

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this Treasury decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.280F-6T also issued under 26 U.S.C. 280F. \* \* \*

■ 2. Section 1.280F-6T is amended as follows:

■ 1. Paragraph (a)(1) is amended by removing the language “the amount of any credit allowable under section 38 to the employee or”.

■ 2. Paragraph (c)(3)(iii) is revised.

■ 3. Paragraph (d)(3) is amended by removing the language “investment tax credit or” and “the investment tax credit and”.

■ 4. The authority citation at the end of the section is removed.

The revision reads as follows:

#### § 1.280F-6T Special rules and definitions (temporary).

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) Truck or van that is a qualified nonpersonal use vehicle as defined under § 1.274-5T(k).

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 27, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 20 and 25

[TD 9068]

RIN 1545-A031

### Definition of Guaranteed Annuity and Lead Unitrust Interests

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document amends the income, estate, and gift tax regulations to conform to the Tax Court's decision in *Estate of Boeshore v. Commissioner*. In *Estate of Boeshore*, the Tax Court held a certain provision of the Estate Tax Regulations invalid to the extent that it disallows a deduction for the value of a charitable unitrust interest if the charitable interest is preceded by a noncharitable interest that is in the form of a unitrust interest. This action is necessary to conform the income, estate, and gift tax regulations to the Tax Court's decision in *Estate of Boeshore*. The effect of these regulations is to allow an income, estate, or gift tax charitable deduction for charitable annuity or unitrust interests that are preceded by a noncharitable unitrust or annuity interest.

**DATES:** The regulations are effective July 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan Hurwitz (202) 622-3090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On July 23, 2002, the Treasury Department and the IRS published in the **Federal Register** (67 FR 48070) a notice of proposed rulemaking (REG-115781-01) conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore v. Commissioner*, 78 T.C. 523 (1982), *acq. in result* (1987-2 C.B. 1). Specifically, the existing regulations under section 170, 2055, and 2522 governing

charitable guaranteed annuity and unitrust interests were proposed to be amended to eliminate the requirement that the charitable interest commence no later than the commencement of a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations will continue to require that any amounts payable for a private purpose before the expiration of the charitable annuity or unitrust interest either must be in the form of a guaranteed annuity or unitrust interest or must be payable from a separate group of assets devoted exclusively to private purposes.

No public hearing was requested or held, but one written comment was received. The commentator suggested that any charitable lead interest in a charitable remainder trust should be taken into account along with the remainder interest for purposes of satisfying the 10 percent test contained in sections 664(d)(1)(D) and (d)(2)(D) of the Internal Revenue Code. Among the requirements for a trust to qualify as a charitable remainder trust, sections 664(d)(1)(D) and (d)(2)(D) provide that the present value of the remainder interest must be equal to at least 10 percent of the initial fair market value of all property placed in the trust. Because the statutory requirement is based solely on the value of the remainder interest, it is not possible to take into account any lead interests that pass to charity for purposes of satisfying this requirement. Accordingly, this document adopts final regulations with respect to the notice of proposed rulemaking without any changes.

### Effect on Other Documents

The following publication is revoked as of July 7, 2003. Rev. Rul. 76-225 (1976-1 C.B. 281).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

### Drafting Information

The principal author of these proposed regulations is Susan Hurwitz of the Office of the Associate Chief Counsel (Passthroughs and Special

Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 20, and 25 are amended as follows:

#### PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ 2. Section 1.170A-6 is amended as follows:

■ 1. Paragraph (c)(2)(i)(E) is revised and the example following paragraph (c)(2)(i)(E) is removed.

■ 2. Paragraph (c)(2)(ii)(D) is revised. The revisions read as follows:

##### § 1.170A-6 Charitable contributions in trust.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of

this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(ii) \* \* \*

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if 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 interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

#### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ 3. The authority citation for part 20 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \* \*

■ 4. Section 20.2055-2 is amended as follows:

■ 1. Paragraph (e)(2)(vi)(f) is revised.

■ 2. Paragraph (e)(2)(vii)(e) is revised.

■ 3. In paragraph (f)(2)(iv), *Example (4)* is removed.

The revisions read as follows:

##### § 20.2055-2 Transfers not exclusively for charitable purposes.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(f) Where a charitable interest in the form of a guaranteed annuity interest is

in trust, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vi)(f), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(vii) \* \* \*

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if 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 interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vii)(e), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947-1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

**PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954**

■ 5. The authority for part 25 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ 6. Section 25.2522(c)–3 is amended as follows:

■ 1. Paragraph (c)(2)(vi)(f) is revised.

■ 2. Paragraph (c)(2)(vii)(e) is revised.

■ 3. In paragraph (d)(2)(iv), *Example (4)* is removed.

The revisions read as follows:

**§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(f) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(f), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

\* \* \* \* \*

(vii) \* \* \*

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust

interest if 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 interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(e), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

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**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 30, 2003.

**Gregory F. Jenner,**

*Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 75

**RIN 1219–AA98**

#### Improving and Eliminating Regulations, Phase 5, Miscellaneous Technology Improvements (Methane Testing)

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides an alternative method of compliance with the requirement for qualified persons to make periodic methane tests at face areas from under permanent roof support, using extendable probes or other acceptable means. The rule applies only during roof bolting activities in room and pillar mining operations which use continuous mining machines. It allows methane tests to be made by sweeping a probe in by the last roof support, provided that a number of requirements for roof support, ventilation, and continuous methane monitoring at the roof bolting machine are met to protect the miners.

The rule results in increased mining efficiency and provides an equivalent level of safety to miners.

**DATES:** This rule becomes effective on August 6, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, [Nichols-Marvin@msha.gov](mailto:Nichols-Marvin@msha.gov), (202) 693–9440 (telephone), (202) 693–9441 (facsimile).

This rule is available in alternative formats, such as a large print version or an electronic file, and is also available at <http://www.msha.gov>, under “Statutory and Regulatory Information.”

**SUPPLEMENTARY INFORMATION:**

#### A. Background

As part of a comprehensive revision of ventilation standards, MSHA published the existing rule, § 75.362, On-shift Examination, on March 11, 1996 (61 FR 9764). Section 75.362(d)(1) requires that a qualified person test for methane at the start of each shift at each working place before electrically powered equipment is energized, taken into or operated in a working place; immediately before equipment is energized, taken into or operated in a working place; and at 20-minute intervals, or more often if required in the approved ventilation plan at specific location, during the operation of equipment in the working place. Section 75.362(d)(2) requires that these methane tests be made at the face from under permanent roof support, using extendable probes or other acceptable means. On September 25, 2002, in response to a joint petition from a labor and an industry group, MSHA published the proposed rule (67 FR 60611) to allow the alternative method of testing for methane. The comment period closed on November 25, 2002. Four commenters responded to the proposed rule. MSHA received no hearing requests.

On-shift examinations of working sections have long been accepted as a standard safety practice in coal mining due to the variable nature of mining conditions and the potential for hazards to develop quickly. These examinations ensure that the environment is safe while miners work during the shift by identifying existing or developing hazards, and permitting rapid correction of hazardous conditions before miners are endangered. Methane tests are a key part of the on-shift examination.

Methane is an invisible, odorless, and highly flammable product of coal off-gassing which liberates from the coal at