

TABLE OF CONTENTS

Chapter 1	
AN OVERVIEW OF CHARITABLE TRUSTS	1
EXHIBITS	
Exhibit 1A—Diagram Of Tax Benefits Of A Charitable Remainder Unitrust	3
Exhibit 1B—Diagram Of Tax Benefits Of A Non-Grantor Charitable Lead Trust	9
Exhibit 1C—Diagram Of Tax Benefits Of A Grantor Charitable Lead Trust	11
Exhibit 1D—Section 7520 Rates (1989–2011)	13
Chapter 2	
A TYPICAL CASE FOR A CHARITABLE REMAINDER TRUST	15
§ 2.1—A Typical Case For CRT Planning	15
§ 2.2—Meeting The Client’s Objectives — The NIMCRUT	16
Chapter 3	
TYPES OF CHARITABLE REMAINDER TRUSTS	19
§ 3.1—Introduction	19
§ 3.2—Charitable Remainder Annuity Trust (CRAT)	20
§ 3.3—Charitable Remainder Unitrust (CRUT)	20
§ 3.3.1—Standard Charitable Remainder Unitrust (STANCRUT)	21
§ 3.3.2—Net Income Charitable Remainder Unitrust (NICRUT)	21
§ 3.3.3—Net Income With Make-Up Charitable Remainder Unitrust (NIMCRUT)	21
§ 3.3.4—Flip Charitable Remainder Unitrust (FLIPCRUT)	21
§ 3.4—Testamentary Charitable Remainder Trusts	23
Chapter 4	
TAX ASPECTS OF CHARITABLE REMAINDER TRUSTS	25
§ 4.1—Overview	25
§ 4.2—Income Tax Matters	25
§ 4.2.1—General Rules	25
§ 4.2.2—Income Tax Deduction Limitations	26
§ 4.2.3—Income Tax Status Of A CRT	27
§ 4.2.4—Filing Requirements For A Charitable Income Tax Deduction	27

Charitable Trusts

§ 4.3—Gift Tax Consequences 27
§ 4.4—Estate Tax Treatment 28
§ 4.5—Taxation Of Distributions From CRT 29

EXHIBIT

Exhibit 4A—Limitations On Charitable Income Tax Deductions 31

Chapter 5

TRUSTEE OF THE CHARITABLE REMAINDER TRUST 33
§ 5.1—Who May Serve As Trustee 33
§ 5.2—Duties Of The Trustee 33

Chapter 6

DRAFTING A CHARITABLE REMAINDER TRUST 35
§ 6.1—Required And/Or Advisable Provisions 35
 § 6.1.1—Trust Must Be Irrevocable 35
 § 6.1.2—Payment To Recipient 36
 § 6.1.3—Designation Of Single Or Joint Recipients 39
 § 6.1.4—Limitation On Payments To Non-Charitable Beneficiaries . . . 40
 § 6.1.5—Additional Contributions To The Trust 40
 § 6.1.6—Valuation Date 40
 § 6.1.7—Adjustment For Incorrect Valuation 41
 § 6.1.8—Valuation Of Unmarketable Assets 41
 § 6.1.9—Distribution Of Remainder To Charity 42
 § 6.1.10—No Investment Restrictions 43
 § 6.1.11—No Payment Of Transfer Taxes From Trust 43
 § 6.1.12—Private Foundation Restrictions 44
 § 6.1.13—Capital Gain Allocation Provision 45
§ 6.2—Sample Charitable Remainder Unitrust 46

Chapter 7

TRAPS FOR THE UNWARY:

CHARITABLE REMAINDER TRUST 47
§ 7.1—Prearranged Sales 47
§ 7.2—Property Encumbered By Debt 47
 § 7.2.1—Recourse Mortgage Debt 47
 § 7.2.2—Debt-Financed Property 48
§ 7.3—Unrelated Business Taxable Income 48
 § 7.3.1—Definition Of UBTI 48
 § 7.3.2—Exceptions 48

Table of Contents

§ 7.4—Self-Dealing	49
§ 7.4.1—Disqualified Persons	49
§ 7.4.2—Prohibited Transactions	50
§ 7.4.3—Exceptions	50
§ 7.5—Private Foundation Rules	51
§ 7.5.1—Taxable Expenditures	51
§ 7.5.2—Excess Business Holdings	52
§ 7.5.3—Jeopardizing Investments	52
§ 7.6—10 Percent Minimum Charitable Benefit Rule	53
§ 7.7—5 Percent Probability Of Exhaustion Test	54

Chapter 8

SUITABLE ASSETS FOR A CHARITABLE REMAINDER TRUST	57
§ 8.1—Real Estate	57
§ 8.2—Securities	58
§ 8.2.1—Publicly Traded Securities	58
§ 8.2.2—Privately Held Securities	58
§ 8.3—Installment Sale Contracts	59
§ 8.4—Partnership Interests	59
§ 8.5—Tangible Personal Property	60
§ 8.5.1—Gold Coins	60

Chapter 9

EARLY TERMINATION OF THE CHARITABLE REMAINDER TRUST WITH DIVISION OF ASSETS TO DONOR AND CHARITY	63
§ 9.1—Reasons For Early Termination	63
§ 9.2—Internal Revenue Service Rulings On Trust Termination	64
§ 9.2.1—Basic Requirements (PLR 200208039)	64
§ 9.2.2—The Good Health Issue	65
§ 9.2.3—Procedural Matters	65
§ 9.2.4—Private Foundation Issue	66
§ 9.3—Income Tax Consequences Of Termination	67
§ 9.3.1—The Four-Tier Rule	67
§ 9.3.2—The Capital Gain Exception To The Four-Tier Rule	67
§ 9.3.3—Valuation Adjustment For NIMCRUTs	68

Chapter 10

ADDITIONAL OPTIONS FOR EARLY TERMINATION

OF THE CHARITABLE REMAINDER TRUST 69

- § 10.1—Alternatives Other Than Division Of Assets 69
- § 10.2—Outright Gift To The Charitable Remainderman 69
- § 10.3—Sale Of Income Interest To The Charitable Remainderman 70
- § 10.4—Exchange For A Charitable Gift Annuity 70
- § 10.5—Rescission 71
- § 10.6—Need For One’s Own Ruling 71

Chapter 11

A TYPICAL CASE FOR A CHARITABLE LEAD TRUST 73

- § 11.1—A Typical Case For CLT Planning 73
- § 11.2—Meeting The Client’s Objectives 74
 - § 11.2.1—Tax Advantages Of A CLT 74
 - § 11.2.2—Non-Tax Advantages Of A CLT 74
 - § 11.2.3—Disadvantages Of A CLT 75

Chapter 12

TYPES OF CHARITABLE LEAD TRUSTS 77

- § 12.1—Introduction: What Is A Charitable Lead Trust? 77
- § 12.2—Characteristics Common To Both CLATs And CLUTs 77
 - § 12.2.1—The Charitable Interest 77
 - § 12.2.2—Payment Source 78
 - § 12.2.3—Term 78
 - § 12.2.4—The Charitable Beneficiary (Or Beneficiaries) 80
 - § 12.2.5—The Remainder Interest 81
- § 12.3—CLATs 82
 - § 12.3.1—The Lead Interest 82
 - § 12.3.2—Advantages Of CLATs 84
 - § 12.3.3—Disadvantages Of CLATs 84
- § 12.4—CLUTs 85
 - § 12.4.1—The Lead Interest 85
 - § 12.4.2—Advantages Of CLUTs 86
 - § 12.4.3—Disadvantages Of CLUTs 86

Table of Contents

Chapter 13

GRANTOR CHARITABLE LEAD TRUSTS	89
§ 13.1—Introduction	89
§ 13.2—Advantages Of A Grantor CLT	89
§ 13.3—Income Tax Impact Of Grantor Trust Status	90
§ 13.3.1—Calculating The Income Tax Deduction	90
§ 13.3.2—Tangible Personal Property	90
§ 13.3.3—Distributions Of Excess Income To Charitable Lead Beneficiary	91
§ 13.3.4—Potential For Conversion To A Complex Trust	91
§ 13.4—Gift Tax Impact Of Grantor Trust Status	91
§ 13.5—Estate Tax Impact Of Grantor Trust Status	91
§ 13.6—Triggering Grantor Trust Status	92

Chapter 14

TAX ASPECTS OF CHARITABLE LEAD TRUSTS	95
§ 14.1—Overview	95
§ 14.2—Income Tax	96
§ 14.2.1—General Rule	96
§ 14.2.2—Source-Ordering Provisions	96
§ 14.2.3—Preparing For The Possibility Of Excess Income	97
§ 14.3—Gift Tax	98
§ 14.4—Estate Tax	98
§ 14.4.1— <i>Inter Vivos</i> CLTs	98
§ 14.4.2—Testamentary CLTs	99
§ 14.5—Generation-Skipping Transfer Tax	99

Chapter 15

TRUSTEE OF THE CHARITABLE LEAD TRUST	101
§ 15.1—Who May (And May Not) Serve As Trustee	101
§ 15.1.1—Institutional Trustee	101
§ 15.1.2—Charitable Lead Beneficiary	101
§ 15.1.3—The Donor Or Members Of The Donor’s Family	101
§ 15.2—Recommendations Regarding Trustees	102
§ 15.2.1—Disinterested Trustee	102
§ 15.2.2—Reasonable Compensation	102
§ 15.2.3—Valuation Of Assets	102

Charitable Trusts

Chapter 16

DRAFTING A CHARITABLE LEAD TRUST	105
§ 16.1—Historical Background	105
§ 16.2—A Word Regarding The IRS Forms	107
§ 16.3—Recommended Provisions	107
§ 16.3.1—Charitable Deduction Saving Clause	107
§ 16.3.2—Prohibit Commutation	108
§ 16.3.3—Trustees’ Fees	108
§ 16.3.4—Preparing For The Possibility Of Additional Contributions	108
§ 16.3.5—Preparing For Economic Uncertainty	108
§ 16.3.6—Increase Annuity Amount Year Over Year	109
§ 16.3.7—Selecting The Applicable § 7520 Rate	109

Chapter 17

TRAPS FOR THE UNWARY: CHARITABLE LEAD TRUSTS	111
§ 17.1 —Debt-Financed Property	111
§ 17.2—Unrelated Business Taxable Income	111
§ 17.2.1—Definition Of UBTI	111
§ 17.2.2—Exceptions	112
§ 17.3—Self-Dealing	113
§ 17.3.1—Disqualified Persons	113
§ 17.3.2—Prohibited Transactions	113
§ 17.3.3—Exceptions	114
§ 17.4—Additional Private Foundation Rules	114
§ 17.4.1—Taxable Expenditures	115
§ 17.4.2—Excess Business Holdings	115
§ 17.4.3—Jeopardizing Investments	115
§ 17.5—Need For One’s Own Ruling	116

Chapter 18

SUITABLE ASSETS FOR A CHARITABLE LEAD TRUST	119
§ 18.1—Real Estate	119
§ 18.2—Securities	120
§ 18.2.1—Publicly Traded Securities	120
§ 18.2.2—Privately Held Securities	120
§ 18.3—Installment Sale Contracts	121
§ 18.4—Partnership Interests	121

Table of Contents

Chapter 19

CREATIVE CHARITABLE LEAD TRUSTS	123
§ 19.1—Introduction	123
§ 19.2—CLT + Family Limited Partnership	123
§ 19.3—Layered Testamentary Lead Trust	124
§ 19.4—Combination CLT/CRT	124
§ 19.5—“Shark Fin” CLAT	124
§ 19.6—Supergrantor Charitable Lead Trust	125

APPENDICES

Appendix A

IRS FORM 4720 — RETURN OF CERTAIN EXCISE TAXES	129
---	-----

Appendix B

IRS FORM 5227 — SPLIT-INTEREST TRUST INFORMATION RETURN	141
--	-----

Appendix C

IRS FORM 8283 — NONCASH CHARITABLE CONTRIBUTIONS	151
IRS FORM 8282 — DONEE INFORMATION RETURN	153

Appendix D

RECEIPT FOR CONTRIBUTION TO CHARITABLE TRUST	159
---	-----

Appendix E

SAMPLE CHARITABLE REMAINDER UNITRUST	163
---	-----

Appendix F

REV. PROC. 2005-52 — IRS SAMPLE <i>INTER VIVOS</i> CRUT (ONE MEASURING LIFE)	189
---	-----

Appendix G

REV. PROC. 2003-53 — IRS SAMPLE <i>INTER VIVOS</i> CRAT (ONE MEASURING LIFE)	223
---	-----

Appendix H

REV. PROC. 2003-54 — IRS SAMPLE <i>INTER VIVOS</i> CRAT (TERM OF YEARS)	239
--	-----

Appendix I

REV. PROC. 2003-55 — IRS SAMPLE <i>INTER VIVOS</i> CRAT (TWO MEASURING LIVES PAID CONSECUTIVELY)	257
---	-----

Charitable Trusts

Appendix J	
REV. PROC. 2003-56 — IRS SAMPLE <i>INTER VIVOS</i>	
CRAT (TWO MEASURING LIVES PAID	
CONCURRENTLY AND CONSECUTIVELY)	275
Appendix K	
REV. PROC. 2003-57 — IRS SAMPLE TESTAMENTARY	
CRAT (ONE MEASURING LIFE	295
Appendix L	
SAMPLE NON-GRANTOR CHARITABLE LEAD	
ANNUITY TRUST	309
Appendix M	
SAMPLE GRANTOR CHARITABLE LEAD	
ANNUITY TRUST	333
Appendix N	
REV. PROC. 2007-45 — IRS SAMPLE CHARITABLE	
LEAD GRANTOR AND NON-GRANTOR	
ANNUITY TRUSTS	361
Appendix O	
IRS PRIVATE LETTER RULING 200208039 —	
EARLY TERMINATION OF CRUT	391
Appendix P	
IRS PRIVATE LETTER RULING 200846037 —	
EARLY TERMINATION OF NIMCRUT	399
Appendix Q	
IRS PRIVATE LETTER RULING 200817039 —	
EARLY TERMINATION OF CRT	407
Appendix R	
SAMPLE PRIVATE AGREEMENT TO TERMINATE CRT	417
Appendix S	
SAMPLE COURT PETITION TO TERMINATE CRT	423
Appendix T	
LIST OF REV. PROCS. CONTAINING IRS	
SAMPLE FORMS FOR CHARITABLE	
REMAINDER ANNUITY TRUSTS	429
Appendix U	
LIST OF REV. PROCS. CONTAINING IRS	
SAMPLE FORMS FOR CHARITABLE	
REMAINDER UNITRUSTS	433
SUBJECT INDEX	435