

2007 Instructions for Form 5227, Split-Interest Trust Information Return

Purpose: This is the first circulated draft of the 2007 Instructions for Form 5227, Split-Interest Trust Information Return, for your review and comments. See below for a discussion of the major changes.

NOTE: We have also included an additional section (prepared by the Reviewer) to provide you with some helpful background information.

TPCC Meeting: There is no meeting scheduled but you may request one.

Prior Version: The 2006 Instructions for Form 5227 are available at:
<http://www.irs.gov/pub/irs-pdf/i5227.pdf>

Form: The 2007 Form 5227 is being circulated for a second time separately.

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at: <http://taxforms.web.irs.gov/Circulations/index.htm>

Comments: Please email, fax, call, or mail any comments by **December 5, 2007** to me and the Reviewer, Chuck Frank at (Chuck.L.Frank@irs.gov).

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Major Changes to the 2007 Instructions for Form 5227

- On page 1, under *What's New*, we briefly summarized the following to reflect amendments made by the Pension Protection Act of 2006:
 - Highlights of the major redesign of the 2007 Form 5227,
 - Current filing requirements for split-interest trusts,
 - New requirements for public inspection and disclosure of Form 5227,
 - Increased penalties related to failure to file, and failure to accurately and completely report required information, and
 - The application of increased penalties personally on trustees who knowingly fail to file a return.
- On page 1, under *Purpose of Form*, we revised this section to explain the expanded use of Form 5227 and the purpose of new Schedule A of Form 5227. These revisions were made to incorporate the new filing requirements of IRC section 6034.

- On page 1, under *Who Must File*, we added text to clarify that under the new filing requirements of IRC section 6034, certain charitable remainder trusts, pooled income funds, and charitable lead trusts must now file Form 5227, unless the exception (discussed in the instructions) applies. The new provision creates this requirement because the exemption for split-interest trusts that currently distribute all net income is repealed.
- On page 1, under *Exception*, we added text which clarifies when a trust is not required to file Form 5227.
- On page 1, under *Note*, we added text to advise split-interest trust trustees of the reporting requirements for Form 5227 and Form 1041-A.
- On page 2, under *Which Parts To Complete*, (continued from the discussion under *Who Must File* on page 1), we added text to explain the exceptions to filing certain parts of Form 5227, which otherwise would be filed by the entity.
- On page 2, under *Definitions, Split-interest trust*, we identified three types of split-interest trusts by code section to clarify their treatment within the Instructions for Form 5227.
- On page 3, under *Where To File*, we added the text “Department of the Treasury” to the address per the Acting Chief, Individual Branch, email dated 9/6/2007.
- On page 3, we added a new section, entitled *Penalty for Failure To File Timely, Completely, or Correctly*, which provides details on the penalty increases imposed on split-interest trusts for the failure to file and the failure to completely and accurately include required information on Form 5227. We also added text on the penalties imposed on trustees who knowingly fail to file Form 5227.
- On page 3, under *Trust Instrument*, we added a reference to two new revenue procedures with sample charitable lead annuity trusts (CLATs). Revenue Procedure 2007-45 provides guidance for *inter vivos* charitable lead annuity trusts while Revenue Procedure 2007-46 contains guidance on testamentary charitable lead annuity trusts.
- On page 4, under A. *Employer Identification Number (EIN)*, the second bullet, we added the window of time during which trustees may call for live telephone assistance in obtaining an EIN.
- On page 4, we added new text, entitled *D. Gross Income*, which includes the definition of gross income within the meaning of Code section 61. This change was made to clarify the amount that filers should report in box D on Form 5227.
- On page 4, under *Initial return*, we added text to alert charitable remainder trust entities that both item E and question 92 (along with submitting a copy of the trust instrument) must be completed if the entity is filing an initial return.

- On page 4, we added new text, entitled *For charitable remainder trusts*, which directs trustees of charitable remainder trusts to submit additional attachments where the filing of an amended return results in certain changes.
- On page 5, under *G. Unrelated Business Taxable Income*, we revised the instructions to alert trustees about filing Form 4720 to report the trust's unrelated business taxable income. IRC section 664(c)(2).
- On page 5, under *Line 5. Farm income or (loss), Note*, we added instructions on where to report farm rental income and expenses on tenant-produced crops or livestock.
- On page 5, we added new text, entitled *Line 7. Other income*, to clarify for trustees how to report other income items on line 7.
- On pages 5 and 6, we added a new section, entitled *Section B—Capital Gains (Losses)*, by restructuring the instructions from the prior revision (*old Line 17 instructions*), and adding text to clarify the capital gains (losses) reporting requirements for a section 664 trust versus a split-interest trust other than a section 664 trust.
- On page 6, we added a new section, entitled *Section C—Nontaxable Income*, to reflect the addition of this section to Form 5227. The text alerts trustees as to the type of income to include on lines 14 and 15.
- On page 6, we added a new section, entitled *Section D—Deductions*, by restructuring some of the instructions from the prior revision (*old Deductions instructions*), and adding a section which discusses how to report deductions for split-interest trusts other than section 664 trusts.
- On page 6, we added a new section, entitled *Section E—Deductions Allocable to Income Categories (Section 664 trust only)*, by restructuring some of the instructions from the prior revision (*also from old Deductions instructions*), and adding text which explains the amounts to enter in on lines 24a through 26b in Section E.
- On page 6, we revised the heading of *Part II* to read as follows: *Schedule of Distributable Income (Section 664 trust only)*. This change reflects a change made to Form 5227.
- On page 6, we added a new section, entitled *Part III-A. Distributions of Principal for Charitable Purposes*, by using text similar to that found in Form 1041-A (Rev. December 2000) to give guidance on and an example of how to report principal distributions for charitable purposes. IRC section 2055.
- On pages 6 and 7, we added a new section, entitled *Part III-B. Accumulated Income Set Aside and Income Distributions for Charitable Purposes*, which discusses when filers would complete Part III and gives guidance on how to report certain charitable distributions. Reg. sections 1.6034-1(a)(1), (2), and (3).

- On page 7, under *Part IV. Balance Sheet*, we revised the last sentence of the first paragraph to reflect that “...all charitable remainder unitrusts must complete column (c)” for purposes of clarity.
- On page 8, under *Line 55. Other liabilities*, we added text to clarify what all trusts must report with respect to advances, and what charitable remainder unitrusts must additionally report.
- On page 8, under *Parts V-A and V-B. Charitable Remainder Trust Information, Line 66a*, we inserted the term “fiduciary” for purposes of clarity.
- On page 8, under *Parts V-A and V-B. Charitable Remainder Trust Information, Line 67a*, we added text stating that line 67a should be the same amount reported on line 53 of Form 5227.
- On page 8, immediately after the instructions for *Line 67a*, we deleted the instructions for *Line 68 (old line 52)* as unnecessary for the Form 5227 Instructions.
- On page 10, we added a new section, entitled *Line 95*, to reflect the addition of question 95 regarding signature authority over a financial account in a foreign country.
- On page 11, we added a new section to reflect the addition of Schedule A, entitled *Distributions, Assets, and Donor Information*, to Form 5227. We noted that Schedule A is not open to public disclosure.
- On page 11, we added a new section, entitled *Part I. Accumulation Schedule (Section 664 trust only)*, with instructions for amounts to be entered on lines 2a and 2b. Within this section, we also included a *TIP icon*, which recommends that trustees read and/or complete certain portions of Part II-A before entering amounts on line 2a or line 2b.
- On page 11, we added a new section, entitled *Part II-A. Current Distributions Schedule (Section 664 trust only)*, by restructuring some of the instructions from the prior revision (*from old Part III. Current Distributions Schedule*), and adding text which alerts trustees to further instructions that follow.
- On page 12, (continued under the discussion *Inclusion of Amounts in Recipients’ Income* on page 11), we added a new section, entitled *Types of Income*, which details how trustees are to treat distributed amounts where there is more than one type of income in a class. Within this section, we also included an example to clarify these instructions.
- Please note: All references to pages, lines, and items affected by any of the above-noted changes will be corrected prior to the final print approval of the Instructions to Form 5227.

Background Information

For tax year 2005, there were approximately 124,000 Forms 5227 filed. Of the returns filed, the approximate percentage of filers by entity is as follows:

- 93.5% were charitable remainder trusts,
- 5% were charitable lead trusts, and
- 1.5% were pooled income funds.

Years 1975 - 1980

Form 5227. Form 5227 was filed by section 4947(a)(1) non-exempt charitable trusts (treated as private foundations) and section 4947(a)(2) split-interest trusts. The design of the form was similar to Form 990-PF, including the computation of the excise tax based on net investment income. Basically, the form was an EZ version of Form 990-PF for section 4947(a)(1) trusts. Split-interest trusts were required to file the form and complete Part I, column (a), income statement, certain questions on Parts III and V relating to the trusts activities, and the Part IV balance sheet. Parts III and V addressed the applicability of certain chapter 42 taxes. Form 5227 met the Reg. section 53.6011-1(d) filing requirement for split-interest trusts. Generally, split-interest trusts are composed of charitable remainder trusts, pooled income funds, and charitable lead trusts. Pooled income funds and charitable lead trusts are not tax-exempt entities; therefore, they also have a Form 1041 filing requirement. Charitable remainder trusts are tax-exempt (under section 664) and were required to file Form 1041-B.

Note: Any chapter 42 taxes that would be owed by split-interest trusts are reported on and paid with Form 4720.

Form 1041-B. Form 1041-B was filed by charitable remainder trusts. Charitable remainder trusts are tax-exempt. However, if the trust had any unrelated business taxable income, it essentially lost its tax exemption for that year, and was treated as a complex trust and required to file Form 1041. Form 1041-B determined the amount and character of the trust's income and the amount of distributions and the character of those distributions to the non-charitable beneficiaries according to the rules of section 664 and its regulations. Form 1041-B fulfilled the filing requirements of Reg. section 1.6012-3(a)(6).

Form 1041-A. Form 1041-A was basically the same as the December 2000 revision. It was filed by split-interest trusts and trusts that paid or set-aside an amount for which a section 642(c) charitable deduction was claimed. Form 1041-A required information about income, deductions, a balance sheet, and information about charitable payments and set-asides if a section 642(c) charitable deduction had been claimed.

Summary. Charitable remainder trusts had to file 3 annual returns: Form 1041-B, Form 5227, and Form 1041-A. Under certain circumstances, charitable remainder trusts may have been required to file Form 1041 and Form 4720.

Charitable lead trusts and pooled income funds had to file 3 annual returns: Form 5227, Form 1041, and Form 1041-A. Under certain circumstances, these trusts may also be required to file Form 4720.

Years 1981 to 2006

Form 1041-B. This form was obsolete in 1981.

Form 5227. Section 4947(a)(1) nonexempt charitable trusts no longer filed Form 5227. Instead, in 1981 these filers began filing Form 990-PF. Form 5227 was revised and the core of Form 5227 became the former Form 1041-B. Additionally, the Statements Regarding Activities (questions concerning sections 4941 through 4945) from the old Parts III and V of Form 5227 became new Parts VI-A and VI-B. Additional information was requested in new Part VII. The revenue and expense requirement was dropped¹ but the balance sheet requirement continued.

Form 5227 now met the filing requirements of Reg. section 1.6012-3(a)(6) and Reg. section 53.6011-1(d).

Summary. Charitable remainder trusts had 2 annual returns to file instead of 3 annual returns: Form 5227 and Form 1041-A. Also, under certain circumstances, charitable remainder trusts may be required to file, Form 1041 and Form 4720.

Charitable lead trusts and pooled income funds continued filing the same returns.

Announcement 82-14 listed the filing requirement changes for 1981. In 1983, the Service issued Rev. Proc. 83-32 that reflected the filing requirements for various charitable trusts. Subsequently, T.D. 8026 amended the Regulations for the changes in filing requirements except for Reg. section 1.6012-3(a)(6). This section should have been amended to change Form 1041-B to Form 5227.

Year 2007

Form 5227. In addition to meeting the filing requirements of Reg. section 1.6012-3(a)(6) and Reg. section 53.6011-1(d), Form 5227 will also meet the Reg. section 1.6034-1 filing requirement for split-interest trusts. New Parts III-A and III-B and changes in the format of the form were made to accommodate Reg. section 1.6034-1 and the new disclosure requirements. Also, a few new information requests were added and Part V-B was simplified. Additional formatting changes were made due to disclosure requirements and new information requests were added.

Form 1041-A. Form 1041-A will only be filed by trusts that are not split-interest trusts but either set aside or paid amounts in which a section 642(c) charitable deduction was claimed.

Summary. Charitable remainder trusts are now required to file one annual return: Form 5227. Also, because of Public Law 109-432, act section 424(a), charitable remainder trusts, under certain circumstances, may now be required to file 1 additional return, Form 4720. (Form 1041 will no longer be used to report the tax on a charitable remainder trusts unrelated business taxable income.)

¹ However, the income and deduction section from Form 1041-B carried over for charitable remainder trusts.

Charitable lead trusts and pooled income funds are now required to file 2 annual returns, Form 5227 and Form 1041. Also, Form 4720 may be required under certain circumstances.

Therefore, all split-interest trusts have one less annual return to file and charitable remainder trusts, under certain circumstances, have one less additional return they may be required to file than under previous requirements.