



## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 10051]

RIN 1545-BQ58

### Charitable Remainder Annuity Trust Listed Transaction

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

**ACTION:** Final rule.

**SUMMARY:** This document contains final regulations that identify certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and will be subject to penalties for failure to disclose. The final regulations affect participants in these transactions as well as material advisors but provide that certain organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants in the transaction or as parties to a prohibited tax shelter transaction subject to excise taxes and disclosure requirements.

**DATES:** *Effective date:* These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Applicability date:* For applicability date, see § 1.6011-15(e).

**FOR FURTHER INFORMATION CONTACT:** Concerning the final regulations, Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs, Trusts & Estates) (202) 317-5279 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority**

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6011 of the Internal Revenue Code (Code) to identify certain CRAT transactions as listed transactions, a type of reportable transaction (final regulations).

Section 6001 of the Code provides an express delegation of authority to the Secretary of the Treasury or his delegate (Secretary) to require, either by notice served or by regulations, every taxpayer to keep the records, render the statements, make the returns, and comply with the rules and regulations that the Secretary deems necessary to demonstrate tax liability.

Section 6011(a) of the Code provides an express delegation of authority to the Secretary to require every taxpayer to “make a return or statement according to the forms and regulations prescribed by the Secretary” and “include therein the information required by such forms or regulations.”

Section 6707A(c) of the Code confirms the Secretary’s authority to identify transactions as “reportable transactions” and as “listed transactions” and to require reporting of information relating to such transactions pursuant to the authority conferred by section 6011. Section 6707A(c)(1) defines the term “reportable transaction” to mean “any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.” In addition, section 6707A(c)(2) defines the term “listed transaction” to mean a reportable transaction that is “the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.”

The final regulations also are issued under the express delegation of authority under section 7805(a) of the Code, which authorizes the Secretary to “prescribe all

needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

## **Background**

On March 25, 2024, the Department of Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-108761-22) in the **Federal Register** (89 FR 20569) proposing regulations at new § 1.6011-15 (proposed § 1.6011-15) that would identify certain CRAT transactions and substantially similar transactions as “listed transactions” for purposes of § 1.6011-4 and sections 6111 and 6112 of the Code (proposed regulations). The Treasury Department and the IRS received one comment in response to the proposed regulations that are the subject of this final rulemaking. The comment is available for public inspection at <https://www.regulations.gov> or upon request. No public hearing was held on the proposed regulations because there were no requests to speak.

## **Summary of and Response to Comment**

The one comment received supports the proposed regulations and agrees that the transactions described in the proposed regulations miscomprehend the operation of the tier structure under section 664 that governs the characterization and taxation of distributions from CRATs. In addition, the commenter noted that the CRATs described in the proposed regulations have other technical flaws that would prevent the purported CRATs from qualifying as CRATs under section 664(d)(1).

The commenter also agreed with the proposal that an organization described in section 170(c) of the Code that the purported CRAT designates as a recipient of the remainder interest is not treated as (1) a participant under § 1.6011-4(c)(3)(i)(A) in the transaction, or (2) as a party to the transaction for purposes of section 4965 of the Code solely by reason of its status as a recipient of the remainder interest described in

section 664(d)(1). Further, the commenter pointed out that the charitable remainder beneficiary often is not even aware of the existence of its remainder interest until the charitable organization receives a distribution from the trust.

The proposed regulations requested comments concerning whether a charitable remainder beneficiary could be a material advisor under section 6111(b)(1)(A), and asked, in particular, whether the charitable remainder beneficiary ever provides material aid, assistance, or advice with respect to transactions described in proposed § 1.6011-15(b), the nature of the services being provided, and what fees the charitable remainder beneficiary would receive for providing such material aid, assistance, or advice. In response to this request for comments, the commenter stated that, based on its experience, charitable remainder beneficiaries rarely provide material aid, assistance, or advice, and that any material aid, assistance, or advice is most often provided by the promoters of the transaction. Additionally, the commenter stated it is not aware of cases in which charitable remainder beneficiaries have received fees, either directly or indirectly, for providing material aid, assistance, or advice.

However, the commenter noted that it is possible that a charity would provide general information about a CRAT to a participant in the listed transaction. Specifically, it would not be unusual for a charity to suggest consideration of a CRAT to a potential charitable donor or to explain to that potential donor the elements and operation of a trust that qualifies as a CRAT. The commenter requested that the final regulations make clear that a charitable remainder beneficiary will not be considered to provide material aid, assistance, or advice unless the charitable remainder beneficiary provides information that specifically endorses the abusive interpretation of the applicability and operation of the tier structure under which CRAT distributions are taxed by section 664(b).

Section 301.6111-3(b)(1) provides that a person is a material advisor with

respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and directly or indirectly derives gross income in excess of the threshold amount provided in § 301.6111-3(b)(3). Section 301.6111-3(b)(2)(i) provides that a person provides material aid, assistance, or advice if the person makes or provides a tax statement to or for the benefit of any person described in § 301.6111-3(b)(2)(i). Section 301.6111-3(b)(2)(ii) generally provides that a tax statement is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction.

A description of the effect of section 664(b) that includes, or a statement endorsing, the abusive interpretation of the application or operation of the tier structure under section 664(b) would be considered a tax statement as defined in § 301.6111-3(b)(2)(ii) as noted by the commenter, as would other statements regarding other elements of the transaction described in these final regulations, such as the validity of the terms of a CRAT used in the structure. However, a mere suggestion or description of a trust qualifying as a CRAT would not be a statement relating to a tax aspect of the transaction that causes the transaction to be a reportable transaction. As a result, as was discussed by the commenter, simply suggesting a donor's consideration of the creation of, or providing general information regarding, a trust qualifying as a CRAT would not be a tax statement that would result in the charity being a material advisor. Furthermore, to be a material advisor, the charitable remainderman must receive gross income (such as a fee) at least equal to the thresholds in § 301.6111-3(b)(3), and the commenter noted that it was not aware of charitable remaindermen receiving fees for providing material aid, assistance, or advice.

Because the application of rules governing who is considered a material adviser

seem sufficiently clear in this context, the Treasury Department and IRS have determined that it is unnecessary to address the issue in the regulatory text. Thus, the Treasury Department and IRS decline to adopt the proposed change recommended by the commenter in finalizing the proposed regulations, and the proposed regulations are adopted as final without change.

## **Special Analyses**

### *I. Regulatory Planning and Review*

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

### *II. Paperwork Reduction Act*

The estimated number of taxpayers impacted by these final regulations is between 50 to 100 per year. No burden on these taxpayers is imposed by these final regulations. Instead, the collection of information contained in these final regulations is reflected in the collection of information for Form 8886, Reportable Transaction Disclosure Statement, and Form 8918, Material Advisor Disclosure Statement, that have been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 already is contained in the burden associated with the control numbers for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB

control number.

### III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). The term “small entities” is defined in 5 U.S.C. 601(6) to mean “small business,” “small organization,” and “small governmental jurisdiction,” which also are defined in 5 U.S.C. 601(3) through (5). Small business size standards define whether a business is “small” and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See title 13, part 121 of the Code of Federal Regulations (titled “Small Business Size Regulations”). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. See title 13, part 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act allows an agency to certify a rule if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the final regulations falls on individuals and trusts. Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding this rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small

Business Administration for comment on its impact on small business and no comments were received.

#### *IV. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This final rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

#### *V. Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

### **Drafting Information**

The principal author of these final regulations is Charles D. Wien, Office of Associate Chief Counsel (Passthroughs, Trusts, & Estates). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

## **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011-15 in numerical order to read, in part, as follows:

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

\* \* \* \* \*

Section 1.6011-15 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

\* \* \* \* \*

**Par. 2.** Section 1.6011-15 is added to read as follows:

### **§1.6011-15 Charitable remainder annuity trust listed transaction.**

(a) *In general.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of § 1.6011-4(b)(2).

(b) *Charitable remainder annuity trusts.* A transaction is described in this paragraph (b) if:

(1) The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1) of the Internal Revenue Code (Code);

(2) The grantor funds the trust with property having a fair market value in excess of its basis (contributed property);

(3) The trustee sells the contributed property;

(4) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(5) On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72 of the Code, instead of as carrying out to the beneficiary amounts

in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

(c) *Participation*—(1) *In general*. A taxpayer has participated in a transaction identified as a listed transaction in paragraph (a) of this section if the taxpayer's tax return reflects tax consequences or a tax strategy described in this section as provided under § 1.6011-4(c)(3)(i)(A). These tax consequences include those tax consequences that would affect any gift tax return, whether or not such gift tax return was filed. See § 25.6011-4 of this chapter.

(2) *Treatment of charitable remainderman*. An organization described in section 170(c) of the Code that the purported charitable remainder annuity trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a participant under § 1.6011-4(c)(3)(i)(A) in the transaction described in this section solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(d) *Treatment of charitable remainderman under section 4965*. A tax-exempt entity (as defined in section 4965 of the Code) that is an organization described in section 170(c) and that the purported charitable remainder annuity trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a party to the transaction described in this section for purposes of section 4965 solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(e) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transaction described in paragraph (b) of this section as listed transactions for purposes of § 1.6011-4(b)(2) is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**Frank J. Bisignano,**  
*Chief Executive Officer.*

Approved: April 15, 2026

**Kenneth J. Kies.**  
*Assistant Secretary of the Treasury (Tax Policy).*

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