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The American College of Trust and Estate Counsel

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Stamford, Connecticut

September 9, 2014

The Honorable Ronald L. Wyden, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dave Camp, Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Orrin G. Hatch, Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sander Levin, Ranking Member
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable John A. Koskinen, Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins, Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: The American College of Trust and Estate Counsel (ACTEC®) Proposal to Amend Charitable Remainder Trust Requirements

Dear Chairmen Wyden and Camp, Ranking Members Hatch and Levin, Commissioner Koskinen, and Chief Counsel Wilkins:

The American College of Trust and Estate Counsel (ACTEC) believes changes to the Internal Revenue Code (Code) are needed with respect to Charitable Remainder Trusts that are currently being thwarted by low Section 7520 rates. ACTEC believes Congress intended to encourage the use of Charitable Remainder Trusts because charity is the ultimate recipient of these trusts. ACTEC believes Congress intended to permit individuals of all ages to be beneficiaries of a charitable remainder trust. Unfortunately, the current low Section 7520 rates have made it impossible for many people to use a charitable remainder trust. In fact, in today's environment where the Section 7520 rate hovers around 2%, the life annuitant must be at least 72 years old in order to be the life beneficiary of a charitable remainder annuity trust. ACTEC believes that the Code should be amended to allow CRTs to be created for the life of an individual of nearly any age. Please consider the enclosed Proposal.

ACTEC is a professional organization of approximately 2,600 lawyers from throughout the United States. 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 activities. Fellows have extensive experience in providing advice to taxpayers on matters of federal taxes, with a focus on estate, gift, and GST tax planning, fiduciary income tax planning, and compliance. ACTEC offers technical comments about the law and its effective administration, but does not take positions on matters of policy or political objectives.

If you or your staff would like to discuss the Proposal, please contact Ellen Harrison, Chair of the ACTEC Washington Affairs Committee, at (202) 663-8316, or ellen.harrison@pillsburylaw.com; Trent S. Kiziah, ACTEC Transfer Tax Committee, at (213) 861-5028, or trent.kiziah@ustrust.com; or Leah Weatherspoon, ACTEC Communications Director, at (202) 688-0271, or lweatherspoon@actec.org.

Respectfully submitted,

Kathleen R. Sherby
ACTEC President 2014-2015

cc: Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation
Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, U.S. Department of the Treasury
Melissa Liquerman, Chief Branch 2, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Tiffany P. Smith, Esq., Tax Counsel, U.S. Senate Committee on Finance
Curtis G. Wilson, Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Lisa Zarlenga, Tax Legislative Counsel, U.S. Department of the Treasury

Introduction

A charitable remainder trust (CRT) is a split-interest trust in which the grantor makes a gift in trust with charity as the remainder beneficiary. The current income beneficiary designated by the Grantor receives either an annuity payment (CRAT) or a unitrust payment (CRUT) for a specified term (typically the life of the income beneficiary). As long as the CRT meets certain requirements as provided in Section 664 of the Code, the Grantor may take a charitable deduction based on the present value of the remainder interest at the time of the gift. The CRT thus provides a regular, ongoing income stream to the Grantor (or another beneficiary), reduces the Grantor's taxable estate, and provides a current income tax deduction for the charitable gift of the remainder interest. These tax benefits are obtained in exchange for the distribution of the trust to charity upon its termination.

The Section 664 qualification requirements include a minimum and maximum annual payment amount, a minimum remainder interest value, and a maximum probability of exhaustion of trust assets over the life of the income beneficiary. The discount rate used to determine the net present value of the remainder interest of a CRT is the applicable rate under Section 7520 (7520 rate) in effect when the trust is created. The 7520 rate is also used as the rate of growth of trust assets for determining the probability of exhaustion of a CRT. In today's economic environment, the difference in the 7520 rate applicable to a CRT and the minimum payout percentage combined with the minimum remainder interest requirement and maximum exhaustion probability result in extremely narrow circumstances under which a CRT will meet the requirements and thus qualify for favorable tax status.

The proposed amendment to the Code would change the minimum payout requirement in order to restore the universe of potential CRTs that Congress determined should qualify under Section 664. The proposed amendment would result in a far greater number of situations in which a CRAT would meet the Section 664 requirements, thus giving effect to the Congressional intention to encourage gifts to charity. The impact on CRUTs is less substantial due to the unitrust nature of such trusts and the fact that there is no exhaustion requirement for CRUTs[1].

Analysis

CRT Requirements – The 5% Minimum Payout Rule

Under the current Section 664 requirements, every qualified CRT, whether a CRAT or a CRUT, must make an annual payment of at least five percent but no greater than 50 percent of the value of the trust assets, determined either at the time of trust creation in the case of a CRAT or on an ongoing basis in the case of a CRUT[2]. On occasion, a taxpayer will set up a CRT in a way that *maximizes* the payout percentage while staying within the other requirements of Section 664, namely the minimum remainder interest and the maximum exhaustion probability, so as to provide the highest current income to the income beneficiary while ensuring that the trust qualifies as a CRT.

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[1] A "unitrust" pays out a fixed percentage of the current fair market value of the trust's assets, so even if that payout is greater than the growth rate of the trust's assets, the trust assets will never be reduced to zero. Even where the payout rate is 50%, the trust assets will only be decreased by half every year, thus guaranteeing there are always assets (half of what was there the year before) remaining for the next year. A CRAT on the other hand pays out an annuity amount that is fixed at the trust's creation, so that when the annual payout percentage is greater than the rate of growth of the trust assets, there is a chance that the trust corpus will be exhausted, depending on how long the beneficiary lives.

[2] While CRUTs may also be set up to pay out the *lesser* of the stated fixed unitrust payout percentage of at least five percent or the trust's fiduciary accounting income for the period, this report analyzes only the qualification of CRUTs that must pay out the fixed unitrust payout percentage. The income limitation does not affect either the amount of the charitable deduction or the qualification of the CRUT.

CRT Requirements – The 10% Minimum Remainder Value Requirement

Every CRT must be set-up so that the net present value of the remainder interest in the trust is at least 10%. Treasury Regulations require the remainder value to be calculated by using IRS-provided mortality and remainder factor tables, the beneficiary's age, the annual CRT payout percentage, and an annual growth and discount rate equal to the 7520 rate.

Because a Grantor will typically wish to maximize the annual payout percentage, the 10% remainder value restriction acts as a limit on how high that payout can be. When the payout is greater than the rate of return (for which the 7520 rate is the mandated proxy), the trust assets will decrease over time as more is being paid out annually than is being generated through investments. Additionally, a CRAT is much more sensitive to changes in the 7520 rate because the annual payout amount is fixed at the trust creation, so as the trust assets decrease over time the gap between the annual payout and the assumed annual growth widens, thus accelerating the decrease in trust assets. The remainder value of a CRUT, on the other hand, is less sensitive to movements in the 7520 rate since the annual payout is based upon the fair market value of the trust assets every period and will thus decrease as the trust assets decrease.

CRT Requirements – The 5% Maximum Probability of Exhaustion Requirement

A CRT must also meet the maximum exhaustion requirement which is another test based upon the mortality tables and the age of the beneficiary. This test measures the probability that a beneficiary of a CRAT will outlive the trust assets assuming an annual growth rate of trust assets equal to the 7520 rate and the fixed payout percentage specified in the CRAT. The maximum calculated probability of exhaustion must not exceed 5%. This test does not apply to a CRUT because a CRUT will only approach zero over time and can never actually run out of assets.

Meeting the CRT Requirements During Periods of Low Interest Rates

A CRT must meet all three of the applicable requirements discussed above in order to qualify under Section 664. As discussed, some grantors will establish a CRT to maximize the payout rate while staying within the requirements so as to retain the greatest current benefit while obtaining the tax benefits of making a charitable gift of the remainder. This normally means that the CRT payout percentage is set at a higher rate than the 7520 rate but still close enough to provide for a remainder value equal to at least 10% and an exhaustion probability of less than 5%. During periods of historically "normal" interest rates[3], the 7520 rate allows for flexibility in designing CRTs which will meet all three requirements for most beneficiaries. However, as the 7520 rate declines below 5%, the ability to meet the qualification requirements becomes more and more difficult (meaning beneficiaries must be increasingly older in order to qualify under Section 664). This is because the 7520 rate in existence at the time of the trust's creation is the assumed rate of growth of trust assets over the lifetime of the CRT. Since the minimum payout rate of a CRT is 5%, as the 7520 rate declines below this number, the trust will pay out more and more of the principal amount (instead of investment growth) over its lifetime since the trust corpus is projected to grow less than the annual required payout. As the 7520 assumed growth rate goes down, the remainder value of a given CRT decreases and the probability of exhaustion increases resulting in fewer circumstances under which a CRT can meet the Section 664 requirements.

The analysis below demonstrates the severity of the effects of this difference between growth rates and payout rates (particularly in the case of CRATs) under the current regulations.

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[3] Since January 1989, the monthly 7520 rate has been greater than 4 percent approximately 78.5% of the time (233 out of 297 months). However, the 7520 rate has not been at least 4% since September of 2008, with the current rate at 2%.

CRAT – Required Minimum Age of Beneficiary[4]

If the annuity payout is greater than the 7520 rate, the beneficiary of a CRAT must be of a certain age in order for the trust to be a qualified CRAT. The beneficiary must be old enough so that there is at least a 5% probability that the trust will have value at the end of beneficiary's life (the 5% exhaustion test) and be old enough to calculate a remainder value of the CRAT of at least 10%. The greater the difference between the annuity amount and the 7520 expected growth rate of the trust assets, the older the beneficiary must be in order to meet the exhaustion and remainder value requirements. At the current 7520 rate of 2% and the Section 664 minimum payout rate of 5%, the youngest a beneficiary can be for a qualified CRAT is 72. At ages younger than 72, the exhaustion percentage rises above 5% and disqualifies the CRAT.

The following table and chart show the minimum required age of a beneficiary for various 7520 rates in order for a CRAT to qualify under the 5% minimum payout rate, 10% remainder interest, and 5% exhaustion probability requirements:

Table 1 CRAT - Required Minimum Beneficiary Age (Current Law)

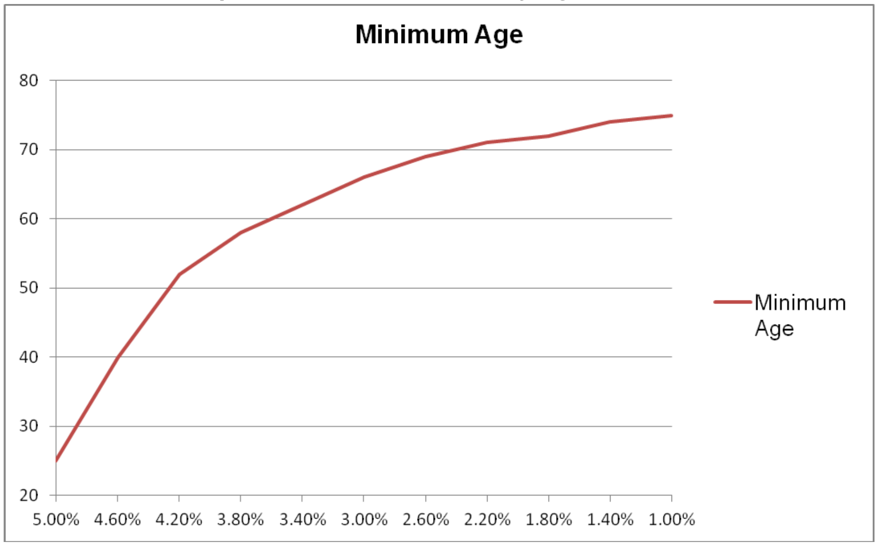
7520 Rate	Minimum Age of Beneficiary
1.0%	75
1.4%	74
1.8%	72
2.2%	71
2.6%	69
3.0%	66
3.4%	62
3.8%	58
4.2%	52
4.6%	40
5.0%	25*

* At a 5% payout and a 5% growth rate, there is no chance of exhaustion; however, the remainder values for ages less than 25 are less than 10%, so 25 is the minimum age under all three of the tests at a 7520 rate of 5.0%.

A graph of the above table is shown below and demonstrates the severity of the effects where the 7520 rate drops below 5%. Note the steepness of the curve.

[4] The calculations for determining whether the CRATs analyzed in this paper meet the requirements assume a single beneficiary receiving an annuity payment that is distributed once per year at the end of the year for the life of the beneficiary.

Chart 1 CRAT - Required Minimum Beneficiary Age (Current Law)



CRUT – Required Minimum Age of Beneficiary[5]

The analysis for a CRUT to be qualified under Section 664 includes only the 5% minimum payout requirement and the 10% remainder requirement since there is no chance of exhaustion for a unitrust. The minimum required age of a beneficiary under a CRUT is therefore much lower than for a CRAT at the same 7520 rate because the exhaustion probability requirement is what restricts most CRATs for younger beneficiaries while the remainder test is the only limit for similar CRUTs.

The following table shows the minimum required age of a beneficiary for various 7520 rates in order for a CRUT to qualify under the 5% minimum payout rate and 10% remainder requirements:

Table 2 CRUT - Required Minimum Beneficiary Age (Current Law)

7520 Rate	Minimum Age of Beneficiary
1.0%	27
1.4%	27
1.8%	27
2.2%	27
2.6%	27
3.0%	27
3.4%	27
3.8%	27
4.2%	27
4.6%	26
5.0%	26

[5] The calculations for determining whether the CRUTs analyzed in this paper meet the requirements assume a single beneficiary receiving quarterly unitrust payments for life based on the trust's fair market value as determined 3 months prior to each payout.

Proposal

The College proposes a simple change to the qualification rules for CRTs in order to eliminate the difficulty of passing the exhaustion test for most beneficiaries. The proposal is to change Section 664 to require a minimum annual CRT payout equal to the lesser of (i) the 7520 rate used to value the remainder interest and (ii) 5%. This would allow a Grantor to create a trust for a younger income beneficiary at a much reduced payout rate that would still enable the trust to meet the 10% remainder interest requirement and, in the case of a CRAT, the 5% exhaustion requirement.

A. Proposed Amendment to Sections 664(d)(1)(A) and 664(d)(2)(A)

Sections 664(d)(1)(A) and 664(d)(2)(A) would be amended to read as follows (new material is underscored):

Sec. 664(d) DEFINITIONS.

(1) CHARITABLE REMAINDER ANNUITY TRUST. For purposes of this section, a charitable remainder annuity trust is a trust--

> (A) from which a sum certain (which is not less than <u>the lesser of (i) the percent equal to the rate under section 7520 used to value the remainder interest in the trust and (ii)</u> 5 percent<u>,</u> nor more than 50 percent<u>,</u> of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(2) CHARITABLE REMAINDER UNITRUST. For purposes of this section, a charitable remainder unitrust is a trust—

> (A) from which a fixed percentage (which is not less than <u>the lesser of (i) the rate under section 7520 used to value the remainder interest in the trust and (ii)</u> 5 percent<u>,</u> nor more than 50 percent)<u>,</u>of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

B. Proposed Amendment to Section 664(e)

Section 664(e) would be amended to read as follows (new material is underscored):

Sec. 664(e) VALUATION FOR PURPOSES OF CHARITABLE CONTRIBUTION.

> For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to <u>the lesser of (i) the percent equal to the rate under section 7520 used to value the remainder interest in the trust and (ii)</u> 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.

Conclusion

The data and analysis provided above confirms the severity of the current regulations relating to qualification requirements for CRATs in low interest rate environments. The College believes that Congress did not intend such a result. Congress indicated that the 5% distribution requirement was to prevent charitable remainder trusts from being used to circumvent the current income distribution requirements imposed on private foundations[6]. A NICRUT or NIMCRUT avoids the 5% requirement but has Congressional approval (Section 664(d)(3)) because Congress believed that it would "adequately protect against abuse" to require a CRUT "to distribute currently at least the amount of its income … if this is less than a 5 percent payout."[7] The proposed statute requires a reasonable payout requirement and in that way also addresses the Congressional concern about abuse. As a consequence, it seems appropriate to have the Code amended so that the minimum payout from a charitable remainder trust must be at least the lesser of 5 percent (the current minimum required payout) or the applicable 7520 rate.

[6] *See* S. Rept. 91-552 (1969), 1969-3 C.B. 423, 481.

[7] Staff of the Joint Comm. on Int. Rev. Taxation, General Explanation of the Tax Reform Act of 1969 (JCS-16-70) at 85 (1970) While the Senate bill did not amend the 5% distribution requirement proposed in the House bill, it did include a net income provision that allowed both CRUTs and CRATs to pay out the lesser of the annual trust income and 5%. S Rept. 91-552 (1969), at 89. The Conference Committee amended the Senate proposal to allow only for Net Income CRUTs and not CRATs.

APPENDIX

Impact of Proposed Amendment

The following analysis shows the impact of amending the CRT rules for both CRATs and CRUTs to allow for a minimum payout equal to the lesser of 5% and the 7520 rate.

CRAT – Required Minimum Age of Beneficiary

The following table and chart show the minimum required age of a beneficiary for various 7520 rates in order for a CRAT to qualify under the 10% remainder interest requirement where the payout rate is set at the lesser of the 7520 rate and 5%:

Table 3 CRAT - Required Minimum Beneficiary Age (ACTEC Proposal)

7520 Rate	Minimum Age of Beneficiary
1.0%	1
1.4%	1
1.8%	1
2.2%	1
2.6%	1
3.0%	1
3.4%	4
3.8%	11
4.2%	16
4.6%	21
5.0%	25

Unlike the table for a CRAT under the current rules, the minimum age for 7520 rates under 5% actually decreases as the rate decreases. The minimum age for 7520 rates above 5% is the same under the ACTEC Proposal as the current rules, since the minimum rate would be 5% and the maximum rate would be 50%, which is unchanged.

CRAT – Maximum Payout Allowed For Various Ages of Beneficiaries

Since some grantors desire to maximize the benefit to the current income beneficiaries by allocating the highest annuity payout possible, an important consideration in potentially changing the Section 664 minimum payout requirement is analyzing the effect such change might have on the payout terms of CRATs. The following chart shows the highest payout percent for a beneficiary of a given age at a variety of 7520 rates under the Proposal. The payout percentages listed meet both the 10% remainder interest requirement and the 5% maximum exhaustion probability requirement (except where noted).

Table 4 CRAT – Maximum Allowable Payout for Qualified CRAT (ACTEC Proposal)

Age of Beneficiary	1% 7520 Rate	2% 7520 Rate	3% 7520 Rate	4% 7520 Rate	5% 7520 Rate
20	1.88%	2.57%	3.35%	4.12%	4.90%
25	1.97%	2.64%	3.41%	4.23%	5.00%
30	2.07%	2.74%	3.49%	4.32%	5.13%
35	2.19%	2.85%	3.59%	4.40%	5.26%
40	2.34%	2.98%	3.70%	4.50%	5.34%
45	2.51%	3.14%	3.85%	4.62%	5.45%
50	2.72%	3.34%	4.03%	4.78%	5.59%
55	2.98%	3.59%	4.27%	5.00%	5.78%
60	3.32%	3.92%	4.58%	5.28%	6.04%
65	3.76%	4.35%	4.99%	5.68%	6.41%
70	4.24%	4.82%	5.45%	6.12%	6.82%
75	5.08%	5.66%	6.27%	6.91%	7.59%
80	6.09%	6.67%	7.27%	7.89%	8.55%

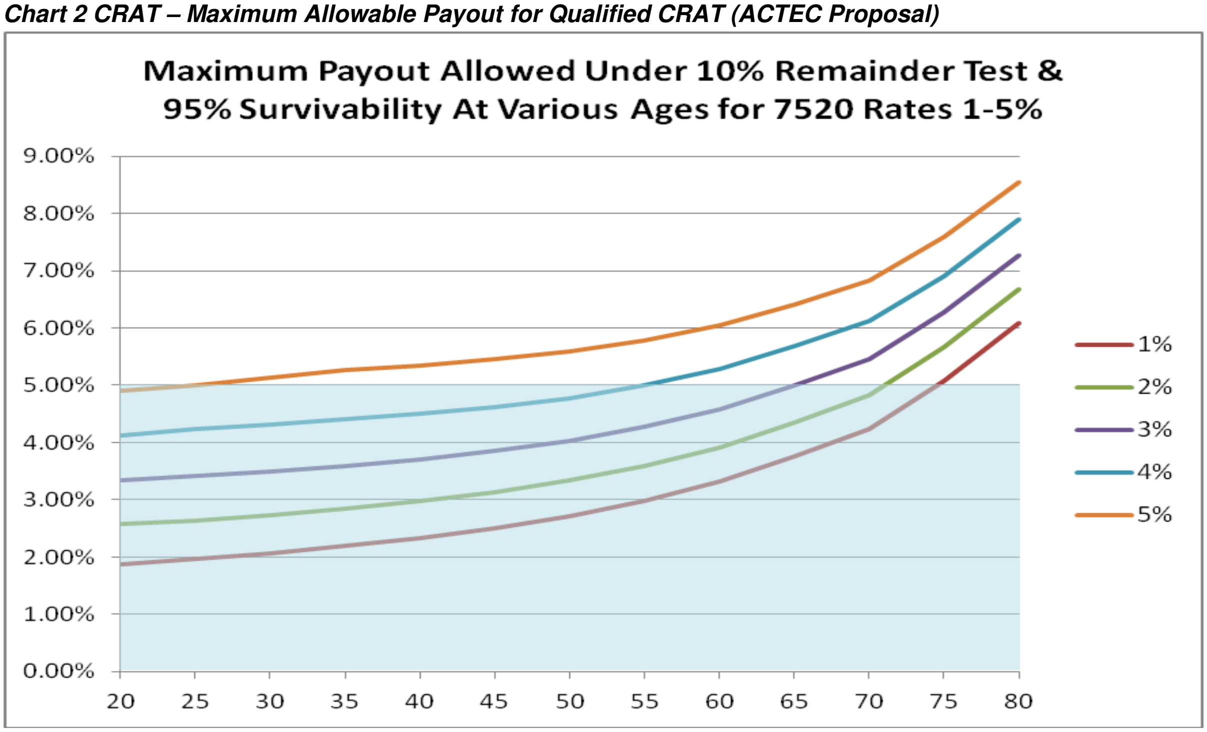
Grey shading denotes the minimum payout of 5% still does not meet the 10% remainder test and so such a CRAT would not be qualified.

Red font denotes a higher payout was allowed under the 5% survivability test, but not under the 10% remainder test

Yellow highlighting indicates CRATs that would qualify under the current 5% minimum payout requirement.

The following chart shows the same data as the above table. The upper portion of the graph shows those combinations of ages and 7520 rates that would qualify under the current regulations and under the proposed ACTEC changes. The shaded area of the graph shows those combinations of beneficiary ages and 7520 rates that would also meet the qualification requirements under the ACTEC Proposal:

Chart 2 CRAT – Maximum Allowable Payout for Qualified CRAT (ACTEC Proposal)



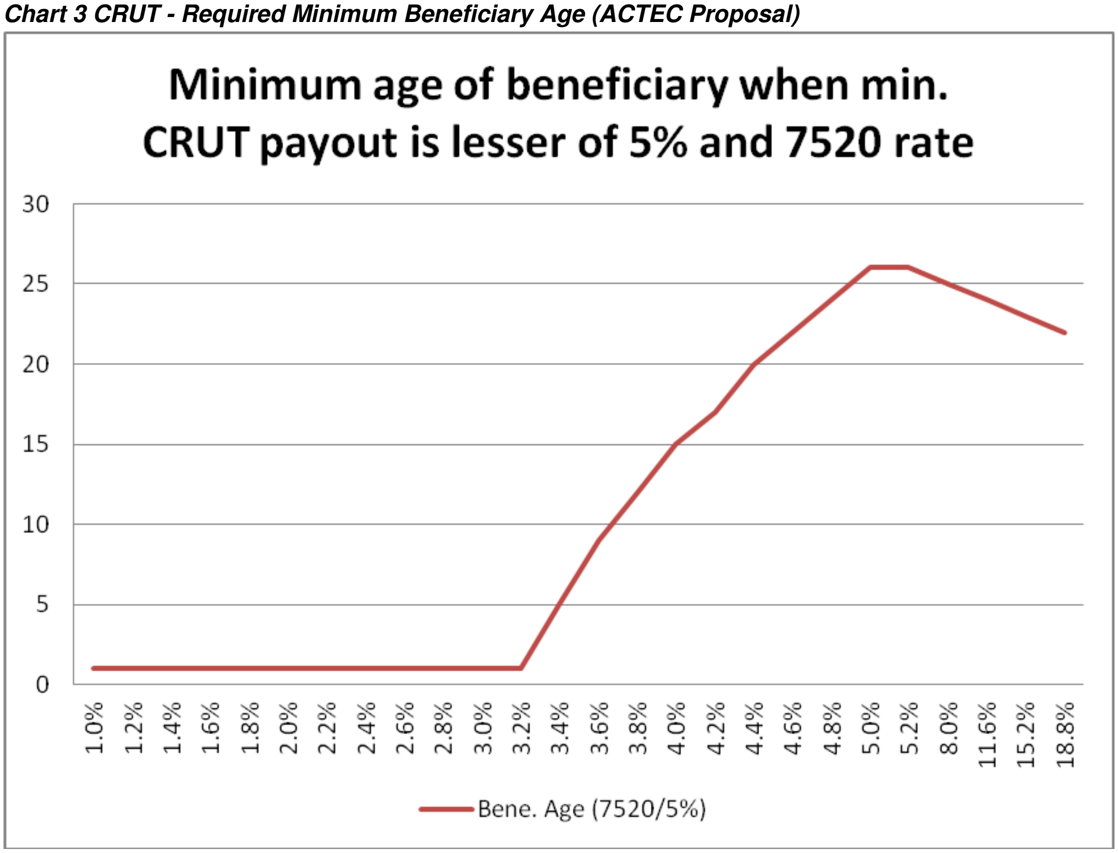
CRUT – Required Minimum Age of Beneficiary

A qualified CRUT that has a required minimum annuity payout of the lesser of the 7520 rate and 5% must still meet the 10% remainder interest rule. The following table and chart show the minimum required age of a beneficiary for various 7520 rates in order for a CRUT to qualify under the 10% remainder interest requirement where the payout rate is set at the lesser of the 7520 rate and 5%:

Table 5 CRUT - Required Minimum Beneficiary Age (ACTEC Proposal)

7520 Rate	Minimum Age of Beneficiary
1.0%	1
1.4%	1
1.8%	1
2.2%	1
2.6%	1
3.0%	1
3.4%	5
3.8%	12
4.2%	17
4.6%	22
5.0%	26

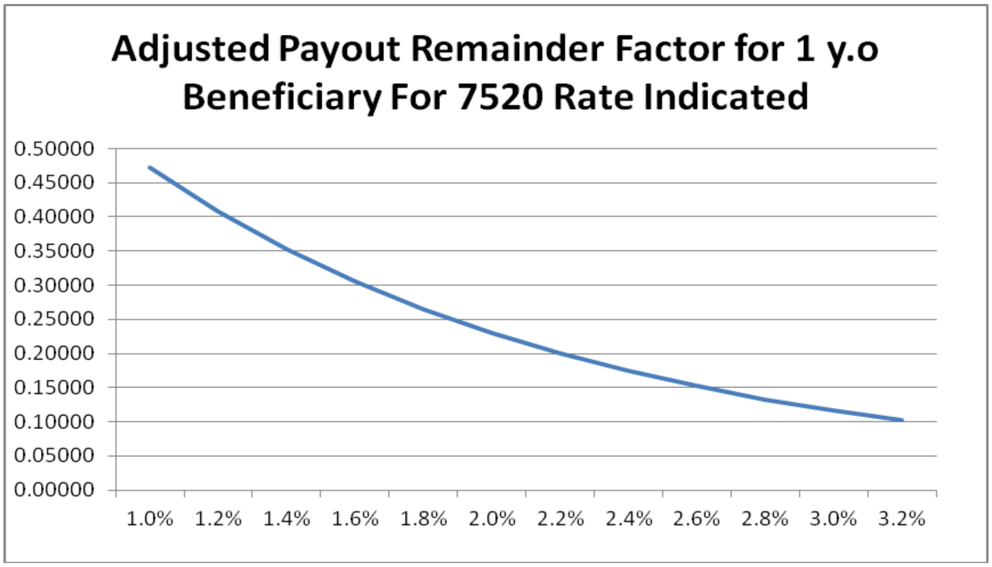
Chart 3 CRUT - Required Minimum Beneficiary Age (ACTEC Proposal)



The results are nearly identical to the CRAT results under the Proposal, with all CRUTs passing the 10% remainder value for 7520 rates less than 3.4% and then an increasing minimum age as the 7520 rate approaches 5.0% due to the fact that the net present value of the remainder values decrease as the discount rate increases. The following chart graphs the net present value of the remainder interest for a

CRUT which pays out the lesser of the 7520 rate and five percent based on various 7520 rates for a beneficiary who is 1 year old. The values for 7520 rates 1.0% to 3.2% are graphed. For 7520 rates greater than 3.2%, the remainder value is less than 10%.

Chart 4 CRUT – Net Present Value of Remainder Interest of CRUT with a One Year Old Beneficiary



The Exhaustion Calculation

All CRATs must be tested to determine the probability that the trust assets will be exhausted before the income beneficiary dies. A qualified CRAT must have an exhaustion probability less than 5%. Revenue Ruling 77-374 provides the method for calculating the probability of exhaustion. The calculation is only necessary for CRATs where the adjusted payout rate (which is equal to the annual payout rate adjusted for the frequency of payments) is greater than the 7520 rate. The calculation is conducted as follows:

1) The trust assets are calculated on a year by year basis to determine the end of year balance, assuming that the trust assets grow by the 7520 rate during the year and the annuity payment is taken out at the end of every year. Since the adjusted annual payout rate is greater than the rate of growth during the year, the trust assets will decrease each year. The above calculation determines the year in which the trust assets decrease to zero.

2) A calculation is made using the mortality table to determine the probability of the beneficiary living at least until the year after exhaustion determined in step 1. The mortality tables provide the number of people who live to a given age out of 100,000 (represented by the symbol l_x) and the probability that a beneficiary age x will survive for at least t more years is calculated using the following equation:

$$ {}_tp_x = \frac{l_{x+t}}{l_x} \, . $$

Example

A CRAT is created and funded on 1/1/2014 with $1,000,000 by Grantor aged 73 who is also the income beneficiary. The CRAT will pay to the Grantor an annuity amount of 6.5% per year ($65,000) for his life. Assuming the 7520 rate is 4.0%, the following table shows the Step 1 calculation:

	Beginning balance	Growth	Payment
2014	$	$ 40,000.00	$65,000.00
2015	$	$ 39,000.00	$65,000.00
2016	$	$ 37,960.00	$65,000.00
2017	$	$ 36,878.40	$65,000.00
2018	$	$ 35,753.54	$65,000.00
2019	$	$ 34,583.68	$65,000.00
2020	$	$ 33,367.02	$65,000.00
2021	$	$ 32,101.71	$65,000.00
2022	$	$ 30,785.77	$65,000.00
2023	$	$ 29,417.20	$65,000.00
2024	$	$ 27,993.89	$65,000.00
2025	$	$ 26,513.65	$65,000.00
2026	$	$ 24,974.19	$65,000.00
2027	$	$ 23,373.16	$65,000.00
2028	$	$ 21,708.09	$65,000.00
2029	$	$ 19,976.41	$65,000.00
2030	$	$ 18,175.47	$65,000.00
2031	$	$ 16,302.49	$65,000.00
2032	$	$ 14,354.59	$65,000.00
2033	$	$ 12,328.77	$65,000.00
2034	$	$ 10,221.92	$65,000.00
2035	$	$ 8,030.80	$65,000.00
2036	$	$ 5,752.03	$65,000.00
2037	$ 84,552.79	$ 3,382.11	$65,000.00
2038	$ 22,934.90	$ 917.40	$23,852.29

Step 1 shows us that the CRAT will be exhausted with the 2038 annuity payment, so we must calculate the probability of the grantor outliving the trust until at least 2039. The mortality table (Table 2000CM) provided by the IRS gives us the following values for l_x and l_{x+t}:

l_x (where x is 73, the Grantors age in 2014) = 69056

l_{x+t} (where x+t is 98, the Grantors age in 2039) = 2959

Using the numbers from the mortality table, we can calculate the probability of the Grantor living until 2039 as follows:

$${}_tp_x = \frac{l_{x+t}}{l_x} \quad \Longrightarrow$$

Probability of living to *x+t* = 2959/69056 = .04285

The Grantor has only a 4.285% probability of outliving the trust funds so the CRAT passes the 5% maximum exhaustion probability test.