



Charitable Remainder Trusts: The Basics and Beyond

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NATIONAL PROFESSIONAL ADVISOR NETWORK

**Jennifer Cayetano, Estate and
Gift Planning Director**

AMERICAN CANCER SOCIETY

Advisor Summary: <https://bit.ly/3fz0kzL>



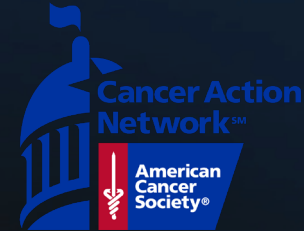
Attacking from every angle.®

cancer.org/NPAN

COVID-19

Cancer Resources

CANCER HASN'T STOPPED. *So Neither have we.*



With the spread of COVID-19, cancer patients are more vulnerable than ever. We need your support to keep vital patient and caregiver resources available during this difficult time. Here's what the American Cancer Society is doing right now to help:

RESEARCH



As always, our lifesaving cancer research continues, aiming to find more – and better – treatments, uncover factors that may cause cancer, and improve cancer patients' quality of life.

INFORMATION

We're continually sharing vital information and guidance to keep patients safe and informed.



Hub:
[Coronavirus, COVID-19, and Cancer](#)



Article:
["Common Questions about the Coronavirus Outbreak"](#)



Podcast:
[What Cancer Patients and Caregivers Need to Know About COVID-19](#)

PATIENT & FAMILY SERVICES

24/7 Cancer Helpline:
1-800-227-2345 and [Live Chat](#)
80% of calls in March were COVID-19 related

Reach To Recovery®
Peer-to-peer breast cancer support is still available, now 100% phone-based

Ongoing Support Groups
[Cancer Survivors Network™](#) and [Springboard Beyond Cancer](#)

Cancer.org
Comprehensive cancer information

Personal Health Manager
[Track diagnosis and treatment](#)

Tender Loving Care®
Help with appearance-related side effects

Caregiver Resources
[Caregiver Resource Guide](#) and [Caregiver Support Video Series](#)

Cancer Information Videos
[Prevention to treatment](#) and more

ADVOCACY

[ACS CAN](#) is working tirelessly to continue to advance the cancer-fighting mission through public policy during these trying times.



Online Days of Action:
Volunteers contacting legislators in support of state priorities



Stimulus Packages:
Ensuring the patient community and nonprofit sector are included (i.e., tax relief for charitable organizations)



Policy Provisions:
Critical funding for access to care, including funding for community health centers, increased federal Medicaid match to provide expanded health coverage for nation's most vulnerable, and guaranteed coverage for COVID-19 testing

cancer.org

1.800.227.2345

What is a Charitable Remainder Trust

- Split interest trust
 - Pays “income” beneficiary(ies) for lifetime(s) or term of up to 20 years
 - What’s remaining in trust at last of income beneficiaries to die or end of term goes to charity
- Key benefits
 - Defers capital gain on donated assets (primary motivator)
 - Consider impact of possible Biden proposal to tax capital gains at ordinary income rates
 - Generates an up-front income tax deduction
 - Consider impact of standard deduction
 - Often diversifies a concentrated position
 - Creates an “income” stream

Types of CRATs

- CRAT
 - Pays fixed dollar amount (as opposed to fixed percentage) each year
 - Consider current historically low interest rates
 - CRAT calculations using the current low Section 7520 rate of .6% will not work. The annuity would have to be so small to pass the 10% charitable remainder requirement that it would fail the 5% minimum annuity requirement!

Types of CRUTs

- Standard CRUT (“SCRUT”)
 - Pays fixed percentage each year, regardless of trust’s income
- Net Income CRUT (“NICRUT”)
 - A NIMCRUT with no “make-up” provision
- Net Income with Make-Up CRUT (“NIMCRUT”)
 - Pays lesser of trust’s accounting income and fixed percentage
 - Shortfalls can be paid out in future years, if earned
- Flip CRUT
 - Begins as a NIMCRUT and “flips” to Standard CRUT upon triggering event

Table 4. Charitable Remainder Unitrusts: Income and Deductions, by Size of End-of-Year Book Value of Total Assets, Filing Year 2012

[All figures are estimates based on samples—money amounts are in thousands of dollars]

Scroll over selected items below for brief definitions.

[Additional data information, including expanded definitions, is also available.](#)

Item	Total	Size of end-of-year book value of total assets				
		Under \$500,000 [1]	\$500,000 under \$1,000,000	\$1,000,000 under \$3,000,000	\$3,000,000 under \$10,000,000	\$10,000,000 or more
	(1)	(2)	(3)	(4)	(5)	(6)
Number of returns	91,250	65,444	13,587	9,012	2,532	675
Total net income (loss)	6,636,295	565,554	498,741	815,691	729,685	4,026,624
Net ordinary income	2,847,252	234,370	183,104	335,468	295,830	1,798,480
Total ordinary income	3,782,748	348,977	252,850	438,862	370,356	2,371,703
Interest income	591,007	51,492	47,809	88,213	70,959	332,534
Ordinary dividends and business income (loss)	1,489,880	259,749	186,733	290,994	258,588	493,816
Rents, royalties, partnerships, other estates and trusts, etc.	314,574	11,903	4,293	21,971	17,973	258,435
Farm income (loss)	* 167	0	* 28	0	* 139	0
Ordinary gain (loss)	10,014	9,183	152	331	526	-178
Other income (loss)	1,377,105	16,650	13,835	37,352	22,172	1,287,097
Deductions allocable to ordinary income	935,495	114,607	69,745	103,394	74,526	573,223
Net capital gains (losses)	3,702,473	318,105	304,183	456,154	416,692	2,207,339
Total capital gains (losses)	4,331,806	334,380	316,780	470,206	427,150	2,783,291
Total short-term capital gains (losses)	-530,830	-22,434	-7,697	-9,819	-23,010	-467,871
Total long-term capital gains (losses)	4,862,637	356,814	324,476	480,024	450,160	3,251,162
Deductions allocable to capital gains (losses)	629,333	16,274	12,596	14,052	10,458	575,952
Net nontaxable income	86,569	13,079	11,453	24,070	17,163	20,805
Total nontaxable income	105,270	15,897	14,092	30,345	21,593	23,343
Tax-exempt interest	93,141	10,284	12,827	27,949	21,241	20,840
Other nontaxable income	12,129	5,613	1,266	2,396	351	2,503
Deductions allocable to nontaxable income	18,700	2,818	2,639	6,275	4,429	2,538
Total deductions [2]	1,584,820	134,367	85,015	124,109	89,602	1,151,727
Interest	376,258	564	228	1,407	1,685	372,374
Taxes	9,534	1,696	568	2,316	1,574	3,380
Trustee fee	199,315	58,891	41,826	51,796	28,715	18,088
Attorney, accountant, and return preparer fees	61,706	27,203	9,871	11,048	7,260	6,324
Other allowable deductions	938,008	46,013	32,522	57,543	50,368	751,561

* Estimate should be used with caution because of the small number of sample returns on which it is based.

[1] Includes returns that did not report the end-of-year book value of total assets (Form 5227, Part IV, line 50, column (b)) from the balance sheet, or that reported the amount as zero. Often, these zero amounts are explained by trusts filing a final return.

[2] Taken from Form 5227, Part I, Section D, line 22. Total deductions may not equal the sum of deductions allocable to ordinary income (Section E, line 24a), capital gains (line 25a), and nontaxable income (line 26a). Deductions may also be allocated to corpus, but are not reported on Section E and are thus not shown separately in this table.

NOTE: Detail may not add to totals due to rounding.

SOURCE: IRS, Statistics of Income Division, August 2013.

Table 2. Charitable Remainder Annuity Trusts: Accumulation and Distribution Information, by Size of End-of-Year Book Value of Total Assets, Filing Year 2012

[All figures are estimates based on samples--money amounts are in thousands of dollars]

Scroll over selected items below for brief definitions.

[Additional data information, including expanded definitions, is also available.](#)

Item	Total	Size of end-of-year book value of total assets				
		Under \$500,000 [1]	\$500,000 under \$1,000,000	\$1,000,000 under \$3,000,000	\$3,000,000 under \$10,000,000	\$10,000,000 or more
	(1)	(2)	(3)	(4)	(5)	(6)
Number of returns	14,616	11,944	1,429	912	279	52
Total accumulations of income	3,318,030	725,557	416,171	600,205	781,646	794,451
Net ordinary income	383,467	68,919	28,839	78,710	115,692	91,306
Net capital gains (losses)	2,788,907	635,306	363,855	498,085	602,127	689,535
Net nontaxable income	145,655	21,333	23,477	23,410	63,827	13,609
Prior-year undistributed income	2,956,585	645,041	366,740	520,741	712,574	711,488
Net ordinary income	228,696	31,931	* 7,281	41,904	87,509	60,071
Net capital gains (losses)	2,606,653	596,348	340,604	460,333	568,785	640,583
Net nontaxable income	121,236	16,761	18,855	18,504	56,281	10,835
Current year net income	361,445	80,517	49,430	79,464	69,072	82,962
Net ordinary income	154,771	36,987	21,558	36,807	28,184	31,235
Net capital gains (losses)	182,254	38,958	23,250	37,752	33,342	48,952
Net nontaxable income	24,420	4,572	4,622	4,906	7,546	2,774
Distributions of income	385,327	130,862	67,233	72,609	65,945	48,679
Net ordinary income	132,964	34,293	22,101	31,399	21,153	24,018
Net capital gains (losses)	230,768	90,692	40,597	36,139	39,529	23,812
Net nontaxable income	21,595	5,877	4,535	5,072	5,262	* 849
Undistributed at end of year	2,932,702	594,695	348,938	527,596	715,701	745,772
Net ordinary income	250,503	34,626	* 6,738	47,312	94,539	67,288
Net capital gains (losses)	2,558,139	544,614	323,258	461,946	562,598	665,723
Net nontaxable income	124,060	15,455	18,941	18,338	58,565	12,760

* Estimate should be used with caution because of the small number of sample returns on which it is based.

[1] Includes returns that did not report the end-of-year book value of total assets (Form 5227, Part IV, line 50, column (b)) from the balance sheet, or that reported the amount as zero. Often, these zero amounts are explained by trusts filing a final return.

NOTE: Detail may not add to totals due to rounding.

SOURCE: IRS, Statistics of Income Division, August 2013.

When to Suggest a CRT

- Client owns appreciated property
- Client is not ready/able to donate entire position to charity
- Client does not foresee needing access to proceeds from sale of property
- For many clients, the ultimate decision is to either create a CRT or sell the position outright and pay the tax
 - See Sterling's report *Planning with Charitable Remainder Trusts* for a detailed comparison

Selecting the Right Type of CRT

- Standard CRUT
 - Most common type of CRT
- Exceptions
 - Income deferral
 - If client wants ongoing flexibility to defer distributions, consider using a NIMCRUT with a partnership or variable annuity
 - Trap FAI inside the partnership or LLC held in the NIMCRUT
 - If client wants flexibility to defer distributions for a known period of time, consider a Flip CRUT
 - Illiquid assets
 - If the donated assets are not immediately liquid (e.g., closely-held stock or real estate), a Flip CRUT or NIMCRUT is often a necessity
 - CRATs

Selecting the Right Payout Rate

- Trade-off between tax deduction and payout rate
- 10% remainder test
- Payout rate must be at least 5% and cannot exceed 50%
- Most payout rates are between 5% and 10%
- Considerations
 - Will the client's income need change over time?
 - What's the CRT's expected rate of return?
 - For payout rates that exceed the CRT's expected rate of return, is the client okay with decreasing distributions over time (particularly if they anticipate needing more income later in life)?

Drafting Considerations

- Make sure CRT type and CRT payout rate match with client's situation and goals
- Give client maximum flexibility
 - Charitable beneficiary
 - Situs and controlling law
 - Trusteeship
- Private foundation remainderman
- Tip: Ensuring the client understands that a CRT is not necessarily a lifetime lockup will lead to more CRT creations

Putting it all together

- Bob and Jane Smith
 - Husband and wife, both 64 years old (24-year life expectancy per IRS tables)
 - Own \$1,000,000 investment property (no debt) with \$400,000 basis
 - Wish to sell property and are looking for ways to mitigate tax burden
 - Don't have an immediate use for the sale proceeds but aren't in a position to give entire property to charity
- Tax deductions from creating CRT (via Crescendo Interactive)

	5%	6%	7%	8%	9%	10%	11%
<i>Pres. Val. of Income</i>	679,180	741,620	791,000	830,200	861,430	886,400	N/A*
<i>Charitable Deduction</i>	320,820	258,380	209,000	169,800	138,570	113,600	N/A*

* Fails 10% test. Maximum payout is 10.63%.

- Bob and Jane decide to create a 6% Standard CRUT

CHARITABLE REMAINDER UNITRUST

Two Lives

IRS Form 709 Gift Value of **\$741,620.00**

Donor:	Gift Amount:	Gift Date:
Smith	\$1,000,000.00	07/27/2020
Beneficiary(ies)		
Person:	Date of Birth:	Age*
1st: Bob	07/27/1956	64
2nd: Jane	07/27/1956	64
Cost Basis:	Payment Frequency:	
\$400,000.00	Quarterly	

Age* - Year changes at six months from birth date.

Calculation		
(A) Unitrust Percentage	6.00%	(A)
(B) Factor for Adjusted Payout Rate <small>IRS Pub 1458, Table F AFR of the Month: <u>0.6%</u></small>	0.996270	(B)
(C) Adjusted Payout Rate (A x B)	5.97800%	(C)
(D) Nearest table rate below (C)	5.80%	(D)
(E) Factor at Line (D) rate <small>(IRS Pub. 1458, Table U(2))</small>	0.26845	(E)
(F) Nearest table rate above (C)	6.00%	(F)
(G) Factor at Line (F) rate <small>(IRS Pub. 1458, Table U(2))</small>	0.25714	(G)
(H) Line (E) Minus Line (G)	0.01131	(H)
(I) Line (C) Minus Line (D)	0.17800%	(I)
(J) Line (I) Divided by 0.2%	0.89000	(J)
(K) Line (H) Times Line (J)	0.01007	(K)
(L) Line (E) Minus Line (K)	0.25838	(L)
(M) Line (L) Times Gift Amount <small>PRESENT VALUE OF REMAINDER INTEREST</small>	\$258,380.00	(M)

Value of CRT Income Stream

Assumptions

Expected Duration (Yrs.) ¹	24
Starting Trust Value	1,000,000
Growth Rate	6.00%
Distribution Rate	6.00%

¹ Equal to IRS Table 2000(CM) Life Expectancy

Results

P.V. of Distributions ^{2,3}	\$753,021
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² Discount rate equal to growth rate

³ Assumes beneficiary(ies) live(s) to full life expectancy

CRT Account					Value of Income Stream	
	Beginning CRT Value	Growth (6%)	Distribution (6%)	Ending CRT Value	P.V. of Distribution	Cumulative P.V.
1	1,000,000	60,000	60,000	1,000,000	56,604	56,604
2	1,000,000	60,000	60,000	1,000,000	53,400	110,004
3	1,000,000	60,000	60,000	1,000,000	50,377	160,381
4	1,000,000	60,000	60,000	1,000,000	47,526	207,906
5	1,000,000	60,000	60,000	1,000,000	44,835	252,742
6	1,000,000	60,000	60,000	1,000,000	42,298	295,039
7	1,000,000	60,000	60,000	1,000,000	39,903	334,943
8	1,000,000	60,000	60,000	1,000,000	37,645	372,588
9	1,000,000	60,000	60,000	1,000,000	35,514	408,102
10	1,000,000	60,000	60,000	1,000,000	33,504	441,605
11	1,000,000	60,000	60,000	1,000,000	31,607	473,212
12	1,000,000	60,000	60,000	1,000,000	29,818	503,031
13	1,000,000	60,000	60,000	1,000,000	28,130	531,161
14	1,000,000	60,000	60,000	1,000,000	26,538	557,699
15	1,000,000	60,000	60,000	1,000,000	25,036	582,735
16	1,000,000	60,000	60,000	1,000,000	23,619	606,354
17	1,000,000	60,000	60,000	1,000,000	22,282	628,636
18	1,000,000	60,000	60,000	1,000,000	21,021	649,656
19	1,000,000	60,000	60,000	1,000,000	19,831	669,487
20	1,000,000	60,000	60,000	1,000,000	18,708	688,195
21	1,000,000	60,000	60,000	1,000,000	17,649	705,845
22	1,000,000	60,000	60,000	1,000,000	16,650	722,495
23	1,000,000	60,000	60,000	1,000,000	15,708	738,203
24	1,000,000	60,000	60,000	1,000,000	14,819	753,021

Putting it all together (cont'd)

- By creating a CRT, Bob and Jane:
 - Defer taxes on \$600,000 capital gain
 - Sold an asset into what they felt were optimal market conditions
 - FANG stocks at all time highs?
 - Garner an immediate tax deduction of \$260,000
 - Collect \$1,440,000 in expected income
- Remaining assets go to a donor-advised fund
 - Bob and Jane's children will direct the disbursements of fund's assets

CRT Income Taxation

- Four-tier system of IRC Section 664(b)
- Worst-In, First-Out (WIFO)
 - Ordinary income
 - Capital gain
 - Other income
 - Corpus
- Usually some combination of ordinary and capital gain income
- Exceptions
 - NIMCRUTs invested in variable annuities
 - NIMCRUTs in which capital gain is not included in the definition of income
 - CRTs with investments heavily weighted toward fixed income

CRT Administration

- CRTs are subject to private foundation rules
- Having a professional administrator will generally ensure the CRT remains in full compliance
- Here are common mistakes we see
 - Trading on margin or otherwise using debt
 - Disqualified persons borrowing money from a CRT
 - Disqualified persons lending money to a CRT
 - Not taking the required distribution

CRT Drawbacks

- The combination of irrevocability and a long lifespan can lead to a misalignment between the client's situation and the CRT's terms
- This does NOT mean
 1. Creating the CRT was a mistake
 2. The client is stuck
- Range of secondary planning options exist, creating ample flexibility for client
 - Sale of income interest
 - Gift of income interest
 - Rollover of income interest
 - CRT termination
- These will be discussed in detail on a future webinar

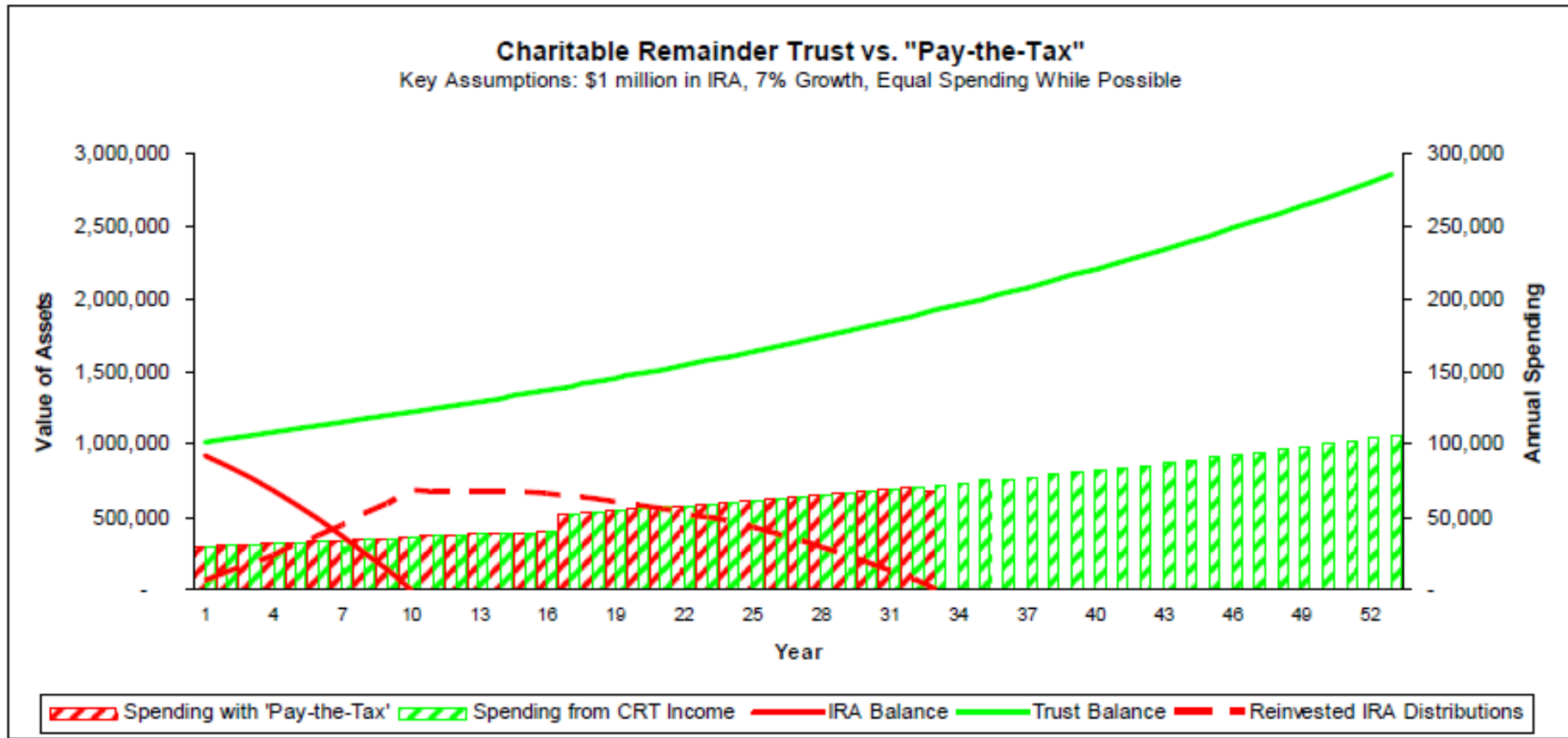
SECURE Act & CRTs

- SECURE Act ends stretch IRAs
 - Beneficiaries must withdraw all IRA assets (and pay the tax) within 10 years
- Expect an increase in IRA transfers to CRTs
 - Legal basis
- IRA owner needs to decide how to do it during their lifetime
 - Funded CRT
 - Unfunded CRT
 - Testamentary Trust (most common)
- Upon client's death
 - Full value of IRA goes into trust, with no income tax
 - Heirs begin receiving income

SECURE Act & CRTs (cont'd)

- Key client benefits
 - Restores the ability to stretch retirement plan for heirs
 - Potential to defer tax for decades, and generations, creating more family wealth
 - Trust provides possibility for future earnings to be taxed as dividends and capital gain, which are taxed lower than ordinary income from retirement plans
 - Biden plan may change that if there is a change in power in the 2020 election
 - Protect assets

SECURE Act & CRTs (cont'd)



SECURE Act & CRTs (cont'd)

- Drafting considerations
 - Not a self settled trust, so consider *lack* of flexibility per client's wishes
- Asset retention opportunity for financial advisors
- Who are the best candidates
 - Clients now age 50 or older
 - Clients with retirement plan assets at least with \$500,000
 - The “client needs to be charitable” fallacy
- Who are not candidates
 - Clients who expect to use up most or all of their retirement plan during life
 - Clients who want their heirs to get the retirement money immediately upon death, regardless of the tax cost

Misc.

- Life + Term CRTs
 - The regulations (1.664-3(a)(5)(i)) explicitly require that a CRT term may not extend beyond either the life or lives of a named individual or individuals or a term of no more than 20 years. Therefore, the regulations allow a CRT to be structured so as to pay for the life of H (or H and W) followed by payments to C1 (and C2 and C3 for that matter) for the shorter of a term of years not to exceed 20 years and the life of C1 (and C2 and C3). All of the income beneficiaries need to be alive when the CRT is created.
- NIMCRUTs owning partnerships
 - Better tax outcome than using variable annuities
 - Include capital gain in the definition of trust accounting income
 - Limit the definition of trust accounting income to distributions from the partnership

For CLE Credits

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