



THE AMERICAN COLLEGE OF
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Please Address Reply to:

May 23, 2024

Submitted Electronically IRS and REG-108761-22

CC: PA: 01: PR (REG-108761-22)

Room 5203, Internal Revenue Service

P.O. Box 7604

Ben Franklin Station Washington, DC. 20044

Executive Director

DEBORAH O. MCKINNON

**RE: COMMENTS OF THE AMERICAN COLLEGE OF TRUST AND ESTATE
COUNSEL (“ACTEC”)
ON THE PROPOSAL TO ADD CERTAIN CHARITABLE REMAINDER ANNUITY
TRUST TRANSACTIONS AS LISTED TRANSACTIONS**

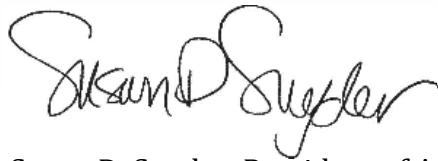
The American College of Trust and Estate Counsel (“ACTEC”) supports the proposed regulation described in the notice of proposed rulemaking REG-108761-22; 89 F.R. 20569-20577; 2024-16 IRB 933 (the “Notice”) which would identify certain charitable remainder annuity trust transactions described in the Notice as listed transactions.

ACTEC is a nonprofit association of lawyers and law professors. Its more than 2,400 members are called “Fellows” and practice throughout the United States, Canada, and other foreign countries, with extensive experience in the preparation of wills and trusts, estate planning, and administration of trusts and estates of decedents, minors, and incompetents. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar association activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of transfer tax and charitable planning. These comments were prepared by members of ACTEC’s Charitable Planning and Exempt Organizations committee who, collectively, have extensive experience representing both donors and charities, including community foundations. ACTEC offers technical comments about the law and its effective administration but does not take positions on matters of policy or political objectives.

ACTEC’s comments regarding the Proposed Regulations are set forth in the attached one-page memorandum. If you or your staff would like to discuss the contents of this memorandum with the ACTEC Fellows who created it, please

contact Reynolds T. Cafferata, who chaired the working group that prepared this memorandum (213-892-7700, reynolds@rhclaw.com), William I. Sanderson, Chair of ACTEC's Washington Affairs Committee (202-875-1743, wsanderson@mcguirewoods.com), or Deborah McKinnon, ACTEC Executive Director (202-684-8460, domckinnon@actec.org).

Respectfully submitted,

A handwritten signature in black ink, reading "Susan D. Snyder". The signature is written in a cursive, flowing style with a large initial "S".

Susan D. Snyder, President of ACTEC
ACTEC President 2024–2025

**ACTEC COMMENTS ON IRS NOTICE OF PROPOSED RULEMAKING TO ADD CERTAIN
CHARITABLE REMAINDER ANNUITY TRUST TRANSACTIONS AS LISTED
TRANSACTIONS**

The American College of Trust and Estate Counsel (“ACTEC”) supports the proposed regulation described in the notice of proposed rulemaking REG-108761-22; 89 F.R. 20569-20577; 2024-16 IRB 933 (the “Notice”) which would identify certain charitable remainder annuity trust transactions described in the Notice as listed transactions. The transactions described in the Notice miscomprehend the operation of the tier structure under which charitable remainder annuity trust distributions are taxed by Internal Revenue Code section 664 and have other technical flaws which would prevent the trusts from qualifying in the first place.

ACTEC further supports the proposed exclusion of organizations described in § 170(c) as parties to a prohibited tax shelter transaction merely because the organization is named as a remainder beneficiary. As noted in the Notice, the charitable remainder beneficiary is often not even aware of its remainder interest until it receives distributions from the trust.

ACTEC also supports the proposed exclusion of the recipient of the remainder interest as a participant in the listed transaction described in the proposed regulation solely by reason of its status as a remainder beneficiary.

The Notice requested comments on whether the charitable remainder beneficiary ever provides material aid, assistance, or advice with respect to the transactions described in regulation § 1.6011-15(b) and the nature of the services being provided. The experience of ACTEC Fellows is that charitable remainder beneficiaries would rarely provide such material aid, assistance, and advice, and that such material aid, assistance, or advice is most often provided by the promoters of the transaction. We are also unaware of cases in which charitable remainder beneficiaries have received fees, directly or indirectly, for providing material aid, assistance, or advice. It is possible that a charity would provide general information about a charitable remainder trust to a participant in the listed transaction. The regulations should make clear that a charitable remainder beneficiary will not be considered to have given material aid, assistance, and advice unless the charitable remainder beneficiary provides information that specifically endorses the abusive interpretation of the operation of the tier structure under which charitable remainder annuity trust distributions are taxed by Code § 664.