The Trustee may pay the annuity amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee’s sole discretion, from time to time may deem advisable.

Annuity Amount as a Specific Dollar Amount.

1. *Explanation.* As an alternative to stating the annuity amount as a percentage of the initial net fair market value of the assets transferred to the trust, the annuity amount may instead be stated as a specific dollar amount.

2. Instructions for use.

a. Replace the first sentence in paragraph 1, Payment of Annuity Amount, of the sample trust with the following sentence:

In each taxable year of the trust during the annuity period, the Trustee shall pay to [*designated charitable recipient*] an annuity amount equal to [*the stated dollar amount*].

b. Delete the last sentence in paragraph 1, Payment of Annuity Amount, of the sample trust concerning the incorrect valuation of trust assets.

Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

1. *Explanation.* The sample trust provides that in the event the charitable beneficiary designated in the trust instrument is not an organization described in §§170(c) and 2055(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§170(c) and 2055(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries.

2. *Instruction for use.* Replace the second sentence in paragraph 1, Payment of Annuity Amount, of the sample trust with the following two sentences:

If [*designated charitable recipient*] is not an organization described in §§170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to [*designated substitute charitable recipient*]. If neither [*designated charitable recipient*] nor [*designated substitute charitable recipient*] is an organization described in §§170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§170(c) and 2055(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee’s sole discretion.

COMMENTS ON IRS SAMPLE FORMS

The foregoing IRS sample forms provide a serviceable “safe harbor” for drafters of charitable lead annuity trusts. The IRS in effect has ensured that charitable lead annuity trusts that follow the recommended provisions (or that are “substantially similar” in content) will qualify for charitable deductions. Indeed, the IRS will no longer issue private rulings on the qualification of charitable lead annuity trusts except where trust provisions fall outside the recommended language or alternate clauses. On the other hand, attorneys will need to make certain that appropriate trust provisions are added to comply with local law and good practice.

The safe harbor forms address several issues that have surfaced over the years with charitable lead trusts and charitable remainder trusts.

One perceived problem involved an attempt by multiple members of one family to establish a single charitable remainder trust. The IRS ruled that only an individual or a married couple may be grantors of a charitable remainder trust – foreclosing the possibility that brothers and sisters or unrelated persons might set up one umbrella CRT. The IRS now has carried that policy over to charitable lead trusts by stating, in annotations to the inter vivos lead annuity trusts: “For purposes of qualification under this revenue procedure, the donor to a charitable lead annuity trust may be an individual or a husband or wife.” Donors who are not married to each other would have to seek IRS approval before acting as grantors of the same charitable lead annuity trust.

The IRS lead annuity trust forms also require provisions forbidding additional contributions after the trust has been funded. The prohibition against additional contributions is another import from charitable

remainder trust law, and perhaps an unnecessary one. Payments to charitable beneficiaries and related deductions resulting from additional contributions could be easily calculated, and it is difficult to discern how allowing additions to lead annuity trusts would lead to abuse. Again, a letter ruling would be needed before including a contrary provision.

A Final Word

Charitable lead trusts are without question the most underused of all charitable estate planning techniques. A recent edition of the IRS Statistics of Income bulletin reported only 6,168 filings of tax returns for charitable lead trusts. Many lead trusts are testamentary, of course, and would not file tax returns until after the grantor’s death, but the technique remains “rare, though well done.”

Why aren’t charitable lead trusts used more frequently? They often are viewed as being only for the very rich – that is, individuals who face significant federal transfer taxes. Surprisingly, the IRS statistics show that 2,757 of the 6,168 tax returns listed net assets of under \$500,000 and another 1,383 held corpus of \$500,000 to \$1 million. Transfer tax savings for these smaller trusts may not have been the donors’ only motivation. Donors may like the idea that charitable lead trusts can provide temporary benefit to charities, then pass their entire estates to family members. In some cases, parents may prefer to stagger the distribution of their estates, so that young adult children do not receive large inheritances immediately. And inter vivos lead trusts can also reduce income taxes, either by diverting investment income to charities through a nongrantor trust or establishing an immediate income tax charitable deduction with a grantor lead trust

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 Gift Planning Office at 1-800-843-8114 for additional information about the mission and the future plans of the American Institute for Cancer Research.

Our Gift Planning Office 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:
The American Institute for Cancer Research
- AICR’s mailing address:
1759 R Street, NW
Washington, DC 20009
- AICR’s phone number:
1-202-328-7744 or 1-800-843-8114
- 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.

Gift Planning Office

AMERICAN INSTITUTE FOR CANCER RESEARCH

1759 R Street, NW

Washington, DC 20009

1-800-843-8114 or 1-202-328-7744

www.aicr.org/estateplanner