Charitable gifts of remainder interests in homes and farms

Russell James, J.D., Ph.D., CFP®, Director of Graduate Studies in Charitable Planning, Texas Tech University
General rule: you can’t deduct a partial interest gift
A partial interest gift occurs when a donor gives some rights to property but keeps others.
General rule: you can’t deduct a partial interest gift
But, you can deduct a remainder interest in a home or farm

Other Exceptions
• Giving all or an “undivided portion” of a property interest
• Charitable remainder/lead trust or pooled income fund
• Qualified conservation easement
A remainder interest gives the right to own the property after a set time or after the death of a person.

OK, you can have my stuff now.

Charles A. Donor
Unlike a will, a remainder interest is not revocable, and can even be sold.
A deductible remainder interest in farmland or a home must be transferred by deed, not by trust or contract.
A farm is any land and improvements used (even by a tenant) to raise crops or livestock.
A remainder interest in any part of a farm may be gifted (Rev. Rul. 78-303)
Can I give a remainder interest of an undivided share in farmland?
Yes, donor may deduct a remainder interest shared by charity and others as tenants in common (Rev. Rule 87-37)
However, IRS may deduct cost of partitioning (of forcing a sale or division)
• No deduction for remainder just in mineral rights because it is not a “farm” Reg. 1.170A-7(b)(4)
• Can gift remainder in entire “fee simple” farm (even if land and mineral rights go to separate charities) PLR 8316037
• Can gift remainder in farm without mineral rights if you don’t owned them
How do you calculate the deduction for a remainder interest in farmland?

1. Find the §7520 interest rate

2. Multiply value of land by remainder percentage in IRS Pub. 1457 (one or two lives or specific term)
Ex: A remainder interest in $100,000 of farmland given by a 59 year old donor on 9/6/10

1. Find the §7520 interest rate (http://www.irs.gov/businesses/small/article/0,,id=112482,00.html) 2.4%

2. Use remainder value in IRS Pub. 1457 for one or two lives or specific term (http://www.irs.gov/retirement/article/0,,id=206601,00.html)

3. Multiply remainder value by value of the farmland

Ex: A remainder interest in $100,000 of farmland given by a 59 year old donor on 9/6/10
Ex: A remainder interest in $100,000 of farmland given by a 59 year old donor on 9/6/10

1. Find the §7520 interest rate
   (http://www.irs.gov/businesses/small/article/0,,id=112482,00.html)
   2.4%

2. Multiply value of land by remainder percentage in IRS Pub. 1457 (one or two lives or specific term)
   (http://www.irs.gov/retirement/article/0,,id=206601,00.html)

   $100,000 \times 0.60589 = $60,589

<table>
<thead>
<tr>
<th>Age</th>
<th>Annuity</th>
<th>Life Estate</th>
<th>Remainder</th>
<th>Age</th>
<th>Annuity</th>
<th>Life Estate</th>
<th>Remainder</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>34.2376</td>
<td>0.82170</td>
<td>0.17830</td>
<td>55</td>
<td>18.1993</td>
<td>0.43678</td>
<td>0.56322</td>
</tr>
<tr>
<td>1</td>
<td>34.3011</td>
<td>0.82323</td>
<td>0.17677</td>
<td>56</td>
<td>17.7570</td>
<td>0.42617</td>
<td>0.57383</td>
</tr>
<tr>
<td>2</td>
<td>34.1418</td>
<td>0.81940</td>
<td>0.18060</td>
<td>57</td>
<td>17.3129</td>
<td>0.41551</td>
<td>0.58449</td>
</tr>
<tr>
<td>3</td>
<td>33.9727</td>
<td>0.81534</td>
<td>0.18466</td>
<td>58</td>
<td>16.8678</td>
<td>0.40483</td>
<td>0.59517</td>
</tr>
<tr>
<td>4</td>
<td>33.7967</td>
<td>0.81112</td>
<td>0.18888</td>
<td>59</td>
<td>16.4213</td>
<td>0.39411</td>
<td>0.60589</td>
</tr>
</tbody>
</table>
Deduction for remainder interest in $100,000 farm by age 59 donor

11.6% (May 89)  $15,684
2.0% (Oct 10)  $65,553
Leaving land to charity by will

- Revocable
- $0 income tax deduction
- Impacts charity after death

Leaving land to charity by remainder interest

- Irrevocable
- $60,589 immediate income tax deduction
- Impacts charity after death or immediately if charity sells remainder interest
Because farmland can be gifted in parts, a donor could annually give remainder interests up to income limits or desired marginal tax rate

- Allows for increasing valuation each year
- Avoids risk of losing carryover deduction at death
- Could use value of annual deductions to pay for ILIT life insurance passing tax free to heirs
Donor can use money from remainder tax deduction to buy tax free life insurance (ILIT) for children’s inheritance.
Age 59 wealthy donor with $100,000 farmland on 9/1/10

- Remainder interest in farmland given to charity
- $60,589 tax deduction x 41% combined tax rate = $24,841
- $24,841 buys est. $70,000 paid up ILIT life insurance
- Will divides farmland 10% to charity 90% to children
- Charity receives $125,000 farmland
- Children receive $70,000 (tax free from ILIT)
- Children receive $50,625 (90% x 125,000 = 112,500, less 55% for estate taxes)
- Charity receives $12,500 (10% x $125,000)
Gifts of remainder interests in personal residences can also be deducted.
Includes second homes, vacation homes, even a boat with bathroom, cooking, and sleeping facilities, if used by the donor as a residence.
Deduction for a house is reduced because, unlike land, it is depreciable (it wears out).

59 year old donor giving on 9/6/10

Remainder interest in $100,000 farm

\[ .60589 \times \$100,000 \]

$60,589 Deduction

Remainder interest in $100,000 home

\[ .60589 \times \$20,000 \text{ (land)} \]
\[ .60589 \times \$10,000 \text{ (salvage)} \]

\[ .33768^* \times \$70,000 \]

$41,814 Deduction

* .60589 less .26821 depreciation reduction calculated on next slide
**Depreciation reduction factor**

**R factor age now – R factor age after useful life of house**

**D factor age now X Useful life of house**

Appraiser can estimate. IRS examples use 45 years.

**Table C(2.4)**  
Factors for Reducing Assurances - Based on Table 2000CM  
Interest at 2.4 Percent

<table>
<thead>
<tr>
<th>Age</th>
<th>Remainder Factors</th>
<th>R-Factors $R_x - 0.5M_x$</th>
<th>D-Factors $D_x$</th>
<th>Age</th>
<th>Remainder Factors</th>
<th>R-Factors $R_x - 0.5M_x$</th>
<th>D-Factors $D_x$</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>.17830</td>
<td>1202916</td>
<td>100000.0</td>
<td>55</td>
<td>.56322</td>
<td>317860.0</td>
<td>24748.54</td>
</tr>
<tr>
<td>1</td>
<td>.17677</td>
<td>1185429</td>
<td>96977.54</td>
<td>56</td>
<td>.57383</td>
<td>304002.2</td>
<td>24008.45</td>
</tr>
<tr>
<td>2</td>
<td>.18060</td>
<td>1168311</td>
<td>94656.94</td>
<td>57</td>
<td>.58449</td>
<td>290311.8</td>
<td>23274.97</td>
</tr>
<tr>
<td>3</td>
<td>.18466</td>
<td>1151231</td>
<td>92407.69</td>
<td>58</td>
<td>.59517</td>
<td>276800.1</td>
<td>22547.02</td>
</tr>
<tr>
<td>4</td>
<td>.18888</td>
<td>1134179</td>
<td>90219.15</td>
<td>59</td>
<td>.60589</td>
<td>263478.6</td>
<td>21825.10</td>
</tr>
<tr>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td>103</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td></td>
<td></td>
<td></td>
<td>104</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table C at http://www.irs.gov/retirement/article/0,,id=206601,00.html
What if the donor leaves?
<table>
<thead>
<tr>
<th>What if the donor leaves?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Give life estate to charity</td>
</tr>
<tr>
<td>Agree with the charity to a joint sale and divide proceeds</td>
</tr>
<tr>
<td>Give life estate to charity in exchange for a gift annuity</td>
</tr>
<tr>
<td>Rent property</td>
</tr>
<tr>
<td>Sell life estate</td>
</tr>
</tbody>
</table>
Will the donor maintain the property?
Will the donor maintain the property?

Common law requires the “life tenant” to **Maintain, Insure, and pay Taxes** on the property.

Some charities also require a written **MIT** contract.
What if I make improvements to the property after giving a remainder interest?
You can deduct the remainder value of major improvements as additional gifts for $8,000 for new HVAC.

PLR 9329017; PLR 8529014
Charitable gifts of remainder interests in homes and farms
Help me convince my bosses that continuing to build and post these slide sets is not a waste of time. If you work for a nonprofit or advise donors and you reviewed these slides, please let me know by clicking HERE.
If you clicked on the link to let me know you reviewed these slides...

Thank You!
For the audio lecture accompanying this slide set, go to EncourageGenerosity.com
Think you understand it?

Prove it!

Click here to go to EncourageGenerosity.com and take the free quiz on this slide set. (Instantly graded with in depth explanations and a certificate of completion score report.)
This slide set is from the introductory curriculum for the Graduate Certificate in Charitable Financial Planning at Texas Tech University, home to the nation’s largest graduate program in personal financial planning.

To find out more about the online Graduate Certificate in Charitable Financial Planning go to www.EncourageGenerosity.com

To find out more about the M.S. or Ph.D. in personal financial planning at Texas Tech University, go to www.depts.ttu.edu/pfp/
About the Author
Russell James, J.D., Ph.D., CFP® is an Associate Professor and the Director of Graduate Studies in Charitable Planning in the Division of Personal Financial Planning at Texas Tech University. He graduated, *cum laude*, from the University of Missouri School of Law where he was a member of the Missouri Law Review. While in law school he received the United Missouri Bank Award for Most Outstanding Work in Gift and Estate Taxation and Planning and the American Jurisprudence Award for Most Outstanding Work in Federal Income Taxation. After graduation, he worked as the Director of Planned Giving for Central Christian College, Moberly, Missouri for six years and also built a successful law practice limited to estate and gift planning. He later served as president of the college for more than five years, where he had direct and supervisory responsibility for all fundraising. Dr. James received his Ph.D. in Consumer & Family Economics from the University of Missouri where his dissertation was on the topic of charitable giving. Dr. James has over 100 publications in print or in press in academic journals, conference proceedings, professional periodicals, and books. He writes regularly for Advancing Philanthropy, the magazine of the Association of Fundraising Professionals. He has presented his research in the U.S. and across the world including as an invited speaker in Ireland, Scotland, England, The Netherlands, Spain, Germany, and South Korea. ([click here for complete CV](https://example.com/cv))

At Giving Korea 2010. I didn’t notice until later the projector was shining on my head (inter-cultural height problems).

Lecturing in Germany. 75 extra students showed up. I thought it was for me until I found out there was free beer afterwards.