

the fund. The fund would thus include in gross income total capital gains of \$165,000 (\$150,000+\$15,000). In determining taxable income for the taxable year the capital losses of \$110,000 (\$100,000+\$10,000) are allowable in full under section 1211(b)(1). The net capital gain of \$55,000 (\$165,000 less \$110,000) is available for the set-aside for charitable purposes under section 642(c)(3) only in the amount of the net long-term capital gain of \$50,000 (\$150,000 long-term gains less \$100,000 long-term losses). The deduction under section 1202 is \$25,000 (\$50,000×50%), all of which is attributable to the set-aside for charitable purposes. Accordingly, the deduction allowable to the fund under section 642(c)(3) is \$25,000 [\$50,000 (set-aside for public charity) less \$25,000 (proper adjustment for section 1202 deduction)]. The \$5,000 balance of net capital gain (capital gain net income for taxable years beginning after December 31, 1976) is taken into account in determining taxable income of the pooled income fund for the taxable year.

(d) *Disallowance of deduction for amounts allocable to unrelated business income.* In the case of a trust, the deduction otherwise allowable under § 1.642(c)-1 or § 1.642(c)-2 is disallowed to the extent of amounts allocable to the trust's unrelated business income. See section 681(a) and the regulations thereunder.

(e) *Disallowance of deduction in certain cases.* For disallowance of certain deductions otherwise allowable under section 642(c) (1), (2), or (3), see sections 508(d) and 4948(c)(4).

(f) *Information returns.* For rules applicable to the annual information return that must be filed by trusts claiming a deduction under section 642(c) for the taxable year, see section 6034 and the regulations thereunder.

[T.D. 7357, 40 FR 23741, June 2, 1975; 40 FR 24361, June 6, 1975, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

#### § 1.642(c)-4 Nonexempt private foundations.

In the case of a trust which is, or is treated under section 4947(a)(1) as though it were, a private foundation (as defined in section 509(a) and the regulations thereunder) that is not exempt from taxation under section 501(a) for the taxable year, a deduction for amounts paid or permanently set aside, or used for a purpose specified in section 642(c) (1), or (2) shall not be allowed under § 1.642(c)-1 or § 1.642(c)-2,

but such trust shall, subject to the provisions applicable to individuals, be allowed a deduction under section 170 for charitable contributions paid during the taxable year. Section 642(c)(6) and this section do not apply to a trust described in section 4947(a)(1) unless such trust fails to meet the requirements of section 508(e). However, if on October 9, 1969, or at any time thereafter, a trust is recognized as being exempt from taxation under section 501(a) as an organization described in section 501(c)(3), if at such time such trust is a private foundation, and if at any time thereafter such trust is determined not to be exempt from taxation under section 501(a) as an organization described in section 501(c)(3), section 642(c)(6) and this section will apply to such trust. See § 1.509 (b)-1 (b).

[T.D. 7357, 40 FR 23742, June 2, 1975; 40 FR 24362, June 6, 1975]

#### § 1.642(c)-5 Definition of pooled income fund.

(a) *In general*—(1) *Application of provisions.* Section 642(c)(5) prescribes certain rules for the valuation of contributions involving transfers to certain funds described in that section as pooled income funds. This section sets forth the requirements for qualifying as a pooled income fund and provides for the manner of allocating the income of the fund to the beneficiaries. Section 1.642(c)-6 provides for the valuation of a remainder interest in property transferred to a pooled income fund. Section 1.642(c)-7 provides transitional rules under which certain funds may be amended so as to qualify as pooled income funds in respect to transfers of property occurring after July 31, 1969.

(2) *Tax status of fund and its beneficiaries.* Notwithstanding any other provision of this chapter, a fund which meets the requirements of a pooled income fund, as defined in section 642(c)(5) and paragraph (b) of this section, shall not be treated as an association within the meaning of section 7701(a)(3). Such a fund, which need not be a trust under local law, and its beneficiaries shall be taxable under part I, subchapter J, chapter 1 of the Code, but the provisions of subpart E (relating to grantors and others treated as

substantial owners) of such part shall not apply to such fund.

(3) *Recognition of gain or loss on transfer to fund.* No gain or loss shall be recognized to the donor on the transfer of property to a pooled income fund. In such case, the fund's basis and holding period with respect to property transferred to the fund by a donor shall be determined as provided in sections 1015(b) and 1223(2). If, however, a donor transfers property to a pooled income fund and, in addition to creating or retaining a life income interest therein, receives property from the fund, or transfers property to the fund which is subject to an indebtedness, this subparagraph shall not apply to the gain realized by reason of (i) the receipt of such property or (ii) the amount of such indebtedness, whether or not assumed by the pooled income fund, which is required to be treated as an amount realized on the transfer. For applicability of the bargain sale rules, see section 1011(b) and the regulations thereunder.

(4) *Charitable contributions deduction.* A charitable contributions deduction for the value of the remainder interest, as determined under § 1.642(c)-6, may be allowed under section 170, 2055, 2106, or 2522, where there is a transfer of property to a pooled income fund. For a special rule relating to the reduction of the amount of a charitable contribution of certain ordinary income property or capital gain property, see section 170(e)(1)(A) or (B)(i) and the regulations thereunder.

(5) *Definitions.* For purposes of this section, §§ 1.642(c)-6 and 1.642(c)-7:

(i) The term *income* has the same meaning as it does under section 643(b) and the regulations thereunder, except that income generally may not include any long-term capital gains. However, in conformance with the applicable state statute, income may be defined as or satisfied by a unitrust amount, or pursuant to a trustee's power to adjust between income and principal to fulfill the trustee's duty of impartiality, if the state statute both provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)-1. In exercising a power to adjust, the trustee

must allocate to principal, not to income, the proceeds from the sale or exchange of any assets contributed to the fund by any donor or purchased by the fund at least to the extent of the fair market value of those assets on the date of their contribution to the fund or of the purchase price of those assets purchased by the fund. This definition of income applies for taxable years beginning after January 2, 2004.

(ii) The term *donor* includes a decedent who makes a testamentary transfer of property to a pooled income fund.

(iii) The term *governing instrument* means either the governing plan under which the pooled income fund is established and administered or the instrument of transfer, as the context requires.

(iv) The term *public charity* means an organization described in clause (i) to (vi) of section 170(b)(1)(A). If an organization is described in clause (i) to (vi) of section 170(b)(1)(A) and is also described in clause (viii) of such section, it shall be treated as a public charity.

(v) The term *fair market value*, when used with respect to property, means its value in excess of the indebtedness or charges against such property.

(vi) The term *determination date* means each day within the taxable year of a pooled income fund on which a valuation is made of the property in the fund. The property in the fund shall be valued on the first day of the taxable year of the fund and on at least 3 other days within the taxable year. The period between any two consecutive determination dates within the taxable year shall not be greater than 3 calendar months. In the case of a taxable year of less than 12 months, the property in the fund shall be valued on the first day of such taxable year and on such other days within such year as occur at successive intervals of no greater than 3 calendar months. Where a valuation date falls on a Saturday, Sunday, or legal holiday (as defined in section 7503 and the regulations thereunder), the valuation may be made on either the next preceding day which is not a Saturday, Sunday, or legal holiday or the next succeeding day which is not a Saturday, Sunday, or legal holiday, so long as the next such preceding day or next such succeeding day

is consistently used where the valuation date falls on a Saturday, Sunday, or legal holiday.

(6) *Cross references.* (i) See section 4947(a)(2) and section 4947(b)(3)(B) for the application to pooled income funds of the provisions relating to private foundations and section 508(e) for rules relating to provisions required in the governing instrument prohibiting certain activities specified in section 4947(a)(2).

(ii) For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and the regulations thereunder.

(b) *Requirements for qualification as a pooled income fund.* A pooled income fund to which this section applies must satisfy all of the following requirements:

(1) *Contribution of remainder interest to charity.* Each donor must transfer property to the fund and contribute an irrevocable remainder interest in such property to or for the use of a public charity, retaining for himself, or creating for another beneficiary or beneficiaries, a life income interest in the transferred property. A contingent remainder interest shall not be treated as an irrevocable remainder interest for purposes of this subparagraph.

(2) *Creation of life income interest.* Each donor must retain for himself for life an income interest in the property transferred to such fund, or create an income interest in such property for the life of one or more beneficiaries, each of whom must be living at the time of the transfer of the property to the fund by the donor. The term *one or more beneficiaries* includes those members of a named class who are alive and can be ascertained at the time of the transfer of the property to the fund. In the event more than one beneficiary of the income interest is designated, such beneficiaries may enjoy their shares of income concurrently, consecutively, or both concurrently and consecutively. The donor may retain the power exercisable only by will to revoke or terminate the income interest of any designated beneficiary other than the public charity. The governing instrument must specify at the time of the transfer the particular beneficiary or bene-

ficiaries to whom the income is payable and the share of income distributable to each person so specified. The public charity to or for the use of which the remainder interest is contributed may also be designated as one of the beneficiaries of an income interest. The donor need not retain or create a life interest in all the income from the property transferred to the fund provided any income not payable under the terms of the governing instrument to an income beneficiary is contributed to, and within the taxable year in which it is received is paid to, the same public charity to or for the use of which the remainder interest is contributed. No charitable contributions deduction shall be allowed to the donor for the value of such income interest of the public charity or for the amount of any such income paid to such organization.

(3) *Commingling of property required.* The property transferred to the fund by each donor must be commingled with, and invested or reinvested with, other property transferred to the fund by other donors satisfying the requirements of subparagraphs (1) and (2) of this paragraph. The governing instrument of the pooled income fund must contain a provision requiring compliance with the preceding sentence. The public charity to or for the use of which the remainder interest is contributed may maintain more than one pooled income fund, provided that each such fund is maintained by the organization and is not a device to permit a group of donors to create a fund which may be subject to their manipulation. The fund must not include property transferred under arrangements other than those specified in section 642(c)(5) and this paragraph. However, a fund shall not be disqualified as a pooled income fund under this paragraph because any portion of its properties is invested or reinvested jointly with other properties, not a part of the pooled income fund, which are held by, or for the use of, the public charity which maintains the fund, as for example, with securities in the general endowment fund of the public charity to or for the use of which the remainder interest is contributed. Where such joint investment or reinvestment of

properties occurs, records must be maintained which sufficiently identify the portion of the total fund which is owned by the pooled income fund and the income earned by, and attributable to, such portion. Such a joint investment or reinvestment of properties shall not be treated as an association or partnership for purposes of the Code. A bank which serves as trustee of more than one pooled income fund may maintain a common trust fund to which section 584 applies for the collective investment and reinvestment of moneys of such funds.

(4) *Prohibition against exempt securities.* The property transferred to the fund by any donor must not include any securities, the income from which is exempt from tax under subtitle A of the Code, and the fund must not invest in such securities. The governing instrument of the fund must contain specific prohibitions against accepting or investing in such securities.

(5) *Maintenance by charitable organization required.* The fund must be maintained by the same public charity to or for the use of which the irrevocable remainder interest is contributed. The requirement of maintenance will be satisfied where the public charity exercises control directly or indirectly over the fund. For example, this requirement of control shall ordinarily be met when the public charity has the power to remove the trustee or trustees of the fund and designate a new trustee or trustees. A national organization which carries out its purposes through local organizations, chapters, or auxiliary bodies with which it has an identity of aims and purposes may maintain a pooled income fund (otherwise satisfying the requirements of this paragraph) in which one or more local organizations, chapters, or auxiliary bodies which are public charities have been named as recipients of the remainder interests. For example, a national church body may maintain a pooled income fund where donors have transferred property to such fund and contributed an irrevocable remainder interest therein to or for the use of various local churches or educational institutions of such body. The fact that such local organizations or chapters have been separately incorporated

from the national organization is immaterial.

(6) *Prohibition against donor or beneficiary serving as trustee.* The fund must not have, and the governing instrument must prohibit the fund from having, as a trustee a donor to the fund or a beneficiary (other than the public charity to or for the use of which the remainder interest is contributed) of an income interest in any property transferred to such fund. Thus, if a donor or beneficiary (other than such public charity) directly or indirectly has general responsibilities with respect to the fund which are ordinarily exercised by a trustee, such fund does not meet the requirements of section 642(c)(5) and this paragraph. The fact that a donor of property to the fund, or a beneficiary of the fund, is a trustee, officer, director, or other official of the public charity to or for the use of which the remainder interest is contributed ordinarily will not prevent the fund from meeting the requirements of section 642(c)(5) and this paragraph.

(7) *Income of beneficiary to be based on rate of return of fund.* Each beneficiary entitled to income of any taxable year of the fund must receive such income in an amount determined by the rate of return earned by the fund for such taxable year with respect to his income interest, computed as provided in paragraph (c) of this section. The governing instrument of the fund shall direct the trustee to distribute income currently or within the first 65 days following the close of the taxable year in which the income is earned. Any such payment made after the close of the taxable year shall be treated as paid on the last day of the taxable year. A statement shall be attached to the return of the pooled income fund indicating the date and amount of such payments after the close of the taxable year. Subject to the provisions of part I, subchapter J, chapter 1 of the Code, the beneficiary shall include in his gross income all amounts properly paid, credited, or required to be distributed to the beneficiary during the taxable year or years of the fund ending within or with his taxable year. The governing instrument shall provide that the income interest of any designated beneficiary shall either terminate with the last

regular payment which was made before the death of the beneficiary or be prorated to the date of his death.

(8) *Termination of life income interest.* Upon the termination of the income interest retained or created by any donor, the trustee shall sever from the fund an amount equal to the value of the remainder interest in the property upon which the income interest is based. The value of the remainder interest for such purpose may be either (i) its value as of the determination date next succeeding the termination of the income interest or (ii) its value as of the date on which the last regular payment was made before the death of the beneficiary if the income interest is terminated on such payment date. The amount so severed from the fund must either be paid to, or retained for the use of, the designated public charity, as provided in the governing instrument. However, see subparagraph (3) of this paragraph for rules relating to commingling of property.

(c) *Allocation of income to beneficiary—*

(1) *In general.* Every income interest retained or created in property transferred to a pooled income fund shall be assigned a proportionate share of the annual income earned by the fund, such share, or unit of participation, being based on the fair market value of such property on the date of transfer, as provided in this paragraph.

(2) *Units of participation—*(i) *Unit plan.*

(a) On each transfer of property by a donor to a pooled income fund, one or more units of participation in the fund shall be assigned to the beneficiary or beneficiaries of the income interest retained or created in such property, the number of units of participation being equal to the number obtained by dividing the fair market value of the property by the fair market value of a unit in the fund at the time of the transfer.

(b) The fair market value of a unit in the fund at the time of the transfer shall be determined by dividing the fair market value of all property in the fund at such time by the number of units then in the fund. The initial fair market value of a unit in a pooled income fund shall be the fair market value of the property transferred to the fund divided by the number of units assigned to the income interest in that

property. The value of each unit of participation will fluctuate with each new transfer of property to the fund in relation to the appreciation or depreciation in the fair market value of the property in the fund, but all units in the fund will always have equal value.

(c) The share of income allocated to each unit of participation shall be determined by dividing the income of the fund for the taxable year by the outstanding number of units in the fund at the end of such year, except that, consistently with paragraph (b)(7) of this section, income shall be allocated to units outstanding during only part of such year by taking into consideration the period of time such units are outstanding. For this purpose the actual income of such part of the taxable year, or a prorated portion of the annual income, may be used, after making such adjustments as are reasonably necessary to reflect fluctuations during the year in the fair market value of the property in the fund.

(ii) *Other plans.* The governing instrument of the fund may provide any other reasonable method not described in subdivision (i) of this subparagraph for assigning units of participation in the fund and allocating income to such units which reaches a result reasonably consistent with the provisions of such subdivision.

(iii) *Transfers between determination dates.* For purposes of subdivisions (i) and (ii) of this subparagraph, if a transfer of property to the fund by a donor occurs on other than a determination date, the number of units of participation assigned to the income interest in such property may be determined by using the fair market value of the property in the fund on the determination date immediately preceding the date of transfer (determined without regard to the property so transferred), subject, however, to appropriate adjustments on the next succeeding determination date. Such adjustments may be made by any reasonable method, including the use of a method whereby the fair market value of the property in the fund at the time of the transfer is deemed to be the average of the fair market values of the property in the fund on the determination dates immediately preceding and succeeding

the date of transfer. For purposes of determining such average any property transferred to the fund between such preceding and succeeding dates, or on such succeeding date, shall be excluded. The application of this subdivision may be illustrated by the following example:

*Example.* The determination dates of a pooled income fund are the first day of each calendar month. On April 1, 1971, the fair market value of the property in the fund is \$100,000, at which time 1,000 units of participation are outstanding with a value of \$100 each. On April 15, 1971, B transfers property with a fair market value of \$50,000 to the fund, retaining for himself for life an income interest in such property. No other property is transferred to the fund after April 1, 1971. On May 1, 1971, the fair market value of the property in the fund, including the property transferred by B, is \$160,000. The average of the fair market values of the property in the fund (excluding the property transferred by B) on April 1 and May 1, 1971, is \$105,000  $(\$100,000 + [\$160,000 - \$50,000] \div 2)$ . Accordingly, the fair market value of a unit of participation in the fund on April 15, 1971, at the time of B's transfer may be deemed to be \$105  $(\$105,000/1,000 \text{ units})$ , and B is assigned 476.19 units of participation in the fund  $(\$50,000/\$105)$ .

(3) *Special rule for partial allocation of income to charity.* Notwithstanding subparagraph (2) of this paragraph, the governing instrument may provide that a unit of participation is entitled to share in the income of the fund in a lesser amount than would otherwise be determined under such subparagraph, provided that the income otherwise allocable to the unit under such subparagraph is paid within the taxable year in which it is received to the public charity to or for the use of which the remainder interest is contributed under the governing instrument.

(4) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

*Example 1.* On July 1, 1970, A and B transfer separate properties with a fair market value of \$20,000 and \$10,000, respectively, to a newly created pooled income fund which is maintained by Y University and uses as its taxable year the fiscal year ending June 30. A and B each retain in themselves for life an income interest in such property, the remainder interest being contributed to Y University. The pooled income fund assigns an initial value of \$100 to each unit of participation in the fund, and under the governing in-

struments A receives 200 units, and B receives 100 units, in the fund. On October 1, 1970, which is a determination date, C transfers property to the fund with a fair market value of \$12,000, retaining in himself for life an income interest in such property and contributing the remainder interest to Y University. The fair market value of the property in the fund at the time of C's transfer is \$36,000. The fair market value of A's and B's units at the time of such transfer is \$120 each  $(\$36,000/300)$ . By reason of his transfer of property C is assigned 100 units of participation in the fund  $(\$12,000/\$120)$ .

*Example 2.* Assume that the pooled income fund in example 1 earns \$2,600 for its taxable year ending June 30, 1971, and there are no further contributions of property to the fund in such year. Further assume \$300 is earned in the first quarter ending September 30, 1970. Therefore, the fund earns \$1 per unit for the first quarter  $(\$300 \text{ divided by } 300 \text{ units outstanding})$  and \$5.75 per unit for the remainder of the taxable year  $([\$2,600 - \$300] \text{ divided by } 400 \text{ units outstanding})$ . If the fund distributes its income for the year based on its actual earnings per quarter, the income must be distributed as follows:

Beneficiary	Share of income
A .....	\$1,350 $([200 \times \$1] + [200 \times \$5.75])$ .
B .....	\$675 $([100 \times \$1] + [100 \times \$5.75])$ .
C .....	\$575 $(100 \times \$5.75)$ .

*Example 3.* (a) On July 1, 1970, A and B transfer separate properties with a fair market value of \$10,000 and \$20,000, respectively, to a newly created pooled income fund which is maintained by X University and uses as its taxable year the fiscal year ending June 30. A and B each retain in themselves an income interest for life in such property, the remainder interest being contributed to X University. The governing instrument provides that each unit of participation in the fund shall have a value of not more than its initial fair market value; the instrument also provides that the income allocable to appreciation in the fair market value of such unit (to the extent in excess of its initial fair market value) at the end of each quarter of the fiscal year is to be distributed currently to X University. On October 1, 1970, which is a determination date, C contributes to the fund property with a fair market value of \$60,000 and retains in himself an income interest for life in such property, the remainder interest being contributed to X University. The initial fair market value of the units assigned to A, B, and C is \$100. A, B, and C's units of participation are as follows:

Beneficiary	Units of participation
A .....	100 $(\$10,000 \text{ divided by } \$100)$ .
B .....	200 $(\$20,000 \text{ divided by } \$100)$ .
C .....	100 $(\$10,000 \text{ divided by } \$100)$ .

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(b) The fair market value of the property in the fund at the time of C's contribution is \$40,000. Assuming the fair market value of the property in the fund is \$100,000 on December 31, 1970, and that the income of the fund for the second quarter ending December 31, 1970, is \$2,000, the income is shared by the income beneficiaries and X University as follows:

<i>Beneficiary</i>	<i>Allocation of income</i>
A, B, and C .....	90% (\$90,000 divided by \$100,000).
X University .....	10% (\$10,000 divided by \$100,000).

(c) For the quarter ending December 31, 1970, each unit of participation is allocated \$2 (90 percent×\$2,000 divided by 900) of the income earned for that quarter. A, B, C, and X University share in the income as follows:

<i>Beneficiary</i>	<i>Share of income</i>
A .....	\$200 (100×\$2).
B .....	\$400 (200×\$2).
C .....	\$1,200 (600×\$2).
X University .....	\$200 (10%×\$2,000).

[T.D. 7105, 36 FR 6477, Apr. 6, 1971; 36 FR 7004, Apr. 13, 1971, as amended by T.D. 7125, 36 FR 11032, June 8, 1971; T.D. 7357, 40 FR 23742, June 2, 1975; T.D. 7633, 44 FR 57925, Oct. 9, 1979; T.D. 9102, 69 FR 18, Jan. 2, 2004]

**§ 1.642(c)-6 Valuation of a remainder interest in property transferred to a pooled income fund.**

(a) *In general.* (1) For purposes of sections 170, 2055, 2106, and 2522, the fair market value of a remainder interest in property transferred to a pooled income fund is its present value determined under paragraph (d) of this section.

(2) The present value of a remainder interest at the time of the transfer of property to the pooled income fund is determined by computing the present value (at the time of the transfer) of the life income interest and subtracting that value from the fair market value of the transferred property on the valuation date. The fact that the income beneficiary may not receive the last income payment, as provided in paragraph (b)(7) of § 1.642(c)-5, is not taken into account for purposes of determining the value of the life income interest. For purposes of this section, the valuation date is the date on which property is transferred to the fund by the donor except that, for purposes of section 2055 or 2106, it is the alternate valuation date, if elected, under the provisions and limitations set forth in

section 2032 and the regulations thereunder.

(3) Any claim for a deduction on any return for the value of the remainder interest in property transferred to a pooled income fund must be supported by a statement attached to the return showing the computation of the present value of the interest.

(b) *Actuarial computations by the Internal Revenue Service.* The regulations in this and in related sections provide tables of actuarial factors and examples that illustrate the use of the tables in determining the value of remainder interests in property. Section 1.7520-1(c)(2) refers to government publications that provide additional tables of factors and examples of computations for more complex situations. If the computation requires the use of a factor that is not provided in this section, the Commissioner may supply the factor upon a request for a ruling. A request for a ruling must be accompanied by a recitation of the facts including the pooled income fund's highest yearly rate of return for the 3 taxable years immediately preceding the date of transfer, the date of birth of each measuring life, and copies of the relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(b) of this chapter) and include payment of the required user fee. If the Commissioner furnishes the factor, a copy of the letter supplying the factor should be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the taxpayer must furnish a factor computed in accordance with the principles set forth in this section.

(c) *Computation of pooled income fund's yearly rate of return.* (1) For purposes of determining the present value of the life income interest, the yearly rate of return earned by a pooled income fund for a taxable year is the percentage obtained by dividing the amount of income earned by the pooled income fund for the taxable year by an amount equal to—