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SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements for a testamentary charitable lead unitrust (CLUT) providing for unitrust payments payable to one or more charitable beneficiaries for the unitrust period followed by the distribution of trust assets to one or more noncharitable remaindermen.

SECTION 2. BACKGROUND

The Internal Revenue Service (Service) is issuing sample forms for CLUTs; annotations and alternate sample provisions are included as further guidance. In addition to the sample trust instrument for a testamentary CLUT that is included in this revenue procedure, samples are provided in a separate revenue procedure for grantor and nongrantor inter vivos CLUTs (see Rev. Proc. 2008-45).

SECTION 3. SCOPE

A CLUT is an irrevocable split-interest trust that provides for a specified amount to be paid to one or more charitable beneficiaries during the term of the trust. The principal remaining in the trust at the end of the term is paid over to, or held in a continuing trust for, a noncharitable beneficiary or beneficiaries identified in the trust. If the terms of a CLUT created on the decedent's death satisfy the applicable statutory and regulatory requirements, the value of the charitable lead unitrust interest will be deductible by the decedent's estate under § 2055(e)(2)(B) and payments of the unitrust amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by § 642(c)(1).

A testamentary CLUT is subject to the provisions of part I, subchapter J of chapter 1 of subtitle A of the Internal Revenue Code (Code). Under the provisions of part I of subchapter J, a CLUT is allowed a deduction under § 642(c)(1) in determining its taxable income for any amount of gross income paid for purposes specified in § 170(c).

Section 4 of this revenue procedure provides a sample declaration of trust for a testamentary CLUT with a term of years unitrust period that is created by a decedent who was a citizen or resident of the United States. Section 5 of this revenue procedure provides annotations to the provisions of the sample trust. Section 6 of this revenue procedure provides samples of certain alternate provisions concerning: (.01) a unitrust period for the life of one individual; (.02) apportionment of the unitrust amount in the discretion of the trustee; and (.03) designation of an alternate charitable beneficiary in the trust instrument. If a trust is substantially similar to the sample trust in section 4 of this revenue procedure or properly integrates one or more alternate provisions from section 6 into a document substantially similar to the sample trust in section 4, is a valid trust under applicable local law, and operates in a manner consistent with the terms of the instrument, and if all other deductibility requirements are satisfied, the value of the charitable lead interest will be deductible by the decedent's estate under § 2055(e)(2)(B) and payments of the unitrust amount to the charitable lead beneficiary will be deductible from the gross income of the trust to the extent provided by § 642(c)(1). In addition, a testamentary CLUT will qualify for the safe harbor created under this revenue procedure if the trust satisfies all of the requirements set forth in the preceding sentence, except that it defines the unitrust amount as a varying percentage amount for which the value is ascertainable at the creation of the trust and/or provides for a different disposition of trust assets upon the termination of the unitrust period.

Except as provided above, a trust that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure or provisions necessary to establish a valid trust under applicable local law that are not inconsistent with the applicable federal tax requirements), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternate provision from section 6 of this revenue procedure is properly integrated), will not necessarily be ineligible for the relevant charitable deduction(s), but neither will that trust (or contributions to it) be assured of qualification for the appropriate charitable deductions. The Service generally will not issue a letter ruling on whether a testamentary CLUT qualifies for income and estate tax charitable deductions. The Service, however, generally will issue letter rulings relating to the tax consequences of the inclusion in a CLUT of substantive trust provisions other than those contained in sections 4 and 6 of this revenue procedure.

SECTION 4. SAMPLE TESTAMENTARY CHARITABLE LEAD UNITRUST

I give, devise, and bequeath [*property bequeathed*] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable lead unitrust, within the meaning of Rev. Proc. 2008-46. This trust shall be known as the Charitable Lead Unitrust, and I hereby designate as the initial trustee (hereinafter ~~the Trustee~~). All references to ~~section~~ or ~~§~~ in this instrument shall refer to the Internal Revenue Code of 1986, 26 U.S.C. § 1, *et seq.*

1. *Payment of Unitrust Amount.* For each taxable year of the trust during the unitrust period, the Trustee shall pay to [*designated charitable recipient*] a unitrust amount equal to [*number representing the annual unitrust percentage to be paid to the designated charitable recipient*] percent of the net fair market value of the assets of the trust, valued as of the first day of each taxable year of the trust (hereinafter ~~the valuation date~~). If [*designated charitable recipient*] is not an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the Trustee shall instead distribute such payments to one or more organizations described in §§ 170(c) and 2055(a) as the Trustee shall select, and in such proportions as the Trustee shall decide, from time to time, in the Trustee's sole discretion. The term ~~the Charitable Organization~~ shall be used herein to refer collectively to the organization(s) then constituting the charitable recipient, whether named in this paragraph or subsequently selected as the substitute charitable recipient. During the trust term, no payment shall be made to any person other than the Charitable Organization. The unitrust period is a term of [*number of years of unitrust period*] years. The first day of the unitrust period shall be the date of my death, and the last day of the unitrust period shall be the day preceding the [*ordinal number corresponding to the length of the unitrust period*] anniversary of that date. The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income and, to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust

amount shall be added to principal. If for any year the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, the Trustee shall pay to the Charitable Organization (in the case of an undervaluation) or receive from the Charitable Organization (in the case of an overvaluation) an amount equal to the difference between the unitrust amount(s) properly payable and the unitrust amount(s) actually paid.

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

3. *Proration of Unitrust Amount.* For any short taxable year, including the taxable year in which the unitrust period ends, the Trustee shall prorate the unitrust amount on a daily basis for the number of days of the unitrust period in that taxable year.

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

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

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

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

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

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

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

SECTION 5. ANNOTATIONS REGARDING SAMPLE TESTAMENTARY CHARITABLE LEAD UNITRUST

.01 Annotations for Introductory Paragraph of the Sample Trust.

1. *Income taxation of testamentary charitable lead trusts.* A testamentary CLUT is a complex trust that is taxable as a separate entity under the provisions of subchapter J of the Code. The trustee of the trust must apply for a tax identification number for the trust.
2. *Deduction under § 642(c)(1) available for amounts paid for a charitable purpose.* Under § 642(c)(1), a testamentary CLUT is allowed a deduction in computing its taxable income for any amount of gross income, without limitation, that under the terms of the trust instrument is paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)) during the taxable year. Section 642(c)(1) and § 1.642(c)-1(a). An amount paid to a corporation, trust, or community chest, fund, or foundation otherwise described in § 170(c)(2) shall be considered paid for a purpose described in § 170(c) even though the corporation, trust, or community chest, fund, or foundation is not created or organized in the United States, any state, the District of Columbia, or any possession of the United States. Section 1.642(c)-1(a)(2). With regard to amounts of income paid to the charitable beneficiary after the close of the taxable year in which the income was received (but on or before the last day of the next succeeding taxable year), the trustee of a testamentary CLUT may elect to take the charitable deduction for that payment for the year in which the income was received, rather than for the year in which the payment was made. Section 642(c)(1). The election is made by filing a statement with the income tax return for the taxable year in which the charitable contribution is treated as paid. See § 1.642(c)-1(b).
3. *Charitable lead beneficiary requirements.* A deduction is allowed under § 642(c)(1) for any amount of the gross income of a testamentary CLUT that is paid for a purpose specified in § 170(c). Note that the class of permissible charitable recipients for obtaining a deduction under § 642(c)(1) differs from the class of permissible charitable recipients for obtaining a deduction under § 170(a). Compare § 170(c) and § 1.642(c)-1(a)(2).
4. *Unrelated business taxable income.* Under § 681, a testamentary charitable lead trust's deduction under § 642(c)(1) is disallowed in any year to the extent that the deduction is allocable to the trust's unrelated business taxable income, as defined in § 512, for that taxable year. See § 1.681(a)-2. However, a partial deduction is allowed under § 512(b)(11) for amounts allocable to unrelated business taxable income. Section 512(b)(11). See § 512(b)(12) and § 1.681(a)-2(a).
5. *Computation of estate tax charitable deduction.* In general, the estate tax charitable deduction available under § 2055(e)(2)(B) with respect to contributions to a CLUT is equal to the present value of the unitrust interest. Section 20.2055-2(f)(1). Section 7520 requires that a unitrust interest must be valued using tables published by the Service. The method for valuing a charitable lead unitrust interest is set forth in the regulations. See § 20.7520-2. If estate or other death taxes are paid from the assets used to fund a testamentary CLUT, the amount deductible under § 2055 is the amount that passes to charity, reduced by the amount of estate or death taxes paid. Section 2055(c).
6. *Trustee provisions.* The trust instrument may name alternate or successor trustees and/or may include a process for the appointment of unnamed alternate or successor trustees. In addition, the trust instrument may contain certain administrative provisions relating to the trustee's duties and powers.

.02 Annotations for Paragraph 1, Payment of Unitrust Amount, of the Sample Trust.

1. *Unitrust interest.* To qualify for an estate tax charitable deduction, a CLUT must provide for the payment of a unitrust amount at least annually to a qualified charitable organization for each year during the unitrust period. See § 2055(e)(2)(B). A unitrust interest is 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 that funds the unitrust interest. Payments of a unitrust interest may be paid for a specified term or for the life or lives of certain individuals, each of whom must be living at the date of the decedent's death and can be ascertained as of such date. Section 20.2055-2(e)(2)(vii)(a). See section 5.02(4) for a discussion of the permissible term of a testamentary CLUT. An interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if an interest is expressed as the right to receive an annual payment from a trust equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets (determined annually), the interest is not a unitrust interest. Section 20.2055-2(e)(2)(vii)(b). See Rev. Rul. 77-300, 1977-2 C.B. 352. In addition, an interest is not a unitrust interest if the trustee has the discretion to commute and prepay the interest prior to the termination of the unitrust period. Rev. Rul. 88-27, 1988-1 C.B. 331. If a charitable interest in the form of a unitrust interest is in trust and the present value of the charitable interest on the appropriate valuation date exceeds 60 percent of the aggregate value of all amounts in the trust,

- the charitable interest will not be considered a unitrust interest unless the governing instrument of the trust prohibits the acquisition and retention of assets that would give rise to a tax under § 4943 or 4944, as modified by §§ 4947(a)(2) and 4947(b)(3). Section 4947(b)(3)(A) and § 53.4947-2(b)(1)(i). See § 20.2055-2(e)(2)(vii)(f). These prohibitions are contained in the sample trust. See section 5.07 for a further discussion of the 60 percent test.
2. **Payment requirements.** CLUTs are not subject to any minimum or maximum payout requirements. The governing instrument of a CLUT must provide for the payment to a charitable organization, not less often than annually, of a fixed percentage of the net fair market value of the assets of the trust, valued annually. Alternatively, the governing instrument of a CLUT may provide for a unitrust amount that is initially stated as a fixed percentage amount but increases or decreases during the unitrust period, provided that the value of the unitrust interest is ascertainable at the time of the decedent's death. The unitrust payments may be made in cash or in kind. If the trustee distributes appreciated property in satisfaction of the required unitrust payment, the trust will realize capital gain on the assets distributed to satisfy part or all of the unitrust payment and the trust will be allowed a § 642(c)(1) deduction for the realized capital gains. Rev. Rul. 83-75, 1983-1 C.B. 114. See section 5.03 for a discussion of the deferral of the requirement to pay the unitrust amount until the end of the taxable year in which the trust is completely funded.
 3. **Rule against perpetuities.** An interest payable for a specified term of years may qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. However, any such savings clause must utilize a period of vesting of not more than 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. Section 20.2055-2(e)(2)(vii)(a).
 4. **Permissible term.** Paragraph 1, Payment of Unitrust Amount, of the sample trust provides for payment of the unitrust amount for a specified term of years. Alternatively, the trust instrument may provide for payment of the unitrust amount for the life or lives of one or more measuring lives or for the life or lives of one or more measuring lives plus a term of years. Rev. Rul. 85-49, 1985-1 C.B. 330. Only one or more of the following individuals may be used as measuring lives: the decedent's spouse and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170 or 2055), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. Each person used as a measuring life for the unitrust period must be living on the decedent's date of death. Section 20.2055-2(e)(2)(vii)(a). See section 6.01 for an alternate provision that provides for a unitrust period based on the life of an individual.
 5. **Permissible recipients.** A CLUT must have one or more charitable lead beneficiaries. The failure to designate a specific charitable beneficiary will not preclude the decedent's estate from receiving a charitable deduction if the trust instrument provides for the selection by the trustee of a charitable beneficiary described in §§ 170(c) and 2055(a). Rev. Rul. 78-101, 1978-1 C.B. 301. See section 6.02 for an alternate provision that provides the trustee with the power to apportion the unitrust amount among charitable beneficiaries. See section 6.03 for an alternate provision that provides for the designation of an alternate charitable beneficiary in the trust instrument.
 6. **Payment of unitrust amount in installments.** Paragraph 1, Payment of Unitrust Amount, of the sample trust specifies that the unitrust amount is to be paid in equal quarterly installments at the end of each calendar quarter. Alternatively, the trust instrument may specify that the unitrust amount is to be paid in annual or other equal or unequal installments throughout the year. See § 20.2055-2(e)(2)(vii)(a). The amount of the charitable deduction will be affected by the frequency of the payment, by whether the installments are equal or unequal, and by whether each installment is payable at the beginning or end of the period. See § 20.2031-7.
 7. **Excess income.** Trust income in excess of the amount required to pay the unitrust amount may be retained by the trust or distributed currently to the charitable beneficiary. The sample trust provides for the retention of excess income by the trust. If, instead, the governing instrument provides for the payment of excess income to or for the use of the charitable beneficiary, no additional estate tax charitable deduction is available for the excess amounts of income distributed to the charitable beneficiary. See § 20.2055-2(e)(2)(vii)(d). However, the trust is entitled to a charitable income tax deduction under § 642(c)(1) for any amounts of excess income paid to the charitable beneficiary. See Situation 2 of Rev. Rul. 88-82, 1988-2 C.B. 336, for the transfer tax consequences of the payment of excess income to a noncharitable beneficiary. See section 5.07 for the private foundation rules applicable to charitable lead trusts.
 8. **Payment of part of unitrust for private purposes.** In general, no part of a charitable lead unitrust interest may be payable for a private purpose before the expiration of all charitable lead unitrust interests. However, there are two exceptions to this rule. The first exception arises when 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 as

opposed to the charitable unitrust. The second exception arises when, under the trust governing instrument, the amount that may be paid for a private purpose is payable only from a group of assets that is devoted exclusively to private purposes and to which § 4947(a)(2) is inapplicable by reason of § 4947(a)(2)(B). Note that an amount is not deemed to have been paid for a private purpose if it was paid for full and adequate consideration in money or money worth. Section 20.2055-2(e)(2)(vii)(e). See section 5.07 for the private foundation rules applicable to charitable lead trusts.

9. *Valuation date.* Paragraph 1, Payment of Unitrust Amount, of the sample trust specifies that the net fair market value of trust assets is to be valued as of the first day of each taxable year of the trust. However, the value of the trust assets may be determined on any one date during the taxable year of the trust, or by taking the average of valuations made on more than one date during the taxable year of the trust, so long as the same valuation date or dates and the same valuation methods are used each year. If the governing instrument does not specify the valuation date or dates, the trustee must select the date or dates and indicate the selection on the first Form 1041, *U.S. Income Tax Return for Estates and Trusts*, that the trust must file. Section 20.2055-2(e)(2)(vii)(a). Note that if the valuation date is a date other than the first day of each taxable year of the trust, it may be necessary to modify the provisions in the sample trust regarding (i) the timing of the payment of the unitrust amount and (ii) the proration of the unitrust amount in a short taxable year and the last taxable year of the unitrust period.
10. *Ordering rules.* A provision in the governing instrument of a charitable lead trust that provides for the payment to charity to consist of different classes of income determined on a non *pro rata* basis will not be respected because such a provision does not have economic effect independent of the income tax consequences of the payment. See § 1.642(c)-3(b)(2) and (3).

.03 Annotations for Paragraph 2, Deferral Provision, of the Sample Trust.

1. *Deferral of requirement to pay unitrust amount.* The deferral provision in paragraph 2 of the sample trust authorizes the trustee to defer the payment of the unitrust amount until the end of the taxable year of the trust in which the trust is completely funded.
2. *Interest on unitrust payments.* The deferral provision in paragraph 2 of the sample trust provides for the payment of interest, compounded annually, with respect to any underpayment of the unitrust amount during the period of estate administration. The sample trust requires that interest be computed at the § 7520 rate in effect on the date of the decedent's death. To the extent that interest payable under state law exceeds the applicable § 7520 rate, the payment of interest at the rate prescribed by state law will be deemed to satisfy the interest payment requirement set forth in the trust instrument.

.04 Annotation for Paragraph 3, Proration of Unitrust Amount, of the Sample Trust.

1. *Prorating the unitrust amount.* Paragraph 3, Proration of Unitrust Amount, of the sample trust provides for the proration of the unitrust amount in any short taxable year, including the last year of the unitrust period.

.05 Annotation for Paragraph 4, Distribution Upon Termination of Unitrust Period, of the Sample Trust.

1. *Generation-skipping transfer tax.* The generation-skipping transfer (GST) tax may apply if a CLUT has or may have a skip person, as defined in § 2613(a), as a remainder beneficiary. Under § 2651(f)(3), a charitable organization is deemed to be in the same generation as the decedent/donor of a charitable lead trust. Therefore, the GST potential of a charitable lead trust is dependent upon whether any noncharitable beneficiary is a skip person. GST tax liability is determined by multiplying the taxable amount by the applicable rate. The applicable rate is the inclusion ratio multiplied by the maximum federal estate tax rate. Section 2641(a). Note that the rules set forth in § 2642(e) for determining the inclusion ratio of certain charitable lead trusts do not apply to CLUTs.

.06 Annotation for Paragraph 5, Additional Contributions, of the Sample Trust.

1. *Additions to the trust.* For purposes of qualification under this revenue procedure, the trust instrument must contain a provision that prohibits additional contributions. A CLUT that permits additional contributions will not qualify for safe harbor treatment under this revenue procedure.

.07 Annotation for Paragraph 6, Prohibited Transactions, of the Sample Trust.

1. *Prohibitions against certain investments and excess business holdings.* Prohibitions against retaining any excess business holdings within the meaning of § 4943, as modified by §§ 4947(a)(2) and 4947(b)(3), and against investments that jeopardize the exempt purpose of the trust within the meaning of § 4944, as modified by §§ 4947(a)(2) and 4947(b)(3), are generally required. The sample trust contains prohibitions against §§ 4943 and 4944 transactions. If the present value of the charitable interest does not exceed 60 percent of the aggregate value of all amounts in the trust, the trust instrument does not provide for the payment of any of the income interest to a noncharitable beneficiary, and the trust instrument does not provide for the payment of excess income to a noncharitable beneficiary, the references to §§ 4943 and 4944 may be removed from the trust instrument. Section 4947(b)(3) and §§ 53.4947-2(b)(1)(i) and 20.2055-2(e)(2)(vii)(f). See section 5.02(7) for a discussion of the payment of excess trust income to a noncharitable beneficiary. See section 5.02(8) for a discussion of the payment of part of the unitrust for a private purpose.

.08 Annotation for paragraph 7, Taxable Year, of the Sample Trust.

1. *Calendar year.* The taxable year of a charitable lead trust must be a calendar year. Section 644(a).

.09 Annotation for paragraph 10, Investment of Trust Assets, of the Sample Trust.

1. *Capital gains.* Gains from the sale or exchange of capital assets may be allocated to the income or the principal of the trust. If the governing instrument is silent, capital gains are allocated in accordance with local law. Even if gains are allocated to principal, they will be deductible under § 642(c)(1) if they are paid to the charitable beneficiary as part of a charitable unitrust payment. Rev. Rul. 83-75, 1983-1 C.B. 114.

SECTION 6. ALTERNATE PROVISIONS FOR SAMPLE TESTAMENTARY CHARITABLE LEAD UNITRUST

.01 Unitrust Period for the Life of One Individual.

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

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

.02 Apportionment of the Unitrust Amount in the Discretion of the Trustee.

1. *Explanation.* The trustee of a testamentary charitable lead trust may be granted the power to apportion the unitrust payment from time to time among a class of qualifying charitable beneficiaries. See §674(b)(4).
2. *Instruction for use.* Replace the first three sentences of paragraph 1, Payment of Unitrust Amount, of the sample trust with the following two sentences:

For each taxable year of the trust during the unitrust period, the Trustee shall pay to one or more members of a class comprised of organizations described in §§ 170(c) and 2055(a) (hereinafter, collectively ~~the Charitable Organization~~) a unitrust amount equal to *[number representing the annual unitrust percentage to be paid to the Charitable Organization]* percent of the net fair market value of the assets of the trust, valued as of the first day of each taxable year of the trust (hereinafter ~~the valuation date~~). The Trustee may pay the unitrust amount to one or more members of the class, in equal or unequal shares, as the Trustee, in the Trustee's sole discretion, from time to time may deem advisable.

.03 Designation of an Alternate Charitable Beneficiary in the Trust Instrument.

1. *Explanation.* The sample trust provides that, in the event the charitable beneficiary designated in the trust instrument is not an organization described in §§ 170(c) and 2055(a) at the time any payment is to be made to it, the trustee shall distribute such payments to one or more organizations described in §§ 170(c) and 2055(a) as the trustee shall select. As an alternative, the trust instrument may specifically designate one or more alternate charitable beneficiaries.
2. *Instruction for use.* Replace the second sentence in paragraph 1, Payment of Unitrust Amount, of the sample trust with the following two sentences:

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

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie N. Bland of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Stephanie N. Bland at (202) 622-3130 or James F. Hogan at (202) 622-3090.