



TaxNewsFlash

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Final regulations: Certain charitable remainder annuity trust transactions identified as listed transactions

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 10051) identifying certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, a type of reportable transaction.

Taxpayers use Form 8886, *Reportable Transaction Disclosure Statement*, to disclose information for each reportable transaction in which they participate. Material advisors must file Form 8918, *Material Advisor Disclosure Statement*, to disclose information about reportable transactions. Penalties apply to taxpayers and material advisors who fail to properly disclose their participation in reportable transactions.

The final regulations adopt the proposed regulations issued in March 2024 without change, and provide that a CRAT transaction is a listed transaction if:

- The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1)
- The grantor funds the trust with property having a fair market value in excess of its basis (contributed property)
- The trustee sells the contributed property
- The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity
- 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, 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)

The preamble to the proposed regulations stated that Treasury and the IRS are aware of transactions in which taxpayers attempt to use a CRAT and a single premium immediate annuity (SPIA) to permanently avoid recognition of ordinary income and/or capital gain. According to the preamble, taxpayers engaging in these transactions claim that distributions from the trust are not taxable to the beneficiaries as ordinary income or capital gain under section 664(b) because the distributions constitute the trust's unrecovered investment in the SPIA, thus claiming that a significant portion of the distributions is excluded from gross income under section 72(b)(2). The preamble also stated that taxpayers claim that the trust qualifies as a CRAT and thus is not subject to tax on the trust's realized ordinary income or capital gain under section 664(c)(1), even though the trust may not meet all of the requirements to be a qualified CRAT that are enumerated in section 664(d)(1).

The final regulations are effective on the date published in the Federal Register, which is scheduled to be July 9, 2026.

Rules relating to charitable remaindermen

The final regulations 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 under section 4965 and disclosure requirements.

However, the preamble to the proposed regulations noted that under section 6111(b)(1)(A), any person (including a charitable remainderman) may be treated as 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 for the material aid, assistance, or advice. Treasury and the IRS requested comments on whether a charitable remainderman may ever be considered to be providing material aid, assistance, or advice with respect to a CRAT transaction, and in such case, the nature of the services generally provided and the fees generally received.

The preamble to the final regulations states that “as was discussed by the [one] commenter [to the proposed regulations], 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 Treas. Reg. § 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.”

Read a related IRS release—[IR 2026-82](#) (July 8, 2026)

KPMG observation

Only the specific CRAT transaction that Treasury and the IRS consider to be abusive with the characteristics described in the final regulations (and substantially similar transactions) are considered listed transaction(s). CRAT transactions without those specific characteristics are not considered listed transactions under the final regulations.

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