

will not be considered to meet the requirements of subparagraph (2) or (3) of this paragraph if such organization engages in any activity which would cause it to be classified as an "action" organization under paragraph (c)(3) of §1.501(c)(3)-1 of this chapter (Income Tax Regulations). See §§20.2055-4 and 20.2055-5 for rules relating to the disallowance of deductions to trusts and organizations which engage in certain prohibited transactions or whose governing instruments do not contain certain specified requirements.

(b) *Powers of appointment*—(1) *General rule.* A deduction is allowable under section 2055(b) for the value of property passing to or for the use of a transferee described in paragraph (a) of this section by the exercise, failure to exercise, release or lapse of a power of appointment by reason of which the property is includible in the decedent's gross estate under section 2041.

(2) *Certain bequests subject to power of appointment.* For the allowance of a deduction in the case of a bequest in trust where the decedent's surviving spouse (i) was over 80 years of age at the date of decedent's death, (ii) was entitled for life to all of the net income from the trust, and (iii) had a power of appointment over the corpus of the trust exercisable by will in favor of, among others, a charitable organization, see section 2055(b)(2). See also section 6503(e) for suspension of the period of limitations for assessment or collection of any deficiency attributable to the allowance of the deduction.

(c) *Submission of evidence.* In establishing the right of the estate to the deduction authorized by section 2055, the executor should submit the following with the return:

(1) A copy of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by statute to be included in his gross estate, for which a deduction under section 2055 is claimed. If the instrument is of record the copy should be certified, and if not of record, the copy should be verified.

(2) A written statement by the executor containing a declaration that it is made under penalties of perjury and stating whether any action has been instituted to construe or to contest the

decedent's will or any provision thereof affecting the charitable deduction claimed and whether, according to his information and belief, any such action is designed or contemplated.

The executor shall also submit such other documents or evidence as may be requested by the district director.

(d) *Cross references.* (1) See section 2055(f) for certain cross references relating to section 2055.

(2) For treatment of bequests accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as bequests to or for the use of the United States, see section 3 of Joint Resolution of December 24, 1969 (Pub. L. 91-160, 83 Stat. 443).

(3) For treatment of bequests accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as bequests to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Pub. L. 91-609 (84 Stat. 1809).

(4) For treatment of certain property accepted by the Chairman of the Administrative Conference of the United States, for the purposes of aiding and facilitating the work of the Conference, as a devise or bequest to the United States, see 5 U.S.C. 575(c)(12), as added by section 1(b) of the Act of October 21, 1972 (Pub. L. 92-526, 86 Stat. 1048).

(5) For treatment of the Board for International Broadcasting as a corporation described in section 2055(a)(2), see section 7 of the Board for International Broadcasting Act of 1973 (Pub. L. 93-129, 87 Stat. 459).

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960 as amended by T.D. 8318, 39 FR 25452, July 11, 1974; T.D. 8308, 55 FR 35593, Aug. 31, 1990]

§ 20.2055-2 Transfers not exclusively for charitable purposes.

(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial

interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. Thus, in the case of decedent's dying before January 1, 1970, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. See paragraph (e) of this section for limitations applicable to decedent's dying after December 31, 1969. See paragraph (f) of this section for rules relating to valuation of partial interests in property passing for charitable purposes.

(b) *Transfers subject to a condition or a power.* (1) If, as of the date of a decedent's death, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest has passed to, or is vested in, charity at the time of a decedent's death and the estate or interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appeared at the time of the decedent's death to be so remote as to be negligible, the deduction is allowable. If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, the deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of the power.

(2) The application of this paragraph may be illustrated by the following examples:

Example (1). In 1965, A dies leaving certain property in trust in which charity is to receive the income for the life of his widow. The assets placed in trust by the decedent consist of stock in a corporation the fiscal policies of which are controlled by the decedent and his family. The trustees of the trust and the remaindermen are members of the decedent's family, and the governing instru-

ment contains no adequate guarantee of the request income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the decedent's family but have no power to sell or otherwise dispose of the closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

Example (2). C dies leaving a tract of land to a city government for as long as the land is used by the city for a public park. If the city accepts the tract and if, on the date of C's death, the possibility that the city will not use the land for a public park is so remote as to be negligible, a deduction will be allowed.

(c) *Disclaimers*—(1) *Decedents dying after December 31, 1976.* In the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest, devise or transfer for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as the result of either—

(i) A qualified disclaimer (see section 2518 and the corresponding regulations for rules relating to a qualified disclaimer), or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual by reason of the death of such individual or for any other reason, if the termination occurs within the period of time (including extensions) for filing the decedent's Federal estate tax return and before such power has been exercised.

(2) *Decedents dying before January 1, 1977.* In the case of a bequest, devise or transfer made by a decedent dying before January 1, 1977, the amount of a bequest, devise or transfer, for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as a result of either—

(i) A disclaimer of a bequest, devise, transfer, or power, if the disclaimer is made within 9 months (15 months if the decedent died on or before December 31, 1970) after the decedent's death (the period of time within which the estate tax return must be filed under section 6075) or within any extension of time for filing the return, granted pursuant

to section 6081, and the disclaimer is irrevocable at the time the deduction is allowed, or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual (whether the termination occurs by reason of the death of the individual, or otherwise) if the termination occurs within the period described in paragraph (c)(2)(i) of this section and before the power has been exercised. Ordinarily, a disclaimer made by a person not under any legal disability will be considered irrevocable when filed with the probate court. A disclaimer is a complete and unqualified refusal to accept the right to which one is entitled. Thus, if a beneficiary uses these rights for his own purposes, as by receiving a consideration for his formal disclaimer, he has not refused the rights to which he was entitled. There can be no disclaimer after an acceptance of these rights, expressly or impliedly. The disclaimer of a power is to be distinguished from the release or exercise of a power. The release or exercise of a power by the donee of the power in favor of a person or object described in paragraph (a) of §20.2055-1 does not result in any deduction under section 2055 in the estate of the donor of a power (but see paragraph (b)(1) of §20.2055-1 with respect to the donee's estate).

(d) *Payments in compromise.* If a charitable organization assigns or surrenders a part of a transfer to it pursuant to a compromise agreement in settlement of a controversy, the amount so assigned or surrendered is not deductible as a transfer to that charitable organization.

(e) *Limitation applicable to decedents dying after December 31, 1969—(1) Disallowance of deduction—(i) In general.* In the case of decedents dying after December 31, 1969, where an interest in property passes or has passed from the decedent for charitable purposes and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) after October 9, 1969, no deduction is allowed under section

2055 for the value of the interest which passes or has passed for charitable purposes unless the interest in property is a deductible interest described in subparagraph (2) of this paragraph. The principles of section 2056 and the regulations thereunder shall apply for purposes of determining under this paragraph (e)(1)(i) whether an interest in property passes or has passed from the decedent. If however, as of the date of a decedent's death, a transfer for a private purpose is dependent upon the performance of some act on the happening of a precedent event in order that it might become effective, an interest in property will be considered to pass for a private purpose unless the possibility of occurrence of such act or event is so remote as to be negligible. The application of this paragraph (e)(1)(i) may be illustrated by the following examples, in each of which it is assumed that the interest in property which passes for private purposes does not pass for an adequate and full consideration in money or money's worth:

Example (1). In 1973, H creates a trust which is to pay the income of the trust to W for her life, the reversionary interest in the trust being retained by H. H predeceases W in 1975. H's will provide that the residue of his estate (including the reversionary interest in the trust) is to be transferred to charity. For purposes of this paragraph (e)(1)(i), interests in the same property have passed from H for charitable purposes and for private purposes.

Example (2). In 1973, H creates a trust which is to pay the income of the trust to W for her life and upon termination of the life estate to transfer the remainder to S. S predeceases W in 1975. S's will provides that the residue of his estate (including the remainder interest in the trust) is to be transferred to charity. For purposes of this paragraph (e)(1)(i), interests in the same property have not passed from H or S for charitable purposes and for private purposes.

Example (3). H transfers Blackacre to A by gift, reserving the right to the rentals of Blackacre for a term of 20 years. H dies within the 20-year term, bequeathing the right to the remaining rentals to charity. For purposes of this paragraph (e)(1)(i) the term "property" refers to Blackacre, and the right to rentals from Blackacre consist of an interest in Blackacre. An interest in Blackacre has passed from H for charitable purposes and for private purposes.

Example (4). H bequeaths the residue of his estate in trust for the benefit of A and a charity. An annuity of \$5,000 a year is to be

paid to charity for 20 years. Upon termination of the 20-year term the corpus is to be distributed to A if living. However, if A should die during the 20-year term, the corpus is to be distributed to charity upon termination of the term. An interest in the residue of the estate has passed from H for charitable purposes. In addition, an interest in the residue of the estate has passed from H for private purposes, unless the possibility that A will survive the 20-year term is so remote as to be negligible.

Example (5). H bequeaths the residue of his estate in trust. Under the terms of the trust an annuity of \$5,000 a year is to be paid to charity for 20 years. Upon termination of the term, the corpus is to pass to such of A's children and their issue as A may appoint. However, if A should die during the 20-year term without exercising the power of appointment, the corpus is to be distributed to charity upon termination of the term. Since the possible appointees include private persons, an interest in the residue of the estate is considered to have passed from H for private purposes.

Example (6). H devises Blackacre to X charity. Under applicable local law, W, H's widow, is entitled to elect a dower interest in Blackacre. W elects to take her dower interest in Blackacre. For purposes of this paragraph (e)(1)(i), interests in the same property have passed from H for charitable purposes and for private purposes. If, however, W does not elect to take her dower interest in Blackacre, then, for purposes of this paragraph (e)(1)(i), interests in the same property have not passed from H for charitable purposes and for private purposes.

(ii) *Works of art and copyrights treated as separate properties—(a) In general.* For purposes of paragraphs (e)(1)(i) and (e)(2) of this section, in the case of decedents dying after December 31, 1981, if a decedent makes a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties. Thus, a deduction is allowable under section 2055 for a qualified contribution of a work of art, whether or not the related copyright is simultaneously transferred to a charitable organization.

(b) *Work of art defined.* for purposes of paragraph (e)(1)(ii)(a) of this section, the term “work of art” means any tangible personal property with respect to which a copyright exists under Federal law.

(c) *Qualified contribution defined.* For purposes of paragraph (e)(1)(ii)(a) of this section, the term “qualified con-

tribution” means any transfer of property to a qualified organization (as defined in paragraph (e)(1)(ii)(d) of this section) if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501. The rules contained in § 1.170A-4(b)(3) shall apply in determining if the use of property by an organization is related to such purpose or function.

(d) *Qualified organization defined.* For purposes of paragraph (e)(1)(ii)(c) of this section, the term “qualified organization” means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). A private operating foundation (as defined in section 4942(j)(3)) shall be considered a qualified organization under this paragraph.

(e) *Examples.* The application of paragraphs (e)(1)(i) and (e)(1)(ii) (a) through (d) of this section may be illustrated by the following examples:

Example (1). A, an artist, died in 1983. A work of art created by A and the copyright interest in that work of art were included in A's estate. Under the terms of A's will, the work of art is transferred to X charity, the only charitable beneficiary under A's will. X has no suitable use for the work of art and sells it. It is determined under the rules of § 1.170A-4(b)(3) that the property is put to an unrelated use by X charity. Therefore, the rule of paragraph (e)(1)(ii)(a), which treats works of art and their copyrights as separate properties, does not apply because the transfer of the work of art to X is not a qualified contribution. To determine whether paragraph (e)(1)(i) of this section applies to disallow a deduction under section 2055, it must be determined which interests are treated as passing to X under local law.

(i) If under local law A's will is treated as fully transferring both the work of art and the copyright interest to X, then paragraph (e)(1)(i) of this section does not apply to disallow a deduction under section 2055 for the value of the work of art and the copyright interest.

(ii) If under local law A's will is treated as transferring only the work of art to X, and the copyright interest is treated as part of the residue of the estate, no deduction is allowable under section 2055 to A's estate for the value of the work of art because the transfer of the work of art is not a qualified contribution and paragraph (e)(1)(i) of this section applies to disallow the deduction.

Example (2). B, a collector of art, purchased a work of art from an artist who retained the copyright interest. B died in 1983. Under the

terms of B's will the work of art is given to Y charity. Since B did not own the copyright interest, paragraph (e)(1)(i) of this section does not apply to disallow a deduction under section 2055 for the value of the work of art, regardless of whether or not the contribution is a qualified contribution under paragraph (e)(1)(ii)(c) of this section.

(2) *Deductible interests.* A deductible interest for purposes of subparagraph (1) of this paragraph is a charitable interest in property where—

(i) *Undivided portion of decedent's entire interest.* The charitable interest is an undivided portion, not in trust, of the decedent's entire interest in property. An undivided portion of a decedent's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the decedent in such property and must extend over the entire term of the decedent's interest in such property and in other property into which such property is converted. For example, if the decedent transferred a life estate in an office building to his wife for her life and retained a reversionary interest in the office building, the devise by the decedent of one-half of that reversionary interest to charity while his wife is still alive will not be considered the transfer of a deductible interest; because an interest in the same property has already passed from the decedent for private purposes, the reversionary interest will not be considered the decedent's entire interest in the property. If, on the other hand, the decedent had been given a life estate in Blackacre for the life of his wife and the decedent had no other interest in Blackacre at any time during his life, the devise by the decedent of one-half of that life estate to charity would be considered the transfer of a deductible interest; because the life estate would be considered the decedent's entire interest in the property, the devise would be of an undivided portion of such entire interest. An undivided portion of a decedent's entire interest in the property includes an interest in property whereby the charity is given the right, as a tenant in common with the decedent's devisee or legatee, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, ex-

cept as provided in paragraphs (e)(2)(ii), (iii), and (iv) of this section, for purposes of this subdivision a charitable contribution of an interest in property not in trust where the decedent transfers some specific rights to one party and transfers other substantial rights to another party will not be considered a contribution of an undivided portion of the decedent's entire interest in property. A bequest to charity made on or before December 17, 1980, of an open space easement in gross in perpetuity shall be considered the transfer to charity of an undivided portion of the decedent's entire interest in the property. For the definition of an open space easement in gross in perpetuity, see §1.170 A-7(b)(1)(ii) of this chapter (Income Tax Regulations).

(ii) *Remainder interest in personal residence.* The charitable interest is a remainder interest, not in trust, in a personal residence. Thus, for example, if the decedent devises to charity a remainder interest in a personal residence and bequeaths to his surviving spouse a life estate in such property, the value of the remainder interest is deductible under section 2055. For purposes of this subdivision, the term "personal residence" means any property which was used by the decedent as his personal residence even though it was not used as his principal residence. For example, a decedent's vacation home may be a personal residence for purposes of this subdivision. The term "personal residence" also includes stock owned by the decedent as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b) (1) and (2)) if the dwelling which the decedent was entitled to occupy as such stockholder was used by him as his personal residence.

(iii) *Remainder interest in a farm.* The charitable interest is a remainder interest, not in trust, in a farm. Thus, for example, if the decedent devises to charity a remainder interest in a farm and bequeaths to his daughter a life estate in such property, the value of the remainder interest is deductible under section 2055. For purposes of this subdivision, the term "farm" means any land used by the decedent or his tenant for the production of crops, fruits, or other agricultural products or for the

sustenance of livestock. The term “livestock” includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(iv) *Qualified conservation contribution.* The charitable interest is a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A-14.

(v) *Charitable remainder trusts and pooled income funds.* The charitable interest is a remainder interest in a trust which is a charitable remainder annuity trust, as defined in section 664(d)(1) and § 1.664-2 of this chapter; a charitable remainder unitrust, as defined in section 664(d)(2) and (3) and § 1.664-3 of this chapter; or a pooled income fund, as defined in section 642(c)(5) and § 1.642(c)-5 of this chapter. The charitable organization to or for the use of which the remainder interest passes must meet the requirements of both section 2055(a) and section 642(c)(5)(A), section 664(d)(1)(C), or section 664(d)(2)(C), whichever applies. For example, the charitable organization to which the remainder interest in a charitable remainder annuity trust passes may not be a foreign corporation.

(vi) *Guaranteed annuity interest.* (a) The charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. For purposes of this subdivision (vi), the term “guaranteed annuity interest” means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. 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 section 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 all

noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual’s spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, as of the date of the decedent’s death taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date. For example, the amount to be paid may be a stated sum for a term of years, or for the life of the decedent’s spouse, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index. In further illustration, the amount to be paid may be expressed in terms of a fraction or a percentage of the net fair market value, as finally determined for Federal estate tax purposes, of the residue of the estate on the appropriate valuation date, or it may be expressed in terms of a fraction or percentage of the cost of living index on the appropriate valuation date.

(b) A charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. For example, if the charitable interest is the right to receive from a trust each year a payment equal to the

lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a guaranteed annuity interest.

(c) Where a charitable interest in the form of a guaranteed annuity interest is not in trust, the interest will be considered a guaranteed annuity interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing annuity contracts.

(d) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the governing instrument of the trust which is in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2055 shall be limited to the fair market value of the guaranteed annuity interest as determined under paragraph (f)(2)(iv) of this section.

(e) Where a charitable interest in the form of a guaranteed annuity interest is in trust and the present value, on the appropriate valuation date, of all the income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in such trust (after the payment of estate taxes and all other liabilities), the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired such assets.

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

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

(g) Neither the requirement in (e) of this subdivision (vi) for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired the assets nor the provisions of (f) of this subdivision (v) shall apply to—

(1) A trust executed on or before May 21, 1972, if—

(i) The trust is irrevocable on such date,

(ii) The trust is revocable on such date and the decedent dies within 3 years after such date without having amended any dispositive provision of the trust after such date, or

(iii) The trust is revocable on such date and no dispositive provision of the trust is amended within a period ending 3 years after such date and the decedent is, at the end of such 3-year period and at all times thereafter, under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter) to amend the trust, or

(2) A will executed on or before May 21, 1972, if—

(i) The testator dies within 3 years after such date without having amended any dispositive provision of the will after such date, by codicil or otherwise,

(ii) The testator at no time after such date has the right to change the provisions of the will which pertain to the trust, or

(iii) No dispositive provision of the will is amended by the decedent, by codicil or otherwise, within a period ending 3 years after such date and the decedent is, at the end of such 3-year

period and at all times thereafter, under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter) to amend the will by codicil or otherwise.

(h) For purposes of this subdivision (vi) and paragraph (f) of this section, the term “appropriate valuation date” means the date of death or the alternate valuation date determined pursuant to an election under section 2032.

(i) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the guaranteed annuity interest is in trust and for rules governing payment of private income interests by split-interest trusts, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(vii) *Unitrust interest.* (a) The charitable interest is a unitrust interest, whether or not such interest is in trust. For purposes of this subdivision (vii), the term “unitrust interest” means the right pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest. In computing the net fair market value of the property which funds the unitrust interest, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income from the property. The net fair market value of the property which funds the unitrust interest may be determined on any one date during the year or by taking the average of valuations made on more than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Where the charitable interest is a unitrust interest to be paid by a trust and the governing instrument of the trust does not specify the valuation date or dates, the trustee shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the trust is required to file. Payments under a unitrust interest may be paid for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such

date. 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 section 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 all noncharitable remainder beneficiaries are lineal descendants of the individual who is the measuring life, or that individual's spouse, if there is less than a 15% probability that individuals who are not lineal descendants will receive any trust corpus. This probability must be computed, based on the current applicable Life Table contained in § 20.2031-7, as of the date of the decedent's death taking into account the interests of all primary and contingent remainder beneficiaries who are living at that time. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. The rule in this paragraph that a charitable interest may be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664.

(b) A charitable interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if the charitable interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(c) Where a charitable interest in the form of a unitrust interest is not in trust, the interest will be considered a unitrust interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing interests otherwise meeting the requirements of a unitrust interest.

(d) Where a charitable interest in the form of a unitrust interest is in trust, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2055 shall be limited to the fair market value of the unitrust interest as determined under paragraph (f)(2)(v) of this section.

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

(f) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the unitrust interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(3) *Effective date.* The provisions of this paragraph apply only in the case of decedents dying after December 31, 1969, except that they do not apply—

(i) In the case of property passing under the terms of a will executed on or before October 9, 1969—

(a) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended any dispositive provision of the will after October 9, 1969, by codicil or otherwise,

(b) If the decedent dies after October 9, 1969, and at no time after that date had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a), or

(c) If no dispositive provision of the will is amended by the decedent, by codicil or otherwise, after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter (Income Tax Regulations)) to amend the will by codicil or otherwise, or

(ii) In the case of property transferred in trust on or before October 9, 1969—

(a) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended, after October 9, 1969, any dispositive provision of the instrument governing the disposition of the property,

(b) If the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

(c) If no dispositive provision of the instrument governing the disposition of the property is amended by the decedent after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter) to change the disposition of the property, and

(iii) The rule in paragraphs (e)(2)(vi)(a) and (vii)(a) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals is generally effective in the case of transfers pursuant to wills and revocable trusts where the decedent dies on or after April 4, 2000. Two exceptions from the application of this

rule in paragraphs (e)(2)(vi)(a) and (vii)(a) of this section are provided in the case of transfers pursuant to a will or revocable trust executed on or before April 4, 2000. One exception is for a decedent who dies on or before July 5, 2001, without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000, under a mental disability to change the disposition of the decedent's property, and either does not regain competence to dispose of such property before the date of death, or dies prior to the later of: 90 days after the date on which the decedent first regains competence, or July 5, 2001, without having republished the will (or amended the trust) by codicil or otherwise. If a guaranteed annuity interest or unitrust interest created pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000, uses an individual other than one permitted in paragraphs (e)(2)(vi)(a) and (vii)(a) of this section, and the interest does not qualify for this transitional relief, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587 (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402). Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to the later of July 5, 2001, or the date prescribed by section

2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before July 5, 2001, declares any transfer made pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000, and on or before March 6, 2001, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

(4) *Amendment of dispositive provisions.* For purposes of subparagraphs (2) and (3) of this paragraph, an amendment shall generally be considered as one which amends the dispositive provisions of a will or trust if it results in a change in the persons to whom the funds are to be given or makes changes in the conditions under which the funds are given. Examples of amendments which do not amend the dispositive provisions of a will or trust include the substitution of one fiduciary for another to act in the capacity of executor or trustee and the change in the name of a legatee or beneficiary by reason of the legatee's or beneficiary's marriage. On the other hand, examples of amendments which do amend the dispositive provisions of a will or trust include an increase or decrease in the amount of a general bequest, an amendment which increases or decreases the power of a trustee to determine an allocation of income or corpus in such a way as to change the beneficiaries of the funds or a beneficiary's share of the funds, or a change in the allocation of, or in the right to allocate, receipts and expenditures between income and principal in such a way as to change the beneficiaries of the funds or a beneficiary's share of the funds.

(5) *Amendment of wills providing for pour-over into trusts.* For purposes of subparagraphs (2) and (3) of this paragraph, an amendment of a dispositive provision of a trust to which assets are to be transferred under a will shall be

considered a dispositive amendment of such will.

(f) *Valuation of charitable interest*—(1) *In general.* The amount of the deduction in the case of a contribution of a partial interest in property to which this section applies is the fair market value of the partial interest at the appropriate valuation date, as defined in paragraph (e)(2)(vi)(h) of this section. The fair market value of an annuity, life estate, term for years, remainder, reversion, (or) unitrust interest is its present value.

(2) *Certain decedents dying after July 31, 1969.* In the case of a transfer of an interest described in subdivision (v), (vi), or (vii) of paragraph (e)(2) of this section by decedents dying after July 31, 1969, the present value of such interest is to be determined under the following rules:

(i) The present value of a remainder interest in a charitable remainder annuity trust is to be determined under § 1.664-2(c) of this chapter (Income Tax Regulations).

(ii) The present value of a remainder interest in a charitable remainder unitrust is to be determined under § 1.664-4 of this chapter.

(iii) The present value of a remainder interest in a pooled income fund is to be determined under § 1.642(c)-6 of this chapter.

(iv) The present value of a guaranteed annuity interest described in paragraph (e)(2)(vi) of this section is to be determined under § 20.2031-7 or, for certain prior periods, § 20.2031-7A, except that, if the annuity is issued by a company regularly engaged in the sale of annuities, the present value is to be determined under § 20.2031-8. If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under section 2055 only for the minimum amount it is evident the charity will receive.

Example (1). In 1975, B dies bequeathing \$20,000 in trust with the requirement that a designated charity be paid a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of \$4,100 a year, payable annually at the end of each year, for a period of 6 years and that the remainder be paid to his children. The fair market value of

an annuity of \$4,100 a year for a period of 6 years is \$20,160.93 ($\$4,100 \times 4.9173$), as determined under Table B in § 20.2031-7A(d). The deduction with respect to the guaranteed annuity interest will be limited to \$20,000, which is the minimum amount it is evident the charity will receive.

Example (2). In 1975, C dies bequeathing \$40,000 in trust with the requirement that D, an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in paragraph (e)(2)(vi) of this section) of \$5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of \$5,000 each a year for a period of 5 years is \$42,124 ($[\$5,000 \times 4.2124] \times 2$), as determined under Table B in § 20.2031-7A(d). The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction with respect to the charitable annuity will be limited to \$20,000, which is the minimum amount it is evident the charity will receive.

Example (3). In 1975, D dies bequeathing \$65,000 in trust with the requirement that a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of \$5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of \$5,000 a year, payable annually at the end of each year, be paid to W, his widow, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is \$33,877 ($\$5,000 \times 6.7754$), as determined pursuant to § 20.2031-7A(c) and by the use of factors involving one life and a term of years as published in Publication 723A (12-70). The fair market value of the charitable annuity is \$36,800.50 ($\$5,000 \times 7.3601$), as determined under Table B in § 20.2031-7A(d). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the widow and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to \$31,123 ($\$65,000$ less $\$33,877$ [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

(v) The present value of a unitrust interest described in paragraph (e)(2)(vii) of this section is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from

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the fair market value of the transferred property.

(3) *Certain decedents dying before August 1, 1969.* In the case of decedents dying before August 1, 1969, the present value of an interest described in subparagraph (2) of this paragraph is to be determined under §20.2031-7 except that, if the interest is an annuity issued by a company regularly engaged in the sale of annuities, the present value is to be determined under §20.2031-8.

(4) *Other decedents.* The present value of an interest not described in paragraph (f)(2) of this section is to be determined under §20.2031-7(d) in the case of decedents where the valuation date of the gross estate is after April 30, 1999, or under §20.2031-7A in the case of decedents where the valuation date of the gross estate is before May 1, 1999.

(5) *Special computations.* If the interest transferred is such that its present value is to be determined by a special computation, a request for a special factor, accompanied by a statement of the date of birth and sex of each individual the duration of whose life may affect the value of the interest, and by copies of the relevant instruments, may be submitted by the fiduciary to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner furnishes the factor, a copy of the letter supplying the factor must be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in this paragraph.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7318, 39 FR 25453, July 11, 1974, 39 FR 26154, July 17, 1974; T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19995, May 11, 1984; T.D. 7957, 49 FR 20811, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; T.D. 8095, 51 FR 28368, Aug. 7, 1986; 51 FR 32071, Sept. 9, 1986; T.D. 8540, 59 FR 30103, 30170, June 10, 1994; T.D. 8819, 64 FR 23222, 23229, Apr. 30, 1999; 64 FR 33196, June 22, 1999; T.D. 8886, 65 FR 36943, June 12, 2000; T.D. 8923, 66 FR 1042, Jan. 5, 2001; T.D. 9068, 68 FR 40131, July 7, 2003]

§ 20.2055-3 Effect of death taxes and administration expenses.

(a) *Death taxes*—(1) If under the terms of the will or other governing instruments, the law of the jurisdiction under which the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any property the transfer of which would otherwise be allowable as a deduction under section 2055, section 2055(c) provides that the sum deductible is the amount of the transferred property reduced by the amount of the tax. Section 2055(c) in effect provides that the deduction is based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. Thus, if \$50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of \$5,000, payable out of the \$50,000, the amount deductible is \$45,000. If a life estate is bequeathed to an individual with remainder over to a charitable organization, and by the local law the inheritance tax upon the life estate is paid out of the corpus with the result that the charitable organization will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present value, as of the date of the testator's death, of the remainder of the fund so reduced. If a testator bequeaths his residuary estate, or a portion of it, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies upon which they were imposed, shall be payable out of the residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will. If a residuary estate, or a portion of it, is bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The return should fully disclose the computation of the amount to be deducted. If the amount to be deducted is dependent upon the amount of any death tax which has not