# THE BASICS OF PLANNED GIVING

**Karen S. Gerstner, J.D.**
Karen S. Gerstner & Associates, P.C.
5615 Kirby Drive, Suite 306
Houston, Texas 77005
(713) 520-5205
(713) 520-5235 (FAX)
karen@gerstnerlaw.com
www.gerstnerlaw.com

**Jon D. Adinolfi, C.P.A.**
Margolis, Phipps & Wright, P.C.
1400 Post Oak Boulevard, Suite 900
Houston, Texas 77056
(713) 625-3500
(713) 625-3535 (FAX)
jadinolfi@mpwcpa.com
www.mpwcpa.com

## HOUSTON CPA SOCIETY
## HOUSTON TSCPA FOUNDATION

**February 12, 2008**

**THE BASICS OF PLANNED GIVING**
by Karen S. Gerstner
and
Jon Adinolfi
February 12, 2008

I. What is a Gift?

A. Immediate outright gift versus a "future" or "deferred" gift (planned gift)

B. Requirements for a valid gift.

1. Competent Donor ("Donor"=a person who makes a gift)

a. Mental Capacity

b. Minimum Age

2. Donative intent (intent to make a gift)

3. Irrevocable transfer/delivery of subject of gift (donor gives up possession and control of property that is the subject of the gift)

4. Acceptance of the gift by the donee (the recipient of the gift–the charity)

II. What is Planned Giving?

A. Why would a Donor be interested in Planned Giving?

B. Why should Charities be interested in Planned Giving (in addition to their annual campaign and capital campaigns)? *See* "The Case for Planned Giving" attached.

C. What is an Endowment? A gift or bequest–or a fund created through gifts and bequests–intended to be kept intact to generate income for a charitable organization.

III. Definitions

A. Use of the term "Property" (any type of asset, not just real estate)

1. Real Property (and minerals)

2. Personal Property (tangible and intangible)

a. Tangible Personal Property.

b. Intangible Personal Property.

B. What is a Trust?

C. What is a Life Estate?

D. What is a Remainder Interest?

E. What is an Annuity?

F. What is the present value of a future gift?

IV. Income Tax Savings for Donors - Income Tax Charitable Deduction

A. The Income Tax System - See Exhibits A and B

B. Percentage Limitations for Income Tax Deduction - See Exhibit C

C. Five year carry forward for excess income tax charitable deduction

D. Alternative Minimum Tax (AMT) Considerations - See Exhibit D

V. The Estate and Gift Tax System - Excise Tax on Transfers - See Exhibits E-1 through E-3

A. What is a Transfer?

1. Lifetime Gifts to individuals (subject to Gift Tax)

2. Gifts effective upon Death (subject to Estate Tax ["death tax"])

a. Gifts made by Will ("testamentary" gifts)

b. Gifts made via a Revocable (Living) Trust

c. Gifts made by beneficiary designation

d. Gifts made via multi-party accounts and similar arrangements (examples: JTWROS, POD, TOD, etc.)

B. Who pays the Estate/Gift tax?

1. Donor (maker of the gift) pays the gift tax

2. Donee (recipient of the gift) *may* pay the gift tax (net gift)–but not the usual case

3. Decedent's Estate pays the estate tax

C. Important exclusions and deductions

1. $12,000 per donee (recipient) per year annual gift tax exclusion (2008 amount)

2. Unlimited medical and tuition exclusion–*if paid directly to provider*

3. $2,000,000 applicable estate tax exclusion amount (2008 amount)

4. $1,000,000 (cumulative) lifetime gift tax exemption amount

5. Unlimited marital deduction for qualified transfers to spouse who is a United States citizen (during life and at death)

6. Limited gift tax marital deduction for qualified transfers made to a spouse who is NOT a United States citizen - $128,000 (2008 amount)

7. Limited estate tax marital deduction for qualified transfers made to a spouse who is NOT a United States citizen - Qualified Domestic Trust (QDOT)

8. Unlimited charitable deduction (at death) for qualified transfers to charity

D. Basic Estate Planning - See Exhibits F-1 and F-2

VI. The Generation-Skipping Transfer ("GST") Tax

A. What is a Generation-Skipping Transfer?

1. Direct Skip (outright gift from grandparent to grandchild [skip person])

2. Indirect Skip (gift to a "GST Trust")

3. Taxable Distribution (distribution from a GST Trust to a skip person)

4. Taxable Termination (termination of a non-skip person's interest in a GST Trust in favor of a skip person)

B. What is the Generation-Skipping Transfer Tax Rate? (flat tax at the highest estate and gift tax rate)

C. What is the GST Exemption Amount? ($2,000,000 in 2008)

D. How is the GST Exemption Amount Allocated?

1. Form 709 (Gift Tax Return) - for lifetime generation-skipping transfers

2. Form 706 (Estate Tax Return) - for generation-skipping transfers effective upon death

VII. Types of "Planned Gifts" (gifts other than immediate, outright gifts, made to charity)

A. <u>"Deferred" outright gifts of cash or other assets made in Will or Living Trust</u> (gift is not effective until donor dies because such gifts are revocable until death; nevertheless, many charities recognize these planned gifts, if aware of them, through "legacy societies")

1. <u>Specific Bequests in Wills/Trusts</u> (a gift of a specific amount of cash, such as $10,000, or specific assets, such as 100 shares of Exxon stock)

2. <u>Percentage Gifts of Testator's "Residuary Estate"</u> (e.g., charity may receive 10% of decedent's remaining probate or trust assets ["residuary estate"] per Will or Living Trust–Will or Trust should address whether charitable residuary gift is to bear any portion of the debts, funeral expenses, administration expenses, and, especially, death taxes [if applicable] because the residuary estate usually bears these charges)

3. Contingent Residuary/Remaining Property Gifts in Wills/Trusts - provision in Will or Living Trust for alternate gift to charity if primary beneficiary/beneficiaries do not survive (depending on contingency, gift could be somewhat likely or very remote–example, if no spouse or descendants survive, all to charity)

B. Gifts of Life Insurance, IRAs and/or Qualified Retirement Plans upon death – these gifts are made pursuant to the beneficiary designation form on file with company (IRAs and Qualified Retirement Plans are excellent assets to use to satisfy intent to make charitable gifts at death–both estate taxes and income taxes are avoided–but gifts should be made via beneficiary designation and not through Will or Trust)

C. Bargain Sales - An asset is sold to charity for less than its fair market value, so the transaction is treated as part sale and part gift

D. Charitable Gift Annuities - A (simple) contractual arrangement between a donor and a charity. Donor irrevocably transfers cash or other easy to liquidate assets (such as marketable securities) to charity in exchange for charity's promise to pay a fixed annuity to one or two individuals for life. The annuity can start immediately (an immediate annuity) or can start later (a deferred annuity). The annuity is based on the age of the annuitants (the persons to whom the charity will pay the annuity). The American Council on Gift Annuities publishes gift annuity rates that most charities follow. The charitable gift annuity is not an insured investment–it is part gift and part return of basis plus income.

E. Non-trust split property arrangements

1. Life Estate-Remainder Splits - Donor deeds a home or farm (or other personal residence) to charity for life and reserves a life estate in the property for himself (or jointly for himself and his spouse). Charity receives property upon death of donor (or donor and spouse).

2. Fractional or Undivided Interest Gifts - One example would be a gift of an undivided interest in real estate to charity (e.g., 20%). When the property is sold, charity receives its share of the proceeds. Another example would be a donor's gift to a museum of a 25% interest in a painting or coin collection. Congress made substantial changes to the rules relating to this type of gift (i.e., gifts of tangible personal property) in the Pension Protection Act (due to perceived abuses).

F. Split-Interest Trusts - Can be established to be effective immediately or only upon death; most require the donor to execute a legal document (e.g., a Will or a Trust Agreement) to create the trust; the trust must be irrevocable to be effective; the trust must be drafted to meet specific qualification requirements–not all "split interest trusts" will qualify–significant expertise is required to draft these trusts

1. Charitable Remainder Trusts (CRTs) - Donor places assets in a qualified irrevocable trust and either retains the "lead interest" for himself (or himself and his spouse) or gives the "lead interest" to one or more other individuals for a term of years or for life and, upon termination of the trust, the remainder interest passes to charity (outright). The lead interest must meet the requirements in the Treasury Regulations as either a qualified annuity interest or a qualified unitrust interest.

a. Charitable Remainder Annuity Trusts (CRATs) - The lead interest paid to one or more individuals is a fixed annuity, based on the initial fair market value of the assets placed in the trust (e.g., 5%), which does not change despite changes in the value of the assets in the trust. No additional contributions can be made to the trust after the initial contribution.

b. Charitable Remainder Unitrusts (CRUTs) - The lead interest paid to one or more individuals is a fixed percentage (e.g., 5%) of the fair market value of the trust, re-determined each year. The lead interest in a CRUT is called the "unitrust amount". Additional contributions can be made to a CRUT because the unitrust amount is recalculated and changes with changes in the value of the trust.

(1) Net Income CRUTs (NICRUTs) - With this type of CRUT, the lesser of actual trust net income or the unitrust amount is paid out to the individual beneficiary/beneficiaries each year.

(2) Net Income with Makeup CRUTs (NIMCRUTs) - With this type of CRUT, the lesser of actual trust net income or the unitrust amount is paid out to the individual beneficiary/beneficiareis each year and, in later years when net income exceeds the current unitrust amount, prior shortfalls can be made up.

2. Charitable Lead Trusts (CLTs) - Donor places assets in a qualified irrevocable trust in which the "lead interest" is paid out to charity for a term of years and upon termination of the trust, the remainder interest passes to one or more individuals (outright or in new trusts). The lead interest must meet the requirements in the Treasury Regulations as either a qualified annuity interest or a qualified unitrust interest.

a. Charitable Lead Annuity Trusts (CLATs) - The lead interest paid to charity is a fixed annuity based on the initial fair market value of the assets placed in the trust (e.g., 5%). No additional contributions can be made to the trust after the initial contribution.

b. Charitable Lead Unitrusts (CLUTs) - The lead interest paid to charity is a fixed percentage (e.g., 5%) of the fair market value of the trust, re-determined each year. Additional contributions can be made to a CRUT.

3. Pooled Income Funds - Some charities establish these "group trusts" to which numerous donors can make irrevocable contributions (that are commingled and invested together), in which the donor retains the right to be paid his or her proportionate share of the annual income of the fund until death, at which time the donor's contributions are permanently owned by the charity.

4. QTIP Trust with Remainder to Charity - A married couple with charitable intent (and usually no children) create a QTIP Trust in their Wills or Living Trust instrument(s), to which assets are to pass on the death of the first spouse, which will be held for the exclusive benefit of the surviving spouse for his/her life, with all trust income (at least) being distributed out of the trust to the spouse for life, and with the assets remaining in the trust on the death of the surviving spouse being distributed (outright) to one or more charities. No estate taxes are paid on the death of first spouse due to the

unlimited estate tax marital deduction (assuming the surviving spouse is a United States citizen) and no estate taxes are paid on the death of the surviving spouse due to the unlimited estate tax charitable deduction.

G. Private Foundations - A privately created and controlled charity that is subject to strict rules against self-dealing and is also subject to extensive administrative and distribution rules. Created either as a trust or as a non-profit corporation. Preferred by donors who want to maintain control of charitable gifts that are made.

1. Grant-Making Foundations. These foundations make annual grants to public charities. Public charities interested in receiving grants submit grant requests.

2. Operating Foundations. These foundations actually conduct charitable activities (e.g., a museum).

H. Supporting Organizations - These organizations are like foundations but support a particular public charity.

I. Donor Advised Funds with a Community Foundation - A community foundation receives enough public support to be treated like a public charity for purposes of the income tax contribution and deduction rules. Donors cannot control the gifts that are made with the funds they contribute to the community foundation, but they can recommend (i.e., provide advice regarding) what the community foundation should do with their gifts.

VIII. Advantages and Disadvantages of each type of Planned Gift, including Tax Consequences

A. Specific Gifts in Wills and Trusts

B. Residuary Gifts in Wills and Trusts

C. Contingent Residuary Gifts in Wills and Trusts

D. Gifts of Life Insurance, IRAs and/or Qualified Retirement Plans

E. Bargain Sales

F. Charitable Gift Annuities

G. Non-trust split property arrangements

H. CRATs

I. CRUTs

1. NICRUTs

2. NIMCRUTs

J. CLATs

K. CLUTs

L. Pooled Income Funds

M. QTIP Trust with Remainder to Charity

N. Private Foundations

O. Supporting Organizations

P. Donor Advised Funds

IX. Other Matters

A. IRS Publication 526, Charitable Contributions

B. IRS Publications 1457, 1458 and 1459, labeled, Book Aleph, Book Beth and Book Gimel, respectively (providing tables used to compute the actuarial values of annuities, unitrusts and the depreciation adjustment for valuing a remainder interest when depreciated property is given to charity)

C. Model Standards of Practice for the Charitable Gift Planner - Attached

X. Some Examples of How the Numbers Work: the Charitable Deduction, the Taxable Gift and the Value of What Charity and the Individual Beneficiaries Receive

Exhibit G - Summary of $1,000,000 gift to various charitable split-interest trusts

Exhibits H-1 through H-4 - Split-interest trust calculations summarized in Exhibit G

Exhibits I-1 through I-4 - Descriptions of the four split-interest trusts

Exhibit J - Charitable Gift Annuity Example

# The Case for Planned Giving

**By John Elbare, the PG-COACH**

Surprisingly, many charitable organizations do not seek planned gifts from their supporters. Perhaps they view planned giving as a highly-technical option that is beyond their ability. Or they may feel that planned giving has little relevance for them, since their donors are not wealthy. Nothing could be further from the truth. These common misconceptions are preventing many charities from using the one tool that can bring in huge revenues over time.

Planned gifts, which average about $50,000, can have a truly transformational effect on a charity that has been struggling from month to month, barely meeting the budget. Over time, planned giving can build an endowment for your organization, providing a growing and dependable stream of revenue, year after year. Planned giving ensures the long-range financial health of your organization.

Any organization that raises funds should be asking for planned gifts. The vast majority of planned gifts are not complex or technical at all. They are quite simple. You ask your supporters to leave your charity some of their assets, after they no longer need them. Notice that we have not even mentioned anything about reducing taxes or guaranteeing lifetime income. We just ask for a gift at the end of life.

If this is all you ever do, you will still have a highly successful planned giving program. You certainly can enter the technical areas of planned giving, once you are ready, but that is not necessary in the beginning. The core business of planned giving is the simple and straightforward request for a gift at the end of life. Any charity can do that. Every charity should.

Planned gifts are not just for the wealthy. In fact, the beauty of planned giving is that it enables your average, middle class supporter to become a major gift donor. Many of your loyal donors, especially retirees, live on modest fixed incomes. They worry about running out of money and the cost of huge medical bills. So they make small donations while they are alive, carefully protecting their savings. Yet these same donors are often willing and able to leave large 5- and 6-figure estate gifts in their estate plans.

These donors usually give through a *bequest* in a will, or a *beneficiary designation* on an IRA or a life insurance policy. These gifts are easy to understand, and they are easy for your donors to arrange. They are revocable, so your donor does not have to worry about tying up assets that may be needed later in life.

If you are not asking for these gifts, you are missing out on most of the economic value of your donors. Why work hard to acquire new donors and renew them every year, only to miss out on the largest gift they can give your organization? It is an unpleasant wake-up call when you learn that one of your most loyal donors left her entire estate to some other charity. Why weren't you included in her plans? It is because you did not ask!

For more tips on successful planned gift development,
visit our website: **www.pgcoach.com**

This article was previously published in *PG-Mentor*

# Model Standards of Practice for the Charitable Gift Planner

**PREAMBLE**

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent.

This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

**I. PRIMACY OF PHILANTHROPIC MOTIVATION**

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

**II. EXPLANATION OF TAX IMPLICATIONS**

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

**III. FULL DISCLOSURE**

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

**IV. COMPENSATION**

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

**V. COMPETENCE AND PROFESSIONALISM**

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area, and shall advise donors only in areas in which he or she is professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

**VI. CONSULTATION WITH INDEPENDENT ADVISORS**

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisers of the donor's choice.

**VII. CONSULTATION WITH CHARITIES**

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

**VIII. DESCRIPTION AND REPRESENTATION OF GIFT**

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

**IX. FULL COMPLIANCE**

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

**X. PUBLIC TRUST**

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

*Adopted and subscribed to by the National Committee on Planned Giving and the American Council on Gift Annuities, May 7, 1991. Revised April 1999.*

## 2008 Federal Individual Income Tax Rates

| Col. 1 | Single Individuals | | Joint Returns & Surviving Spouses | | Heads of Households | |
|---|---|---|---|---|---|---|
| Taxable Income | Tax on Col. I | Rate on Excess | Tax on Col. I | Rate on Excess | Tax on Col. I | Rate on Excess |
| $ 0 | $ 0 | 10% | $ 0 | 10% | $ 0 | 10% |
| 8,025 | 802.50 | 15% | | | | |
| 11,450 | | | | | 1,145 | 15% |
| 16,050 | | | 1,605 | 15% | | |
| 32,550 | 4,481.25 | 25% | | | | |
| 43,650 | | | | | 5,975 | 25% |
| 65,100 | | | 8,962.50 | 25% | | |
| 78,850 | 16,056.25 | 28% | | | | |
| 112,650 | | | | | 23,225 | 28% |
| 131,450 | | | 25,550 | 28% | | |
| 164,550 | 40,052.25 | 33% | | | | |
| 182,400 | | | | | 42,755 | 33% |
| 200,300 | | | 44,828 | 33% | | |
| 357,700 | 103,791.75 | 35% | 96,770 | 35% | 100,604 | 35% |

"Taxable Income" is your total income, minus deductions for business expenses, contributions to retirement plans and other "adjustments," from which you subtract the standard deduction or itemized deductions, whichever is larger, and your personal and dependency exemptions. Net long-term capital gains (on assets held more than 12 months) and dividends are generally taxed at a maximum of 15%. Taxpayers must compute regular taxes and also "alternative minimum tax" and pay whichever is more.

EXHIBIT A

## STANDARD DEDUCTIONS

| | Single Individuals | Joint Return/ Surviving Spouses | Heads of Households | Married Filing Separately |
|---|---|---|---|---|
| Basic | $5,450 | $10,900 | $8,000 | $5,450 |
| Over 65 | 6,800 | 11,950 (one)<br>13,000 (both) | 9,350 | 6,500 |
| Blind | 6,800 | 11,950 (one)<br>13,000 (both) | 9,350 | 6,500 |
| Over 65 & Blind | 8,150 | 13,000 (one)<br>15,100 (both) | 10,700 | 7,550 |

Taxpayers may "itemize" deductions when deductions total more than the standard deductions shown. Itemized deductions are reduced by 3% of a taxpayer's adjusted gross income (AGI) over $159,950 ($79,975 for married persons filing a separate return). Maximum reduction is 80% of affected deductions. For 2008, the resulting reduction is multiplied by ⅓. Taxpayers who take the standard deduction are unaffected.

## PERSONAL AND DEPENDENCY EXEMPTIONS

| | |
|---|---|
| Individuals | $3,500 |
| Estates | 600 |
| Simple Trusts (distribute all income) | 300 |
| Complex Trusts (accumulate income) | 100 |

Exemptions are not allowed to individuals who are eligible to be claimed as dependents on another's tax return, but a $900 standard deduction is available, rising to $5,450 if earned income reaches $5,450. Exemptions of individuals are phased out starting when AGI reaches $159,950 (single), $239,950 (joint returns) and $199,950 (heads of households). Affected taxpayers lose 2% of personal exemptions for every $2,500 over the threshold amounts, and exemptions are fully phased out when AGI exceeds the threshold by $122,501. The exemption reduction is in the process of being phased out. The reduction is only ⅓ of the calculated amount for 2008 and 2009.

EXHIBIT B

## FEDERAL INCOME TAX CHARITABLE DEDUCTION

An income tax charitable deduction is allowed for charitable contributions made within a taxable year, subject to limitations based upon whether the donee is a 50% or 30% charity, whether the donor is an individual or corporation, and what type of property is contributed. The 50% charities generally include churches, educational institutions, hospitals, governmental units, organizations receiving substantial support from governmental units or the general public, and certain private foundations (operating foundations, distributing foundations and pooled fund foundations described in I.R.C., §170(6)(1)(D)). The 30% charities include other organizations (mostly private foundations) described in I.R.C., §170(c), but which do not qualify as 50% charities.

### Ceiling on Charitable Deductions

| | 50% charity | 30% charity |
|---|---|---|
| **Individual Donor** | Total deductions limited to 50% of donor's adjusted gross income with 5-year carryover. Gifts of trust income to 50% charity deductible up to 30% of AGI with 5-year carryover. | Total deductions limited to 30% of donor's adjusted gross income, with 5-year carryover. |
| **Corporate Donor** | Deduction is limited to 10% of taxable income with 5-year carryover. | Deduction is limited to 10% of taxable income with 5-year carryover. |

### Additional Limitations Based upon Type of Property Contributed

| | 50% charity | 30% charity |
|---|---|---|
| **Cash** | Amount of cash | Amount of cash |
| **Ordinary Income Property –** Property that produces any gain other than long-term capital gain if sold at fair market value. | Cost. 50%-of-adjusted-gross-income ceiling applies. Examples include inventory of a business owner, a work of art in the hands of the artist who created it and tangible property that has been depreciated. | Cost. 30%-of-adjusted-gross-income ceiling applies. |
| **Long-Term Capital Gain Property** | Fair market value, not to exceed 30% of donor's adjusted gross income with 5-year carryover. Donors of long-term capital gain property can qualify for 50%-of-AGI ceiling by electing to reduce contribution deduction by 100% of the gain present in the property. | Fair market value, for gifts of publicly held stock for which market quotations are readily available, not to exceed 20% of donor's adjusted gross income with 5-year carryover. For all other gifts, reduce fair market value by 100% of long-term capital gain element if donee is private foundation. |
| **Tangible Personal Property That Is Unrelated to Charity's Purposes** | Fair market value, reduced by 100% of long-term capital gain element. 50%-of-AGI ceiling applies. | Fair market value, reduced by 100% of long-term capital gain element. 20%-of-AGI ceiling applies. |
| **Appraisal Requirements** | Qualified appraisals generally are required for non-cash gifts valued at more than $5,000 and closely held stock worth more than $10,000. No appraisal is required for gifts of publicly traded securities. The appraisal is summarized on Form 8283. Form 8283 must be filed for all non-cash gifts in excess of $500, even if no appraisal is required. | |

EXHIBIT C

## FEDERAL ALTERNATIVE MINIMUM TAX

| Alternative Minimum Taxable Income | | Tax on | Rate on |
|---|---|---|---|
| From (Col. 1) | To | Col. 1 | Excess |
| $ 0 | $ 175,000 | $ 0 | 26% |
| 175,001 | Infinity | 45,500 | 28 |

An alternative minimum tax is imposed on "alternative minimum taxable income" over the applicable exemption amounts for single taxpayers, married persons filing joint returns, married persons filing separately and trusts and estates. AMT is payable only so far as it exceeds a taxpayer's regular income tax. "Alternative minimum taxable income" is the sum of a taxpayer's regular taxable income and any preference amounts, plus certain regular tax itemized deductions (not including charitable deductions) such as state and local taxes. Net operating losses not attributable to preferences are deductible. Examples of minimum tax preference items include amounts relating to depletion deductions, intangible drilling costs, incentive stock options, tax-exempt interest on nongovernmental-purpose bonds and accelerated depreciation on all property placed in service after 1986 that exceeds depreciation using the 150% declining balance method.

EXHIBIT D

# ESTATE TAX SYSTEM

I. What Assets are Included in Your Gross Estate?

A. Home and furnishings.
B. Other real estate.
C. Oil, gas and other mineral interests.
D. Stocks and bonds (including tax-exempt bonds).
E. Mortgages due you, notes receivable, cash, checking accounts, savings accounts, money market accounts and CD's.
F. Life insurance.
G. Partnership, proprietorship and other business interests.
H. Collections (coin, stamp, gun, etc.).
I. Annuities and retirement benefits (IRAs and Keogh, 401(k) and other qualified employee benefit plans).
J. Deferred compensation benefits and non-qualified employee benefit plans.
K. Tangible personal property (autos, boat, jewelry, etc.).
L. General powers of appointment.

II. How are Assets Valued for Federal Estate Tax Purposes?

A. Based on <u>fair market value</u>.
B. Valuation date - either date of death or 6 months after date of death, if later date would lower estate tax.

III. What Deductions are Allowed Against Your Gross Estate?

A. Unlimited marital deduction (if spouse is a U.S. citizen; must use a QDOT for non-citizen spouse to obtain marital deduction).
B. Funeral expenses.
C. Executor commissions.
D. Attorney fees.
E. Accounting fees.
F. Appraisal fees.
G. Mortgage and liens due at death.
H. Miscellaneous debts owed at death (outstanding bills, property taxes, etc.).
I. Bequests to charity (unlimited deduction at death).

IV. How is the Taxable Estate Determined?

A. The total amount of the allowable deductions is subtracted from the total value of the gross estate and then any adjusted taxable gifts are added back to produce the Taxable Estate.

B. Adjusted taxable gifts are taxable gifts (i.e., gifts larger than the $12,000 per person per year annual exclusion [current amount] from gift tax) made after December 31, 1976.

V. How is the Estate Tax Calculated?

A. Once assets are listed and valued, the total amount of allowable deductions is subtracted, and the amount of the adjusted taxable gifts is added back, the tax rate is then applied to the Taxable Estate. It is in calculating the net estate tax that the $2,000,000 exemption (2008 amount) from estate tax is taken into account. This is done by applying the unified credit to the tentative estate tax (calculated on the Taxable Estate). This is why people who rely exclusively on the unlimited marital deduction upon the first spouse's death will lose the first spouse's estate tax exemption (and could pay unnecessary estate taxes on the second spouse's death).

VI. What are the Estate Tax Rates?

A. As a result of the Economic Growth and Tax Relief Reconciliation Act of 2001, the highest estate tax rate has dropped and the estate tax exemption has increased since 2001. *See attached schedule*. The lifetime gift tax exemption amount has stayed the same at $1,000,000. The GST exemption is currently $2,000,000, the same as the current estate tax exemption amount.

B. Computation Example: Death in 2008:

SINGLE PERSON

| | |
|---|---|
| Total Gross Estate | $2,500,000 |
| Less: Total Allowable Deductions | < 50,000> |
| Taxable Estate | $2,450,000 |
| | |
| Tentative Tax from IRS Tax Table | |
| $780,800 + .45($2,450,000 - $2,000,000) | $983,300 |
| Less: 2008 Unified Credit* | <780,800> |
| Total Federal Estate Tax | $202,500 |

* Shelters first $2,000,000 in assets transferred at death from estate tax.

| Year | Top Rate | Exemption Amount |
| --- | --- | --- |
| 2001 | 55% | $675,000 |
| 2002 | 50% | $1,000,000 |
| 2003 | 49% | $1,000,000 |
| 2004 | 48% | $1,500,000 |
| 2005 | 47% | $1,500,000 |
| 2006 | 46% | $2,000,000 |
| 2007 | 45% | $2,000,000 |
| 2008 | 45% | $2,000,000 |
| 2009 | 45% | $3,500,000 |
| 2010 | Repealed | Unlimited |
| 2011 and after | 55% | $1,000,000 |

Exhibit F-1

# SIMPLE WILL – DEATH IN 2008

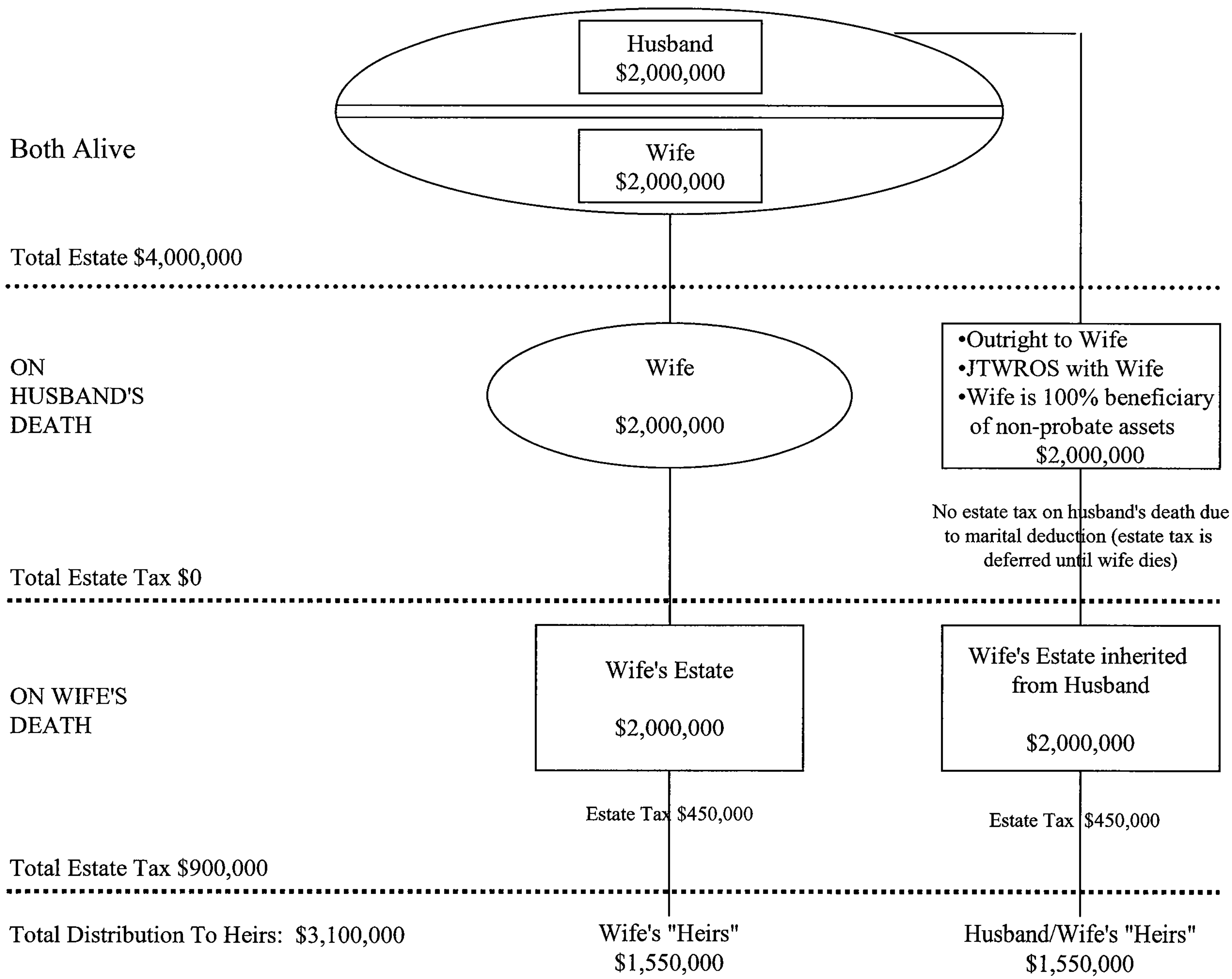
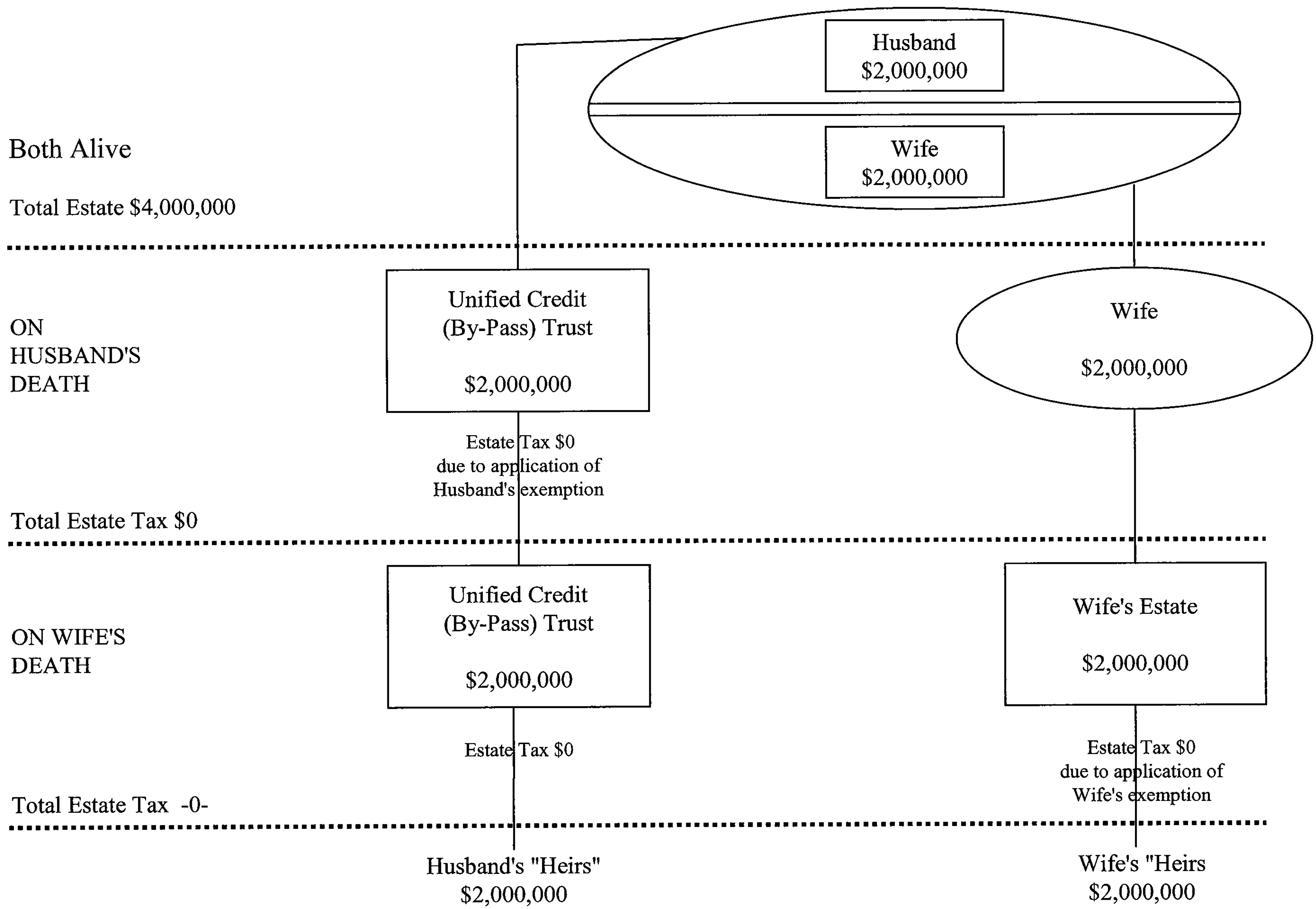


Exhibit F-2

# UNIFIED CREDIT (BY-PASS) TRUST WILL – DEATH IN 2008




Total Distribution to Heirs: $4,000,000. Tax Savings over Simple Will: $900,000.

## Summary of Charitable Trusts From Examples

| Basics | CRAT | CRUT | CLAT | CLUT |
|---|---|---|---|---|
| Income Recipient | Noncharitable Beneficiary (usually donor) | Noncharitable Beneficiary (usually donor) | Charity | Charity |
| Remainder Beneficiary | Charity | Charity | Noncharitable Beneficiary (usually family member) | Noncharitable Beneficiary (usually family member) |
| **If Created During Lifetime** | **CRAT** | **CRUT** | **CLAT** | **CLUT** |
| Charitable Income Tax Deduction | 332,360 | 368,265 | 667,640 | 631,735 |
| | Total Value of Property less Present Value of Retained Income Interest | Total Value of Property less Present Value of Retained Income Interest | Present Value of Income Interest (Must be Grantor Trust)* | Present Value of Income Interest (Must be Grantor Trust)* |
| Taxable Gift (If Grantor is Income Beneficiary) | NONE | NONE | N/A | N/A |
| Taxable Gift (If Grantor is not Income Beneficiary) | 667,640 | 631,735 | N/A | N/A |
| Taxable Gift (If Grantor or Non-Grantor Trust) | N/A | N/A | 332,360 | 368,265 |
| **If Created At Death** | **CRAT** | **CRUT** | **CLAT** | **CLUT** |
| Charitable Estate Tax Deduction | 332,360 | 368,265 | 667,640 | 631,735 |
| | Total Value of Property less Present Value of Income Interest | Total Value of Property less Present Value of Income Interest | Present Value of Charity's Annuity Stream* | Present Value of Charity's Annuity Stream* |
| Taxable Gift | NONE | NONE | NONE | NONE |

* If Non-Grantor Trust is used and remainderman is not the grantor, no charitable income tax deduction is available, but grantor does not report annual income.

Charitable Remainder Annuity Trust

| | |
|---|---|
| Trust Type: | Term |
| Transfer Date: | 2/2008 |
| §7520 Rate: | 4.20% |
| FMV of Trust: | $1,000,000.00 |
| Growth of Trust: | 7.00% |
| Percentage Payout: | 5.000% |
| Payment Period: | Annual |
| Payment Timing: | End |
| Term: | 20 |
| Total Number of Payments: | 20 |
| Exhaustion Method: | IRS |

| | |
|---|---|
| Amount of Annuity: | $50,000.00 |
| Annuity Factor: | 13.3528 |
| Payout Frequency Factor: | 1.0000 |
| Present Value of Annuity = Annual Payout times Factors: | $667,640.00 |
| Charitable Remainder = FMV of Trust less PV of Annuity: | $332,360.00 |
| Charitable Deduction for Remainder Interest: | $332,360.00 |
| Donor's Deduction as Percentage of Amount Transferred: | 33.236% |

| Year | Beginning Principal | 7.00% Growth | Payment | Remainder |
|---|---|---|---|---|
| 1 | $1,000,000.00 | $70,000.00 | $50,000.00 | $1,020,000.00 |
| 2 | $1,020,000.00 | $71,400.00 | $50,000.00 | $1,041,400.00 |
| 3 | $1,041,400.00 | $72,898.00 | $50,000.00 | $1,064,298.00 |
| 4 | $1,064,298.00 | $74,500.86 | $50,000.00 | $1,088,798.86 |
| 5 | $1,088,798.86 | $76,215.92 | $50,000.00 | $1,115,014.78 |
| 6 | $1,115,014.78 | $78,051.03 | $50,000.00 | $1,143,065.81 |
| 7 | $1,143,065.81 | $80,014.61 | $50,000.00 | $1,173,080.42 |
| 8 | $1,173,080.42 | $82,115.63 | $50,000.00 | $1,205,196.05 |
| 9 | $1,205,196.05 | $84,363.72 | $50,000.00 | $1,239,559.77 |
| 10 | $1,239,559.77 | $86,769.18 | $50,000.00 | $1,276,328.95 |
| 11 | $1,276,328.95 | $89,343.03 | $50,000.00 | $1,315,671.98 |
| 12 | $1,315,671.98 | $92,097.04 | $50,000.00 | $1,357,769.02 |
| 13 | $1,357,769.02 | $95,043.83 | $50,000.00 | $1,402,812.85 |
| 14 | $1,402,812.85 | $98,196.90 | $50,000.00 | $1,451,009.75 |
| 15 | $1,451,009.75 | $101,570.68 | $50,000.00 | $1,502,580.43 |
| 16 | $1,502,580.43 | $105,180.63 | $50,000.00 | $1,557,761.06 |
| 17 | $1,557,761.06 | $109,043.27 | $50,000.00 | $1,616,804.33 |
| 18 | $1,616,804.33 | $113,176.30 | $50,000.00 | $1,679,980.63 |
| 19 | $1,679,980.63 | $117,598.64 | $50,000.00 | $1,747,579.27 |
| 20 | $1,747,579.27 | $122,330.55 | $50,000.00 | $1,819,909.82 |
| Summary: | $1,000,000.00 | $1,819,909.82 | $1,000,000.00 | $1,819,909.82 |

EXHIBIT H-1

| | |
|---|---|
| Trust Type: | Term |
| Transfer Date: | 2/2008 |
| §7520 Rate: | 4.20% |
| FMV of Trust: | $1,000,000 |
| Growth Rate: | 3.00% |
| Income Rate: | 6.00% |
| Percentage Payout: | 5.000% |
| Payment Period: | Quarterly |
| Months Val. Precedes Payout: | 3 |
| Term: | 20 |
| CRUT Type: | Normal |

Payout Sequence Factor: 0.974679
Adjusted Payout Rate: 4.873%
Interpolation:
Factor at 4.8%: 0.373886
Factor at 5.0%: 0.358486
Difference: 0.015400
(4.873% - 4.8%) / 0.2% = X / 0.015400; Therefore X = 0.005621
Term Remainder Factor = Factor at 4.8% Less X: 0.368265

Present Value of Remainder Interest = $1,000,000.00 x 0.368265: $368,265.00
Donor's Deduction: $368,265.00
Donor's Deduction as Percentage of Amount Transferred: 36.827%

| Year | Beginning Principal | Principal Growth | Income Rec'd/Accr'd | Distribution | Remainder |
|---|---|---|---|---|---|
| 1 | $1,000,000.00 | $29,437.50 | $58,948.59 | $50,000.00 | $1,038,386.09 |
| 2 | $1,038,386.09 | $30,567.54 | $61,211.40 | $51,919.32 | $1,078,245.71 |
| 3 | $1,078,245.71 | $31,740.84 | $63,561.06 | $53,912.28 | $1,119,635.33 |
| 4 | $1,119,635.33 | $32,959.26 | $66,000.93 | $55,981.76 | $1,162,613.76 |
| 5 | $1,162,613.76 | $34,224.42 | $68,534.46 | $58,130.68 | $1,207,241.96 |
| 6 | $1,207,241.96 | $35,538.18 | $71,165.22 | $60,362.12 | $1,253,583.24 |
| 7 | $1,253,583.24 | $36,902.34 | $73,896.96 | $62,679.16 | $1,301,703.38 |
| 8 | $1,301,703.38 | $38,318.88 | $76,733.58 | $65,085.16 | $1,351,670.68 |
| 9 | $1,351,670.68 | $39,789.84 | $79,679.10 | $67,583.52 | $1,403,556.10 |
| 10 | $1,403,556.10 | $41,317.20 | $82,737.66 | $70,177.80 | $1,457,433.16 |
| 11 | $1,457,433.16 | $42,903.18 | $85,913.61 | $72,871.68 | $1,513,378.27 |
| 12 | $1,513,378.27 | $44,550.09 | $89,211.54 | $75,668.92 | $1,571,470.98 |
| 13 | $1,571,470.98 | $46,260.18 | $92,636.04 | $78,573.56 | $1,631,793.64 |
| 14 | $1,631,793.64 | $48,035.91 | $96,191.94 | $81,589.68 | $1,694,431.81 |
| 15 | $1,694,431.81 | $49,879.86 | $99,884.37 | $84,721.60 | $1,759,474.44 |
| 16 | $1,759,474.44 | $51,794.55 | $103,718.55 | $87,973.72 | $1,827,013.82 |
| 17 | $1,827,013.82 | $53,782.71 | $107,699.91 | $91,350.68 | $1,897,145.76 |
| 18 | $1,897,145.76 | $55,847.22 | $111,834.12 | $94,857.28 | $1,969,969.82 |
| 19 | $1,969,969.82 | $57,990.96 | $116,126.94 | $98,498.48 | $2,045,589.24 |
| 20 | $2,045,589.24 | $60,217.02 | $120,584.58 | $102,279.48 | $2,124,111.36 |
| Summary: | $1,000,000.00 | $862,057.68 | $1,726,270.56 | $1,464,216.88 | $2,124,111.36 |

| | |
|---|---|
| Trust Type: | Term |
| Transfer Date: | 2/2008 |
| §7520 Rate: | 4.20% |
| FMV of Trust: | $1,000,000.00 |
| Growth of Trust: | 7.00% |
| Percentage Payout: | 5.000% |
| Payment Period: | Annual |
| Payment Timing: | End |
| Term: | 20 |
| Total Number of Payments: | 20 |
| Exhaustion Method: | IRS |

| | |
|---|---|
| Annual Payout: | $50,000.00 |
| Annual Payment: | $50,000.00 |
| Term Certain Annuity Factor: | 13.3528 |
| Payout Frequency Factor: | 1.0000 |
| Present Value of Annuity: | $667,640.00 |
| Remainder Interest = FMV of Trust less PV of Annuity: | $332,360.00 |
| Charitable Deduction for Income Interest: | $667,640.00 |
| Donor's Deduction as Percentage of Amount Transferred: | 66.764% |

| Year | Beginning Principal | 7.00% Growth | Payment | Remainder |
|---|---|---|---|---|
| 1 | $1,000,000.00 | $70,000.00 | $50,000.00 | $1,020,000.00 |
| 2 | $1,020,000.00 | $71,400.00 | $50,000.00 | $1,041,400.00 |
| 3 | $1,041,400.00 | $72,898.00 | $50,000.00 | $1,064,298.00 |
| 4 | $1,064,298.00 | $74,500.86 | $50,000.00 | $1,088,798.86 |
| 5 | $1,088,798.86 | $76,215.92 | $50,000.00 | $1,115,014.78 |
| 6 | $1,115,014.78 | $78,051.03 | $50,000.00 | $1,143,065.81 |
| 7 | $1,143,065.81 | $80,014.61 | $50,000.00 | $1,173,080.42 |
| 8 | $1,173,080.42 | $82,115.63 | $50,000.00 | $1,205,196.05 |
| 9 | $1,205,196.05 | $84,363.72 | $50,000.00 | $1,239,559.77 |
| 10 | $1,239,559.77 | $86,769.18 | $50,000.00 | $1,276,328.95 |
| 11 | $1,276,328.95 | $89,343.03 | $50,000.00 | $1,315,671.98 |
| 12 | $1,315,671.98 | $92,097.04 | $50,000.00 | $1,357,769.02 |
| 13 | $1,357,769.02 | $95,043.83 | $50,000.00 | $1,402,812.85 |
| 14 | $1,402,812.85 | $98,196.90 | $50,000.00 | $1,451,009.75 |
| 15 | $1,451,009.75 | $101,570.68 | $50,000.00 | $1,502,580.43 |
| 16 | $1,502,580.43 | $105,180.63 | $50,000.00 | $1,557,761.06 |
| 17 | $1,557,761.06 | $109,043.27 | $50,000.00 | $1,616,804.33 |
| 18 | $1,616,804.33 | $113,176.30 | $50,000.00 | $1,679,980.63 |
| 19 | $1,679,980.63 | $117,598.64 | $50,000.00 | $1,747,579.27 |
| 20 | $1,747,579.27 | $122,330.55 | $50,000.00 | $1,819,909.82 |
| Summary: | $1,000,000.00 | $1,819,909.82 | $1,000,000.00 | $1,819,909.82 |

| | |
|---|---|
| Trust Type: | Term |
| Transfer Date: | 2/2008 |
| §7520 Rate: | 4.20% |
| FMV of Trust: | $1,000,000 |
| Growth of Trust: | 7.00% |
| Percentage Payout: | 5.000% |
| Payment Period: | Quarterly |
| Months Valuation Precedes Payout: | 3 |
| Term: | 20 |

| | |
|---|---|
| Payout Sequence Factor: | 0.974679 |
| Adjusted Payout Rate: | 4.873% |
| Interpolation: | |
| Factor at 4.8%: | 0.373886 |
| Factor at 5.0%: | 0.358486 |
| Difference: | 0.015400 |
| (4.873% - 4.8%) / 0.2% = X / 0.015400; Therefore X = 0.005621 | |
| Term Remainder Factor = Factor at 4.8% Less X: | 0.368265 |
| Remainder Interest: | $368,265.00 |
| Charitable Deduction for Income Interest: | $631,735.00 |
| Donor's Deduction as Percentage of Amount Transferred: | 63.174% |

| Year | Beginning Principal | 7.00% Growth | Payment | Remainder |
|---|---|---|---|---|
| 1 | $1,000,000.00 | $68,687.49 | $50,000.00 | $1,018,687.49 |
| 2 | $1,018,687.49 | $69,971.10 | $50,934.36 | $1,037,724.23 |
| 3 | $1,037,724.23 | $71,278.68 | $51,886.20 | $1,057,116.71 |
| 4 | $1,057,116.71 | $72,610.68 | $52,855.84 | $1,076,871.55 |
| 5 | $1,076,871.55 | $73,967.61 | $53,843.60 | $1,096,995.56 |
| 6 | $1,096,995.56 | $75,349.86 | $54,849.80 | $1,117,495.62 |
| 7 | $1,117,495.62 | $76,757.97 | $55,874.80 | $1,138,378.79 |
| 8 | $1,138,378.79 | $78,192.39 | $56,918.96 | $1,159,652.22 |
| 9 | $1,159,652.22 | $79,653.60 | $57,982.60 | $1,181,323.22 |
| 10 | $1,181,323.22 | $81,142.14 | $59,066.16 | $1,203,399.20 |
| 11 | $1,203,399.20 | $82,658.49 | $60,169.96 | $1,225,887.73 |
| 12 | $1,225,887.73 | $84,203.16 | $61,294.40 | $1,248,796.49 |
| 13 | $1,248,796.49 | $85,776.72 | $62,439.84 | $1,272,133.37 |
| 14 | $1,272,133.37 | $87,379.68 | $63,606.68 | $1,295,906.37 |
| 15 | $1,295,906.37 | $89,012.55 | $64,795.32 | $1,320,123.60 |
| 16 | $1,320,123.60 | $90,675.96 | $66,006.16 | $1,344,793.40 |
| 17 | $1,344,793.40 | $92,370.48 | $67,239.68 | $1,369,924.20 |
| 18 | $1,369,924.20 | $94,096.62 | $68,496.20 | $1,395,524.62 |
| 19 | $1,395,524.62 | $95,855.10 | $69,776.24 | $1,421,603.48 |
| 20 | $1,421,603.48 | $97,646.40 | $71,080.16 | $1,448,169.72 |
| Summary: | $1,000,000.00 | $1,647,286.68 | $1,199,116.96 | $1,448,169.72 |

# Charitable Remainder Annuity Trust (CRAT)

This calculation determines the value of the noncharitable beneficiary's annuity (nondeductible) and the value of the charitable remainder interest (deductible) for a gift made through a charitable remainder annuity trust.

When a charitable remainder annuity trust is established, a gift of cash or property is made to an irrevocable trust. The donor (and/or another noncharitable beneficiary) retains an annuity (fixed payments of principal and interest) from the trust for a specified number of years or for the life or lives of the noncharitable beneficiaries. At the end of the term, the qualified charity specified in the trust document receives the property in the trust and any appreciation.

Most gifts made to a charitable remainder annuity trust qualify for income and gift tax charitable deductions (or in some cases an estate tax charitable deduction). A charitable deduction is permitted for the remainder interest gift only if the trust meets certain criteria.

A trust qualifies as a charitable remainder annuity trust if the following conditions are met:

- The trust pays a specified annuity to at least one non-charitable beneficiary who is living when the trust is created. Annuities can be paid annually, semiannually, quarterly, monthly, or weekly.
- The amount paid, as an annuity, must be at least 5%, but less than 50% of the initial net fair market value of the property placed in the trust. The charity's interest at inception also must be worth at least 10 percent of the value transferred to the trust.
- The annuity is payable each year for a specified number of years (no more than 20) or for the life or lives of the noncharitable beneficiaries.
- No annuity is paid to anyone other than the specified noncharitable beneficiary and a qualified charitable organization.
- When the specified term ends, the remainder interest is transferred to a qualified charity or is retained by the trust for the use of the qualified charity.
- The Internal Revenue Service has also ruled that a trust is not a charitable remainder annuity trust if there is a greater than 5% chance that the trust fund will be exhausted before the trust ends.

The annuity paid must be a specified amount expressed in terms of a dollar amount (e.g., each non-charitable beneficiary receives $500 a month) a fraction, or a percentage of the initial fair market value of the property contributed to the trust (e.g., beneficiary receives 5% each year for the rest of his life).

The grantor will receive an income tax deduction for the present value of the remainder interest that will ultimately pass to the qualified charity. Government regulations determine this amount, which is essentially calculated by subtracting the present value of the annuity from the fair market value of the property and/or cash placed in the trust. The balance is the amount that the grantor can deduct when the grantor contributes the property to the trust.

# Charitable Remainder Unitrust (CRUT)

This calculation determines your deduction for a contribution to a charitable remainder unitrust. It also calculates your deduction as a percentage of the amount transferred.

When a charitable remainder unitrust is established, a donor transfers cash and/or property to an irrevocable trust but retains (either for himself or for one or more non-charitable beneficiaries) a variable annuity (payments that can vary in amount, but are a fixed percentage) from that trust. At the end of a specified term, or upon the death of the beneficiary (or beneficiaries, and the donor and the donor's spouse can be the beneficiaries), the remainder interest in the property passes to the charity the donor has specified.

The principal difference between a charitable remainder unitrust and a charitable remainder annuity trust is that a unitrust pays a varying annuity. In other words, the amount paid is likely to change each year. The payable amount is based on annual fluctuations in the value of the trust's property. As it goes up, so does the annuity paid each year. If it drops in value, so will the annuity.

A gift to a charitable remainder unitrust will qualify for income and gift tax charitable deductions (or an estate tax charitable deduction) only if the following conditions are met:

- A fixed percentage (not less than 5% nor more than 50%) of the net fair market value of the assets is paid to one or more non-charitable beneficiaries who are living when the unitrust is established. The charity's actuarial interest must be at least 10% of any assets transferred to the trust.
- The unitrust assets must be revalued each year, and the fixed percentage amount must be paid at least once a year for the term of the trust, which must be a fixed period of 20 years or less, or must be until the death of the noncharitable beneficiaries, all of whom must be living at the beginning of the trust.
- No sum can be paid except the fixed percentage during the term of the trust and at the end of the term of the trust, the entire balance of the trust's assets must be paid to one or more qualified charities.

The donor receives an immediate income tax deduction for the present value of the remainder interest that will pass to the charity at the end of the term.

Because a charitable remainder unitrust is exempt from federal income tax (the income and gains of the trust are only taxed when they are distributed to the noncharitable beneficiaries as part of the fixed percentage of trust assets distributed each year), they are frequently used to defer income tax on gains about to be realized. For example, if a donor has an appreciated asset that is about to be sold, the donor can give the asset to a charitable remainder unitrust, reserving the right to received a fixed percentage of the value of the trust for life, and for the life of the donor's spouse as well, and the asset can then be sold by the trust and the proceeds of sale reinvested without payment of any federal income tax on capital gains. The capital gains will be taxable to the donor (or the donor's spouse) only as they are distributed to the donor as part of the annual distributions from the trust.

A variation of the CRUT (which pays a fixed percentage of the value of the trust assets, regardless of income) is the net-income-with-makeup CRUT, or "NIMCRUT," which pays either the fixed percentage or the income actually received by the trust, whichever is less. However, if the income is less than the fixed percentage, the deficiency can be paid in a future year, as soon as the trust has income, which exceeds the fixed percentage. An additional variation is a "flip" unitrust, which is a trust that changes from a NIMCRUT to a regular CRUT upon the occurrence of a specific event, such as the sale of a specific asset that was contributed to the trust and was not expected to produce much income. However, both NIMCRUTs and "flip" CRUTs are valued in the same way as a regular CRUT for the purpose of determining the income, estate, and gift tax charitable deduction.

# Charitable Lead Annuity Trust (CLAT)

You create a CLAT by transferring cash or other assets to an irrevocable trust. A charity receives fixed annuity (principal and interest) payments from the trust for the number of years you specify. At the end of that term, assets in the trust are transferred to the non-charitable remainderperson (or persons) you specified when you set up the trust. Usually, this person is a child or grandchild but can be anyone, even someone who is not related to you.

You can set up a CLAT during your lifetime or at your death. Both corporations and individuals may establish lead trusts.

You can set up a CLAT so that you will receive an immediate and sizeable income tax deduction. In the second and following years, you must report the income earned by the trust even though it is actually paid to the charity in the form of an annuity.

What is the advantage of a trust that produces a high deduction in the first year but requires you to report income you don't receive in later years? One advantage is the acceleration of the deduction. For example, suppose you have just won the lottery, closed an incredibly large case, or sold a very highly appreciated asset. Perhaps you reasonably expect that in future years, your income will drop considerably. It's good planning to have a very high deduction in a high bracket year even if you have to report that income in lower bracket years. You are spreading out the income (and the tax) over many years.

Another advantage of the CLAT is that it allows a "discounted" gift to family members. Under present law, the value of a gift is determined at the time the gift is made. The family member remainderman must wait for the charity's term to expire; therefore, the value of that remainderman's interest is discounted for the "time cost" of waiting. In other words, the cost of making a gift is lowered because the value of the gift is decreased by the value of the annuity interest donated to charity.

When the assets in the trust are transferred to the remainderman, any appreciation on the value of the assets is free of either gift or estate taxation in your estate.

Many people of wealth set up CLATs at death through their wills. The present value of the charity's annuity stream is deductible for estate tax purposes. Since your heirs don't pay estate taxes on the charity's portion, the money that otherwise would have been paid in estate taxes can instead be invested. During the term of that trust, increased investment income can help pay for the fixed annuity promised to the charity - and if there is any "surplus", that extra income can be compounded for your heirs and pass to them - gift tax free - when the trust ends.

# Charitable Lead Unitrust (CLUT)

This calculation determines the value of the deduction for a transfer of cash or other property to a CLUT. It shows the future interest gift made to the non-charitable remainderman. It also shows the percentage of principal that is deductible for gift tax purposes.

When a term-of-years CLUT is established, a donor transfers cash or other assets to an irrevocable trust. A charity you select receives variable annuity payments from the trust for the term of years you have specified. That means each year the value of the trust's assets is re-determined. Although the charity will continue to receive the same percentage of the trust's assets each year, as the total value increases, the charity receives more. If the value of the trust's assets fall, the charity will receive less. For example, if the trust is worth $1,000,000 when you create it and you've given the charity a 6% annuity, it will receive $60,000 in the first year. If the trust doubles in value in the second year, the charity will still receive 6% - but of $2,000,000, i.e., $120,000. Of course, if the value of the trust in the third year falls to only $500,000, the charity receives 6% of $500,000, $30,000.

When the trust ends, assets in the trust will pass to the non-charitable remainderperson or persons you have specified. Although this party is usually a child or grandchild, it can be any person you select - including someone who is not legally related to you.

You can set up a CLUT during your lifetime or at death as a form of bequest. Both corporations and individuals may establish lead trusts.

You can set up a CLUT so that you will receive an immediate and sizeable income tax deduction. In the second and following years, you must report the income earned by the trust even though it is actually paid to the charity in the form of an annuity.

What is the advantage of a trust that produces a high deduction in the first year but requires you to report income you don't receive in later years? One advantage is the acceleration of the deduction. For example, suppose you have just won the lottery, closed an incredibly large case, or sold a very highly appreciated asset. Perhaps you reasonably expect that in future years, your income will drop considerably. It's good planning to have a very high deduction in a high bracket year even if you have to report that income in lower bracket years. You are spreading out the income (and the tax) over many years.

Another advantage of the CLUT is that it allows a "discounted" gift to family members. Under present law, the value of a gift is determined at the time the gift is made. The family member remainderman must wait for the charity's term to expire; therefore, the value of that remainderman's interest is discounted for the "time cost" of waiting. In other words, the cost of making a gift is lowered because the value of the gift is decreased by the value of the annuity interest donated to charity.

When the assets in the trust are transferred to the remainderman, any appreciation on the value of the assets is free of either gift or estate taxation in your estate.

Many people of wealth set up CLUTs at death through their wills. The present value of the charity's annuity stream is deductible for estate tax purposes. Since your heirs don't pay estate taxes on the charity's portion, the money that otherwise would have been paid in estate taxes can instead be invested. During the term of that trust, increased investment income can help pay for the fixed annuity promised to the charity - and if there is any "surplus", that extra income can be compounded for your heirs and pass to them - gift tax free - when the trust ends.

## Charitable Gift Annuity Example

| | | |
|---|---|---|
| Donor Age | 65 | |
| Stock Contribution (FMV) | 200,000 | |
| Stock Contribution (Basis) | 50,000 | |
| Annuity (From Charity) | 10,000 | |
| PV of Annuity | 111,090 | (Use Publication 1457, Table S) |
| Charitable Gift | 88,910 | |
| Capital Gain | 83,318 | |
| Annuity Basis | 27,773 | |

| Year | Ordinary Income | Capital Gain | Tax Free Return | Cumulative Capital Gain | Cumulative Tax Free |
|---|---|---|---|---|---|
| 2008 | 4,445.50 | 4,165.88 | 1,388.63 | 4,165.88 | 1,388.63 |
| 2009 | 4,445.50 | 4,165.88 | 1,388.63 | 8,331.75 | 2,777.25 |
| 2010 | 4,445.50 | 4,165.88 | 1,388.63 | 12,497.63 | 4,165.88 |
| 2011 | 4,445.50 | 4,165.88 | 1,388.63 | 16,663.50 | 5,554.50 |
| 2012 | 4,445.50 | 4,165.88 | 1,388.63 | 20,829.38 | 6,943.13 |
| 2013 | 4,445.50 | 4,165.88 | 1,388.63 | 24,995.25 | 8,331.75 |
| 2014 | 4,445.50 | 4,165.88 | 1,388.63 | 29,161.13 | 9,720.38 |
| 2015 | 4,445.50 | 4,165.88 | 1,388.63 | 33,327.00 | 11,109.00 |
| 2016 | 4,445.50 | 4,165.88 | 1,388.63 | 37,492.88 | 12,497.63 |
| 2017 | 4,445.50 | 4,165.88 | 1,388.63 | 41,658.75 | 13,886.25 |
| 2018 | 4,445.50 | 4,165.88 | 1,388.63 | 45,824.63 | 15,274.88 |
| 2019 | 4,445.50 | 4,165.88 | 1,388.63 | 49,990.50 | 16,663.50 |
| 2020 | 4,445.50 | 4,165.88 | 1,388.63 | 54,156.38 | 18,052.13 |
| 2021 | 4,445.50 | 4,165.88 | 1,388.63 | 58,322.25 | 19,440.75 |
| 2022 | 4,445.50 | 4,165.88 | 1,388.63 | 62,488.13 | 20,829.38 |
| 2023 | 4,445.50 | 4,165.88 | 1,388.63 | 66,654.00 | 22,218.00 |
| 2024 | 4,445.50 | 4,165.88 | 1,388.63 | 70,819.88 | 23,606.63 |
| 2025 | 4,445.50 | 4,165.88 | 1,388.63 | 74,985.75 | 24,995.25 |
| 2026 | 4,445.50 | 4,165.88 | 1,388.63 | 79,151.63 | 26,383.88 |
| 2027 | 4,445.50 | 4,165.88 | 1,388.63 | 83,317.50 | 27,772.50 |
| 2028 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2029 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2030 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2031 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2032 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2033 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2034 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2035 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2036 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2037 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |
| 2038 | 10,000.00 | - | - | 83,317.50 | 27,772.50 |

EXHIBIT J