

THE CHARITABLE REMAINDER TRUST

**An Effective Tax and Financial Structure
for Business, Investment, Estate, and Charitable Planning**

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I. GENERAL CONCEPTS

- A. Introduction: (1) the Charitable Remainder Trust ("CRT") is presented as one technique for effective tax and financial planning; (2) only the "bare bone" basics are set forth but should be sufficient for knowledgeable introducing the usefulness of the technique to a client as an alternative for various client needs (see next paragraphs for benefits); (3) the technique would be planned in detail and implemented in a "team" approach (involving the broker/financial advisor, a knowledgeable accountant and attorney, an insurance advisor (if indicated, as part of the transaction), and perhaps a representative of a charitable organization; (4) note that the investment returns and tax rates herein are only "hypothetical" and "illustrative".
- B. Many different types of valuable assets may be sold through a CRT to provide income for life (or, if desired, for a term-of-years period of up to 20 years) to the donors or to the person the donors designate. Later, when the trust terminates, the trust assets will benefit the donors' favorite charity or charities.
- C. Generally, the sale of valuable assets through a CRT will avoid an immediate capital gain tax on any appreciation, may significantly reduce or avoid estate taxes, and will eliminate the need to probate assets placed in the CRT.
- D. The transfer of assets to a CRT can be partially deductible for income tax purposes.
- E. Sale of valuable assets through a CRT can be more beneficial than either keeping the assets or transferring them in a taxable sale. The CRT enables an individual to be philanthropic while also meeting his or her own retirement or other needs with inflation-sensitive income payments.
- F. Through the use of a life insurance trust, many CRT donors choose to use some of the tax savings and cash flow from the CRT to pay premiums on a life insurance policy to replace the CRT assets which will ultimately be transferred to a charity or charities. The life insurance proceeds in a properly structured life insurance trust will be payable to family and heirs and will be exempt from any income tax and estate tax.
- G. A CRT can be an effective technique to transfer ownership and/or control of a family business to children.
- H. CRTs may allow donors to diversify assets initially tax-free while protecting them from creditors.
- I. S Corporation stock may be owned by a CRT but the S election will thereupon terminate; Partnership and LLC interests owned by a CRT may be problematic.

II. BASIC ISSUES

- A. Capital gains tax may be initially avoided when an asset is transferred to and later sold by the trustee of the CRT. The transferred asset may also avoid federal estate and gift taxation if either the donor, donor's spouse, or the donor and donor's spouse, are the only designated income beneficiaries of the CRT.
- B. There are basically four types of CRTs:
1. A Charitable Remainder Annuity Trust ("CRAT") provides for income payments of a fixed amount, which may be stated as a percentage of the initial market value of trust assets. For example, assume that the initial amount in the CRAT is \$100,000 and the income payment is to be 7.5%: the donors will receive \$7,500 each year for the rest of their lives, and during the lifetime of the survivor of them, no matter what the investment performance of the \$100,000 may be. This form of CRT provides for a fixed return to the donors no matter what the future market conditions for the CRAT's invested assets may be. The donors are protected in the event of a decline in value of the CRAT, but note that the donors will not receive any increase in their income payments if the value of the CRAT assets appreciate in the future.
 2. A Charitable Remainder Unitrust ("CRUT") provides for income payments of a fixed amount, stated as a percentage of the annual market value of the trust assets. For example, if the donors choose this form of CRT, and they select an income payment rate of 7.5% of the annual value of the assets, their income will increase or decrease depending on the annual valuation of the CRUT assets. If the donors initially contributed, in the first year, \$500,000 of assets, they could receive in that first year as much as \$37,500 of income payments. However, assume that despite the income payments, the value of the assets rises to \$550,000 in the second year. The donors would then be entitled to \$41,250 of income payments. Of course, if the assets decline in value, the donors will receive less: for instance, if the assets declined to \$450,000 in value in the third year, the donors would be entitled only to \$33,750 in income payments.
 3. A "net income" CRUT pays income beneficiaries only the income actually realized by the CRUT (and not a fixed percentage of the CRUT's annual value). For example, the assets of the CRUT are invested fixed income securities with a value of \$250,000 and fixed income payments of \$17,500 per year are received by the CRUT. The donors will receive that amount as their payments. If the capital value of the CRUT assets increase to, say \$300,000, but the income payments remain the same, the donors will only receive the same income payment (\$17,500). Unless the income payment changes for the CRUT, the increase in the capital value of the CRUT's assets will benefit only the charity or the charities later on. Of course, if the income payments decline for some reason, the donors will receive less. Sometimes, this result can be good planning. For example, if the donors do not need any income payments currently, they may invest the CRUT assets in high-growth stocks, which pay no dividends, and, therefore, the donors will receive no current income and will postpone income payments until a later date when they sell the high-growth stocks and might be able to invest in a higher level of income producing stocks and/or bonds.

4. A "Net Income with Makeup" CRUT ("NIMCRUT") can make up any income payment deficits from excess income earned in subsequent years. This is a relatively complicated form of CRUT, but it can have important advantages. For example, assume that the donors transfer \$500,000 worth of assets to this type of CRUT, and they state that they are to receive the lesser of 10% of the value of the assets determined annually or the actual net income of the NIMCRUT. They also provide that if the actual income in any one year from the NIMCRUT is below the 10% annual value amount, then in any later year if the actual income of the NIMCRUT goes above the 10% annual value amount, the donors can receive that excess annual income to make up for what they did not receive in earlier years. For instance, in the first year of the NIMCRUT, the donors are entitled to \$50,000 of payments (10% of the value of the NIMCRUT assets which is \$500,000), but the actual income of the NIMCRUT is \$35,000. The donors will receive only the \$35,000 and they will have a \$15,000 potential make-up deficit. In the following year the annual value of the NIMCRUT assets remains at \$500,000, but the actual income of the NIMCRUT rises to \$70,000. The donors would be entitled to total payments from the NIMCRUT of \$65,000 (10% of the annual value of the NIMCRUT of \$500,000 plus an additional amount to make up for the \$15,000 not received in the preceding year). This form of CRUT provides significant flexibility in planning for income payments to the donors.
- C. Payments to income beneficiaries are generally taxable. In general, the CRT agreement must state that the minimum payout, based on the value of the CRT assets, is 5 percent, at least annually. However, this required percentage is subject to adjustment by the donors. Payments may be set for life, or "a term of years" not to exceed 20 years.
- D. A CRAT does not qualify if the annuity amount for a year is greater than 50% of the initial fair market value of the trust's assets. A CRUT does not qualify if the percentage of assets that are required to be distributed at least annually is greater than 50%. A trust does not qualify as a CRAT unless the value of the charitable remainder with respect to any transfer to the trust is at least 10% of the initial fair market value of all property transferred to the trust. A trust does not qualify as a CRUT unless the value of the charitable remainder with respect to each transfer to the trust is at least 10% of the net fair market value of the property transferred to the trust. In the latter instance, the 10% test is measured on each transfer to the CRUT, and, consequently, a CRUT that meets the 10% test on the date of transfer will not later fail to meet that test if interest rates have declined between the trust's creation and the death of the measuring life.

III. INCOME TAXATION ISSUES

- A. Payments from the CRT to income beneficiaries are taxed on the basis of IRS rules that trust funds are deemed to be distributed by the CRT in accordance with the following tiered order of distribution:
1. first from the CRT's ordinary income;
 2. then from the CRT's capital gain;
 3. then from the CRT's other income (such as tax-exempt income); and
 4. lastly, as a distribution of the CRT's principal.
- B. Under the above "four-tier system," when capital gain tax is avoided on the sale of an asset through a CRT and the proceeds are invested in tax-exempt bonds, the capital gain is deemed to be distributed prior to any distribution of tax-free income.
- C. Typically, the donor is entitled to an income tax charitable deduction in the year assets are transferred to the trust, plus up to 5 carryover years. However, the deduction for a transfer to a CRT of personal property (for example, art) is postponed until the termination of the interest of the donor or the donor's designated income beneficiary in the personal property. "Termination of interest" can mean the sale of the property by the trust.
- D. The income tax charitable deduction equals the present value of the remainder interest the charity is expected to receive in the future, based on the following three factors: the IRS longevity tables, the amount the donors will receive from the CRT each year, and a floating monthly interest rate.
- E. The income tax charitable deduction is reduced to the extent of any income that would have been recaptured had the asset been sold rather than contributed to the trust. This rule applies to depreciable real property (to the extent the depreciation taken exceeds "straight line"), depreciable personal property, inventory, accounts receivable, trade or business notes, short-term capital gain property, certain copyrights, and other types of "ordinary income property."

IV. OTHER BASIC MATTERS

- A. The charitable value of a CRT must be at least ten percent (10%) of the value of the property contributed to the trust and the maximum payout percentage cannot exceed 50% of the trust's fair market value.
- B. The transfer of mortgaged property or other encumbered property to a CRT is generally inadvisable due to several potentially adverse tax consequences including disqualification of the trust. It should not be done without a careful and thorough analysis.
- C. In an annuity trust (CRAT), no further contributions may be made to the CRAT. In a unitrust (CRUT), additional contributions may be made by the donor or others to the CRUT.
- D. The named charitable remainder beneficiary or beneficiaries may be changed to another charity if the trust document reserves that right for the donors or the donors' designate.
- E. In many cases, the donor may serve as trustee or choose to appoint (and remove) a corporate or individual trustee. Certain transactions between the donor and the trustee, or the trustee and certain family members, family corporations, and partnerships are prohibited as "self-dealing."
- F. No binding obligation to sell an asset transferred to a CRT may be in effect prior to the transfer of the asset; all such binding agreements must be entered into by the CRT after receipt of the asset. If an agreement committing the CRT to sell the asset after its receipt by the CRT, the sale will be taxed to the donor of the asset.
- G. Note that the stream of income interest of a CRT may be able to be sold and the proceeds could be used to provide a lump sum which could (a) convert long-term and uncertain payments into immediate and certain cash, (b) provide a better yield return, and/or (c) provide liquidity in the event of business reversals, divorce, investment losses, and other financial distress.
- H. The suggested minimum asset fair market value for establishing a unitrust is \$100,000 (to justify the donors' start-up costs for legal and accounting fees). A lower minimum may be considered if the donor anticipates making future contributions to the trust.

V. CHARITABLE REMAINDER TRUST CASE ILLUSTRATIONS

- A. **Sale of Appreciated Stock, With Use of Life Insurance.** Mark and Kathy Parker, both age 67, have been retired for two years. They are living comfortably now but are concerned that future inflation will reduce the purchasing power of their retirement income. Also of concern is the lack of any extra income they could use to take more trips away from home. Finally, the preservation of existing capital to provide an inheritance for their children and grandchildren is an important priority.

The majority of their wealth is invested in the stock of the public corporation from which Mark retired. Mark's initial \$100,000 investment in his former employer is now worth \$1 million. Though the stock has appreciated steadily over the years, its dividend yield has never exceeded 3 percent. Mark would like to sell some of this stock to diversify their portfolio and purchase investments that will produce more income. However, the capital gain tax consequences have discouraged him from doing so. After taxes, only \$748,000 of the \$1 million would be available for reinvestment if he were to sell it all.

Mark and Kathy have been active for years in several charitable organizations, having served both as volunteers and board members. They give as generously as they feel they can, but personal and family financial needs prevent them from giving as much as they would like.

1. The Objective. Their financial objectives are to:

- a. Increase their retirement income without incurring capital gain tax.
- b. Reduce current income tax.
- c. Diversify their assets.
- d. Maximize the value of their estate for their heirs.
- e. Leave a significant charitable gift, if possible, instead of paying higher estate tax.

After consulting with a professional advisor knowledgeable about CRTs, they learned about the tax, cash flow and philanthropic advantages of contributing their highly appreciated stock to a CRT, or CRT, versus selling it outright. They finally decided to contribute one-half of their stock to a CRT from which the stock could be sold and the proceeds reinvested to produce increased income and other important benefits.

2. The Plan. The Parkers next assembled a charitable trust design and implementation team to help them create the trust. Team members included their financial advisor, estate planning attorney, CPA, and the gift development director from a charity on whose board Kathy serves. Working together, the team developed this plan:
- a. The Parkers would transfer \$500,000 of stock to a CRT and receive a current income tax charitable deduction of \$126,000. This deduction would release additional cash over the next several years to help finance a “wealth replacement” component of the plan (described in step 3).
 - b. The CRT would then sell the stock free of capital gain tax and reinvest the proceeds in a diversified portfolio of higher-yielding investments. An 8 percent CRT, skillfully invested, should generate an increasing annual cash flow to the Parkers. No less than \$40,000 per year was anticipated for as long as they live.
 - c. In each of the next nine years, about \$9,000 of the approximate \$40,000 CRT distribution would be contributed to a “wealth replacement” trust to purchase a \$250,000 life insurance policy for the benefit of the children and grandchildren.
 - d. When the surviving spouse died, the children and grandchildren would receive \$250,000 from the wealth replacement trust, free of any federal income or estate taxes. At that time, the charities designated in the CRT would receive a gift of about \$500,000.

Mark and Kathy decided to implement the plan. Mark was named as the trustee of the CRT so he could control trust investment policy and administrative matters. He hired a financial advisor who understood how best to invest CRT assets for growth and income and a knowledgeable third-party administrator to help him with all trust record-keeping and distributions.

What started as a quest to diversify a portfolio, increase disposable income and avoid capital gain taxes became a source of enjoyment and benefit for the Parkers, their heirs, and their community.

3. The Parkers Use a CRT to Get Five for One. The CRT the Parkers established, coupled with a life insurance trust, enabled them to achieve five important objectives:
- a. Increase retirement income without incurring capital gain tax.
 - b. Reduce current income tax.
 - c. Diversify their assets.
 - d. Increase the value of the assets for their heirs.
 - e. Leave a significant charitable gift instead of paying capital gain and estate tax.

- B. **Sale of Appreciated Stock, With Use of Life Insurance and Annuity Planning.** As part of the immediate sale of the family business by the family members, Jennifer decides to sell her 51% stock interest in the family corporation to ABC Co. for \$15 million in an all cash deal. Based on financial and tax advice, ten days prior to signing the agreement for the sale Jennifer transfers 1/3 of her stock to a NIMCRUT. The cost basis of the stock is \$250,000. At the closing of the overall stock sale, the NIMCRUT sells its \$5 million share of stock without any capital gain tax. Jennifer receives an income tax charitable deduction of \$400,000, which contributes to the initial funding for a premium payment on a \$7 million life insurance policy (for the benefit of her children) to replace the \$5 million (plus any hypothetical future appreciation of the \$5 million) transferred to the NIMCRUT. In addition, when the \$5 million cash proceeds of the stock sale are received, the NIMCRUT immediately invests in a \$5 million deferred annuity, so that neither the NIMCRUT nor Jennifer receives any current taxable income from the investment. (Jennifer doesn't need it because of her investment income from the \$10 million stock sale she personally receives.) At a date of her choosing in the future, she can call upon the built-up income in the annuity to be distributed to her (on a tax-favorable basis) for the purchase of a vacation cottage in Santa Cruz, California. Jennifer is at all times the Trustee of the NIMCRUT and makes all decisions on Trust investments. However, a friendly "independent" Trustee, selected by her investment banker, necessarily must make any decisions related to the distributions of annuity income.

The investment banker has helped to (a) structure the sale of the stock, (b) obtain the life insurance policy, (c) procure the deferred annuity, and (d) assisted with future NIMCRUT decision-making. The investment banker will be entitled to fees and other compensation for these services, all of which have significantly benefitted Jennifer.

VI. MORE ON NIMCRUTs

- A. **Deferral of Income.** As indicated in the Basic Issues section, above, a form of the CRUT can be used where the income beneficiary receives the lesser of the fixed percentage of the value of the trust assets as valued each year or the actual income of the trust. However, in any year when the income is below the fixed percentage, the trust in a later year can make up any income payment deficits from excess income (in excess of the fixed percentage then payable to the beneficiary) earned in subsequent years. This form of CRUT is called the NIMCRUT.

For example, Mrs. Jones has substantial income from compensation. She expects to retire in five years, whereupon her income will drop and she anticipates being taxed at a lower tax bracket. Mrs. Jones establishes a NIMCRUT and funds it with \$1 million invested in non-dividend-paying growth stocks. The fixed percentage payable to Mrs. Jones is set at 5%. After year five, Mrs. Jones retires. The stock portfolio has appreciated to \$1.5 million, is liquidated, and invested in high-yielding bond instruments. These bonds produce a return of 8% or \$120,000. Mrs. Jones would be entitled to 5% of the \$1.5 million asset value based on her entitlement to a 5% fixed percentage, or \$75,000. However, as a result of the makeup provision, she can be paid additional amounts in each of the remaining years of the trust to makeup for the short fall in prior, pre-retirement years. Thus, if the short fall totals approximately \$300,000 (5 years of 5% times a portfolio value increasing from \$1 million to \$1.5 million), Mrs. Jones will be entitled to all of the income (\$120,000) from the NIMCRUT for a number of years to come.

One difficulty with this “retirement plan” approach is the assumption of lower tax rates on retirement. A client who might engage in such a sophisticated transaction could be likely to have substantial income at present, as well as in the future, even if her post retirement income is expected to be somewhat lower. In addition, future tax rates could increase. Furthermore, a practical difficulty with using the NIMCRUT as a retirement plan is that the trust’s investments must meet certain performance expectations, that is, increase in capital value and subsequently generate income.

The Internal Revenue Service has stated that it is studying whether investing assets of a NIMCRUT to take advantage of the timing difference on the receipt of income (particularly the timing difference between the receipt of trust accounting income and federal tax income with respect to annuities, discussed below) causes the trust to fail to qualify as a CRT. However, there have been no further pronouncements by the IRS in this regard and, given other remedial provisions affecting CRTs, the IRS may leave this particular issue alone.

- B. **Investment in Partnership Interests.** Investment by a NIMCRUT in partnership interests has been proposed because such an investment allows the partners in the partnership to time the distribution of trust accounting income from the partnership to the trust. Although this arrangement is a possibility, it must be very carefully structured to adhere to the rules prohibiting self-dealing in CRTs. The IRS has stated that it will not issue a ruling on whether a NIMCRUT which holds certain partnership interests will qualify as a CRT.

- C. **Investment in Growth Stocks.** In this arrangement, the NIMCRUT invests in growth stocks which, as indicated in the example above, do not produce any income until they are sold, then, at that point in time, the sale of the growth stocks produces capital gain which is allocated to income so as to increase the amount payable to the donor. The IRS has taken the position that it will not recognize an allocation of capital gain to income, because normally state law requires that capital gain is generally allocated to principal. However, the IRS also states that if state law allows a trustee, if so authorized by the trust instrument, discretion to allocate capital gain to income, then the allocation will be valid. Nevertheless, the IRS has issued a ruling that limited the allowance of capital gain as allocated to income to post-contribution gain.
- D. **Investment in Zero Coupon Bonds.** If the trust invests in zero coupon bonds during the donor's pre-retirement years, the bond accumulates interest tax-free (and the bond discount does not constitute trust accounting income until the bond matures, is redeemed, or is sold). When the bond matures after the donor has retired, the bond can then be used for the purpose of substantial distributions providing makeup deficit amounts.
- E. **Investment in Encumbered Property.** A transfer by a donor of property which is encumbered generally will create very substantial problems for a CRT, to the point of disqualifying the CRT. Thus, in general, an investment in encumbered property cannot be made by a CRT. Some have considered transferring to the CRT an option to acquire encumbered property (the option to be valued approximately at the net property value), so that the CRT has the right to purchase property which itself is subject to an encumbrance. The thought was that this arrangement would avoid the encumbrance rules. However, the IRS has taken the position that a transfer of an option to purchase encumbered property to a CRT will cause the trust to cease to qualify as a CRT. The ruling was based on the position of the IRS that a contribution of mortgaged property to a unitrust disqualified the trust as a CRUT where the donor was personally liable on the encumbrance. Transferring the property to a "C" corporation, which assumes the liability and the donor is released therefore, and then transferring the corporate stock to the CRT could work as another method for a CRT investing (indirectly) in encumbered property, but such a corporate arrangement brings with it several other potentially serious tax complications.
- F. **Investment in Annuities.** Generally, a deferred annuity earns money for a period of time and thereafter begins making payments to the annuitant. Assume a NIMCRUT invests in an annuity, and the trust agreement is drafted to state that the buildup of annuity income will be treated as trust accounting income only when the earnings are distributed from the annuity to the trust. The concept is that the trust does not have to distribute anything to the individual beneficiary until the trust actually receives a distribution from the annuity. When the beneficiary of the trust determines that he or she would like to receive income from the trust, the trustee would direct the annuity to pay built-up income to the trust, which, in turn, would pay the beneficiary. Thus, a deferral of income can take place and income distributions can be timed to satisfy the trust beneficiary's income needs.

Annuities may be a more certain form of a "growth" investment, as opposed to an investment in growth stock and may be preferred by the trust donor.

The IRS has stated that if a CRT agreement provides a definition of income which departs fundamentally from the requirements of state law as to what is income and what is principal, the trust provisions will be disregarded. However, there is virtually no specific authority in state law with respect to the characterization of increases in the value of an annuity contract.

Some commentators have been concerned that a NIMCRUT, where the trustee is the same person as the grantor and who has the power to invest in deferred annuities and the discretion to withdraw funds from them for purposes of generating net income to be distributed to the grantor as beneficiary, could result in the trust's disqualification as a qualified CRUT because it is a "grantor trust" or because of "self-dealing." These problems can be avoided through the use of an independent special trustee who would exercise the powers of investment and withdrawal. Generally, such an independent special trustee would be in place during the full time during which the trust is invested in a deferred annuity.

A further question has been raised as to whether the amount retained by an insurance company upon the expiration of the annuity contract could be considered an amount transferred by the trust to the insurance company for less than full and adequate consideration, which would disqualify the CRT. For example, this result could occur if the trust invested in an annuity contract with a "life-only" annuity option. In such event, the annuitant or the insurance company (in the case of the annuitant's early death) could receive a large sum and the charity would receive perhaps nothing. However, in such event, the charity could pursue remedies against the fiduciary who invested in such a contract. Moreover, the problem can be avoided by investing in an annuity product which could for example guarantee that the trust would receive at least the cost of the contract at the death of the annuitant.

The practical benefits of the investment in an annuity contract by a CRT (as opposed to a direct investment in an annuity contract by an individual) is that the investment provides the donor with an income tax charitable deduction on the establishment of the CRT, it allows the withdrawal of funds from the annuity contract before the donor reaches age 59½ without a 10% penalty, and it allows the deferral of income taxation on amounts which are withdrawn by the trustee from the annuity contract and are not immediately paid to the donor.

- G. **Investing in Insurance Contracts.** Another method for deferring income inside of a NIMCRUT is for the trustee of the NIMCRUT to purchase life insurance on the life of the donor, so that the inside build up of cash surrender value will not constitute trust accounting income. Withdrawal of the cash surrender value by the trustee and distributions thereof could be accomplished in later years when the donor needs such income.

VII. OTHER CRT PLANNING ITEMS

- A. **Life Insurance Trusts.** As with all CRTs, the donor or donors will consider the use of life insurance inside of an irrevocable life insurance trust to provide estate tax-free proceeds for the benefit of heirs, particularly children, in order to makeup for the principal amount of the CRT which ultimately will be transferred to the charities at the death of the beneficiary or beneficiaries of the annuity or unitrust amount. The amount of the life insurance should be calculated with a view toward the ultimate amount which will be transferred to the charities. If significant appreciation is anticipated, then the life insurance amount should be calculated based on that expectation.

Again, as with other CRTs, the income derived from the NIMCRUT can be used in part to pay the premiums for the life insurance inside of the life insurance trust, transforming the cash used to pay premiums from being subject to estate tax to estate tax-free amounts. In addition, the distributions from the CRT which are used, in part, to pay the premiums for the life insurance could be sheltered by the charitable income tax deduction to which the donor or the donors are entitled upon the establishment of the CRT.

For example, Mrs. Jones has a substantial taxable estate. She is not particularly charitably inclined. Her financial planner points out that with respect to \$1 million of her taxable estate, if she were to die, the estate tax would be \$550,000, and her children would receive \$450,000 net. The planner recommends that instead Mrs. Jones transfer \$1 million in property to the CRT, receive an income tax charitable deduction immediately, use distributions from the trust (sheltered in part by the income tax charitable deductions) to fund an irrevocable life insurance trust which purchases a \$1 million life insurance policy on Mrs. Jones. At her death, her children will receive the \$1 million estate tax-free.

- B. **Flip Unitrust.** A NIMCRUT can be established with contribution of property, and after the sale of the property, the NIMCRUT can flip to a straight CRT. This arrangement will qualify as a CRT if the following conditions are satisfied. First, the CRT trust must be a NIMCRUT until the earlier of the sale of specified unmarketable assets contributed at the time the trust was created or after the sale of a portion of unmarketable assets any remaining unmarketable assets total 50% or less of the fair market value of the trust's assets. Second, at least 90% of the fair market value of the assets held in the trust immediately after the contribution and before the flip must be assets other than cash, cash equivalents, or marketable securities. Third, the trust must switch exclusively to a fixed unitrust percentage for the purposes of calculating the remaining unitrust payments. Lastly, any makeup amount must be forfeited at the time of the flip.