16. THE POOLED INCOME FUND AGREEMENT

Introduction

General Description

A pooled income fund (PIF) is a trust established and maintained by a public charity (such as a church, school, college, university, hospital, or medical research institution) which receives contributions from multiple donors and is defined in Internal Revenue Code (IRC) §642(c). The PIF is a split-interest gift plan which designates an irrevocable remainder interest for the use of the public charity which maintains the fund and provides an income interest for the life of one or more beneficiaries, each of whom must be living at the time of the asset transfer to the PIF. Contributions qualify for income, gift, and estate tax charitable deductions based on the present value of the charitable interest at the time the gift is completed. The fund is maintained by the organization to which the remainder interest is contributed. No donor or beneficiary of an income interest may be a trustee. A national charitable organization may maintain a fund for its affiliated local organizations with which it has common aims and purposes. Based on the number of fund units attributable to a donor, the pro-rata share of the annual PIF income is distributed to the income beneficiaries during their lifetimes. At the death of the last surviving income beneficiary of a specific PIF agreement, the shares in that account are severed from the fund and the proceeds are distributed to the designated entity for its charitable purposes.

General Conference Corporation Pooled Income Fund

The General Conference Corporation administers its pooled income fund, without charge, for any Seventh-day Adventist Yearbook entity that is a beneficiary under a Pooled Income Fund Agreement with the GCC. The only acceptable assets for funding are cash and readily marketable securities. Two constituent parts make up the PIF in relation to a donor: the founding document entitled *General Conference Pooled Income Plan* which establishes the fund and its specific characteristics, and an instrument of transfer or gift agreement, which is identified as the *Pooled Income Fund Agreement*. This document memorializes the agreement between the donor and the General Conference as Trustee of the PIF, the amount transferred, the transfer date, the income beneficiaries and their respective interests, the remainder beneficiaries, and other pertinent facts specific to the agreement. The General Conference Pooled Income Fund Plan was established June 30, 1971, amended, and restated in 1999. A copy is included at the end of this chapter.

Donor

A pooled income fund donor may be an individual or may be a "person" other than an individual, such as a decedent's estate, trust, or corporation. The only limitations in the case of a donor who is not an individual are (1) the income beneficiary must be an individual other than the donor who is living at the time the agreement is funded, and (2) the income interest may not be revoked by will.

Commingling of Funds

In order to qualify as a pooled income fund, the contributions of the various donors must be commingled for both administrative and investment purposes. Although accounts are maintained for each pooled fund agreement, no donor or income beneficiary has a right to income from any particular asset in the fund, but rather each receives a proportionate share of the income from the entire fund. In this respect, a PIF is analogous to a mutual fund.

Valuation Dates

The pooled income fund must be valued on the first day of its tax year. In addition, the fund must be valued no less frequently than every three months. Thus, a full tax year would have a minimum of four valuation dates. The General Conference PIF is valued on January 1 of each year and on the last business day of each month.

Charitable Remainder at Death of Income Beneficiary

An amount equal to the value of a deceased income beneficiary's fund units/shares is severed from the PIF on the first valuation date following the death of the last income beneficiary entitled to receive income. This amount is then transferred to the remainder beneficiary for its exempt purposes.

Fiscal Year

The Tax Reform Act of 1986 mandates that all pooled income funds adopt a calendar year as their tax year. Thus, the year in which the fund begins will likely be a short year for tax purposes.

Investment Prohibitions

The pooled income fund cannot invest in tax-exempt securities. Long-term capital gains cannot be distributed as income, but must be retained in the fund. Short-term capital gains may be distributed as income, but only if called for in the governing instrument.

Private Foundation Excise Taxes

Pooled Income Funds are subject to some of the private foundation excise taxes even though they are not private foundations. Violations of the private foundation prohibitions against self-dealing, making any taxable expenditures, and, if income is payable to a charitable organization, the rules against excess business holdings and investments that jeopardize the PIF's tax exempt purpose (providing a remainder to charity), can result in the imposition of excise taxes. Accordingly the governing instrument must include prohibitions against the various private foundation prohibited activities.

Income Interest

Income Beneficiary

Income beneficiaries may be one or more individuals living at the time assets are transferred to the pooled income fund. While a corporation can be a PIF donor, it cannot be an income beneficiary. Income beneficiaries may receive the life income jointly or consecutively. The charitable remainder beneficiary may be designated as one of the beneficiaries to receive an income interest. The charity's income benefit is not taxed to the donor and no income tax charitable deduction is allowed to the donor for the income interest paid to the charity at the time of transfer or at the time the payment is made. Each income beneficiary must receive the required income payment at least annually. Income distributed within 65 days following the close of the fund's taxable year is treated as if distributed on the last day of the taxable year.

Term of Income Interest

The pooled income fund measuring term must be for the life of the income beneficiary. It cannot be for a term of years or for the life of someone other than an income beneficiary.

Assignments of Units in the Fund

Units, or shares of participation, are assigned to each donor when property is donated to the fund. The number of shares assigned is determined by dividing the fair market value of the property transferred by the value of one unit (as of the valuation date). Thus if a donor transfers $5000 to the PIF and each unit is valued at $50 then the donor is assigned 100 shares of the fund. The value of one unit/share is determined by dividing the fair market value of the fund by the total number of outstanding fund units/shares. If, on the valuation date, the fund is worth $100,000 and there are 2000 shares outstanding each share is worth $50. For assets transferred between valuation dates, the fund value is the average of the fund value on the valuation dates before and after the transfer, with appropriate time weighting adjustments.

Allocating Income to Units

Income is allocated to each unit/share by dividing the net income for the period by the total number of outstanding shares. The resultant income per share is multiplied by the number of shares assigned to a particular income beneficiary. General Conference Corporation PIF payments are made quarterly.

Termination of Income Interest

The income interest must either terminate at the last payment before the income beneficiary's death or be prorated to the date of the death. The governing instrument must state which method is to be used. The GCC PIF terminates the income interest as of the date of the payment due next preceding the date of death of the last income beneficiary entitled to receive income. Any income earned by the units during the quarter in which death occurs, but prior to severance of fund shares, accrues to the charitable remainder beneficiary.

Income Tax Considerations

Taxation of the Pooled Income Fund

Pooled income funds are taxable trusts. However, in most cases, pooled income funds do not pay taxes because of deductions for (1) amounts required to be distributed annually to the income beneficiaries, and (2) long-term capital gains permanently set aside for charity. The fund retains all long-term gains without taxation. However, short term capital gains (if any) are taxable.

Character of Income in the Hands of the Income Beneficiary

Income beneficiaries are taxed on their proportionate share of the earnings of the fund. The income retains the same character in the hands of the income beneficiary as it had in the fund. The income beneficiary receives a Schedule K-1 reporting the amount and character of income received.

Recognition of Gain or Loss on Transfer to the Fund

Ordinarily, the donor does not recognize gain or loss on property transferred to a qualified pooled income fund. Capital gains realized by the fund on the sale of donated assets are permanently set aside for charity as additions to principal. Generally, the donor’s holding period and basis transfer to the fund. However, if the property is debt encumbered or if the donor receives property from the fund in addition to his/her income interest, gain may be recognized. Under these circumstances, the transfer is subject to bargain sale rules. Since loss is typically not recognized on the transfer of depreciated property to the pooled income fund, it is usually better for the donor to sell the property, recognize the loss on their personal Form 1040, and transfer the proceeds to the pooled income fund for an income tax charitable deduction.

Charitable Deduction

Gift of Future Interest

Generally, charitable deductions for income, gift, or estate tax purposes are allowed only when a donor contributes an entire interest in property—unless the contribution takes the form of a charitable remainder trust, a pooled income fund, a qualified grantor charitable lead trust, or a remainder interest in a personal residence or farm.

Income Tax Charitable Deduction

The donor receives an income tax charitable deduction equal to the value of the charitable gift portion (present value of the future charitable interest) of the pooled income fund agreement in the year of the transfer to the PIF. Any unused charitable deduction may be carried over and used as needed for up to five additional years.

Rate of Return of the Fund

For established funds, the highest yearly rate of return in the previous three tax years is used in calculating the charitable contribution. If the fund has been in existence for less than three taxable years, a deemed rate of return is mandated by the Internal Revenue Service (Reg. 1.642(c)-6(e)(4)).. In 2011, the deemed rate of return for any pooled income fund less than three years old is 2.8%.

The Ages of the Income Beneficiaries

The charitable contribution is also dependent upon the ages of the income beneficiaries; the older the beneficiary, the larger the charitable contribution, because there is actuarially a shorter period of payout and thus a potentially larger remainder interest.

Gift Substantiation

All gifts with a value in excess of $250 must be substantiated by the donor with a contemporaneous written statement indicating asset transfer date, the amount transferred (if cash), and a description of the assets (if other than cash). The gift acknowledgement must also state that no goods or services were provided for the donated amount (other than the value of the income interest). Any return which claims a deduction on the value of the remainder interest in property transferred to a pooled income fund must be supported by an attached statement showing the computation of the present value of the interest (typically produced by gift planning software such as Crescendo Pro or PG Calc).

Percentage Limitations

Depending on the type of property transferred to the fund, the charitable deduction is limited to 30% or 50% of the donor's adjusted gross income (AGI), with a five year carryover for any unused deductible amount. Cash transferred to a PIF is deductible up to 50% of AGI. Long-term appreciated securities are deductible up to 30% of AGI, but may be deducted at 50% of AGI if the donor elects to base the deductible amount on the property's adjusted basis. In the latter event, the donor must treat all contributions of long term appreciated property in that year, and all such carryover from previous years, in the same manner.

Gift Tax and Estate Tax Considerations

Gift Tax Consequences

A transfer to a pooled income fund consists of (1) a charitable gift of a future remainder interest and (2) a gift of an income interest. Transfers may be made during life or, as a testamentary transfer, at the donor's death. Gifting the income interest during life, in whole or in part, to someone other than the donor may result in gift tax.

Donor as Sole Income Beneficiary

If the donor is the sole income beneficiary, the income interest is retained so there is no gift. The remainder interest is donated to a qualified charity and qualifies for the unlimited gift tax charitable deduction.

Spouse (U.S. Citizen) as Income Beneficiary

If the donor's spouse is named as an income beneficiary, potential gift tax consequences exist. If the donor spouse is the named income beneficiary, the unlimited marital deduction is available by electing to treat the entire transferred property as a qualified terminable interest property (QTIP). If the first decedent spouse's executor makes the QTIP election on the decedent spouse's federal estate tax return the property will be included in the donee spouse's gross estate for estate tax purposes.

When the donor is the primary income beneficiary and the spouse is the irrevocable survivor income beneficiary, neither the annual gift tax exclusion, nor the marital deduction is available. The spouse's survivor income interest is a future interest and is therefore not eligible for the annual exclusion. In addition, since the spouse is not the sole income beneficiary, the marital deduction is not available. In this case, the donor's lifetime gift tax exclusion must be utilized (to the extent available) to reduce or eliminate gift tax otherwise payable on the value of the spouse's income interest. A taxable gift may be avoided by retaining a testamentary power to revoke the spouse's interest.

If the donor's spouse is the *sole* irrevocable income beneficiary, the gift is of a present interest and qualifies for the annual gift tax exclusion ($13,000 in 2011 and indexed for inflation) and the unlimited marital deduction. In the event the donor's spouse is named income beneficiary along with any other person (including the donor), the spouse's interest does not qualify for the marital deduction because he/she is not the *sole* income beneficiary. Therefore, the donor's lifetime gift tax exclusion must be utilized to eliminate or reduce any gift tax due.

Non-Spouse as Income Beneficiary

An income interest retained for an individual other than the donor's spouse is a taxable gift. Since it is of present interest, it qualifies for the annual gift tax exclusion. The donor's lifetime gift tax exclusion (to the extent it is available) may be used to eliminate or reduce the gift tax on any amount in excess of the annual exclusion.

Gift Tax Return

Even though the gift of a remainder interest is to a qualified charity, because it is of future interest and less than the entire interest transferred, it is necessary to report the gift on Form 709, regardless of the remainder interest size. However, the charitable gift portion qualifies for an unlimited gift tax charitable deduction.

Power to Revoke an Income Interest

A donor may avoid making a taxable gift by reserving the right to revoke an income interest paid to any income beneficiary except the public charity maintaining the fund. The reservation of the power to revoke must be expressed in the pooled life income agreement and must be exercisable only by the donor's will. Such reservation renders the gift of an income interest to another person an incomplete gift for gift tax purposes. As payments are received by the recipient, they become completed present interest taxable gifts and, as such, are subject to the annual gift tax exclusion. Any amount in excess of the annual exclusion is a taxable transfer that would count toward the lifetime gift tax exclusion to the extent it is available.

Estate Tax Consequences

Deferred gift plans, such as the pooled income fund, have estate tax implications that need to be considered before the gift agreement is executed and assets are transferred. The estate tax charitable deduction is dependent on the charitable remainder passing to a qualified charity under IRC §2055(a).

Donor as Sole or Surviving Income Beneficiary

If the donor is the sole or surviving income beneficiary, the date of death (or alternate valuation date) value of the fund units is included in the decedent's gross estate. However, the full value of the fund units qualifies for an estate tax charitable deduction.

Spouse (U.S. Citizen) as Sole Beneficiary

When the spouse is the sole irrevocable income beneficiary, the donor has no interest in the fund that would cause share values to be includible in his/her gross estate for estate tax purposes.

Donor as Income Beneficiary with Spouse or Another Individual

If the donor retains no testamentary power to revoke, the value of the surviving beneficiary's income interest generally will be includable in the donor's adjusted taxable gifts, but not in the donor's gross estate.

If the donor who is also an income beneficiary predeceases a successor income beneficiary while retaining the testamentary power to revoke the successor income beneficiary's interest, the date of death value of the entire interest is includible in the donor's gross estate with a estate tax charitable deduction for the charity's remainder interest. If the sole surviving beneficiary is the donor's spouse (U.S. citizen), the unlimited marital deduction is available if a QTIP election is made. If a non-spouse income beneficiary survives, the value of the non-spouse beneficiary's life income is included in the donor's gross estate. The present value of the charitable remainder as of the date of death of the donor is available for an estate tax charitable deduction.

In the event of a testamentary transfer to a pooled life income fund, the present value of the life income interest is included in the donor's gross estate. The estate is also entitled to an estate tax charitable deduction for the present value of the charitable interest. If the life income beneficiary is the donor's spouse the marital deduction is available in the donor's executor elects to qualify the property under the QTIP rules.

Additional Resources

The foregoing discussion is not intended to be comprehensive, but provides overview of certain features of the pooled income fund. For further information, refer to the following:

Charitable Giving Tax Service, Volume 3, R & R Newkirk, Oak Brook, Illinois.

Internal Revenue Code Sec. 642(c) and Treasury Regulations thereunder.

Planned Giving Design Center website: www.pgdc.net. (Registration is free.)

Toce, Joseph P. et al, *Tax Economics of Charitable Giving*, Warren, Gorham, & Lamont of RIA.

Teitell, Conrad. *Deferred Giving*, Volume 1, Taxwise Giving, Old Greenwich, Connecticut

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS
AMENDED AND RESTATED
POOLED INCOME FUND PLAN – 1999

1. **The Plan.** The General Conference is a national church body which carries out its purposes through local organizations with which it has an identity of aims and purposes. The General Conference Pooled Income Fund ("Fund") is established exclusively for the management and investment of property transferred by Donors during lifetime and by Will to the General Conference contributing irrevocable remainder interests in the property to the General Conference or local organizations with which it has an identity of aims and purposes, which organizations are public charities (organizations described in clauses (i) to (vi) of section 170(b)(1)(A) of the Internal Revenue Code, and retaining income interests for the life of one or more beneficiaries living at the time of the transfer. The property ("Life Income Agreement") transferred by each Donor is, must, and will be commingled with and invested or reinvested with other property transferred by other Donors who have made or make similar transfers satisfying the requirements of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder. The Fund shall include only amounts received from transfers which meet such requirements. The General Conference intends that the Fund be a pooled income fund within the meaning of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder. Accordingly, this plan shall be interpreted in accordance with the Internal Revenue Code, United States Treasury regulations, and Internal Revenue Service rulings governing pooled income funds.
2. **Taxable Year.** The first taxable year of the Fund begins June 30, 1971 and ends December 31, 1971. Subsequent years shall begin on January 1st and end December 31st.

3. **Division of Fund into Units.** The Fund shall be divided into units, and the proportionate interest of each Donor's Life Income Gift shall be represented by the number of units allocated to it, based on the fair market value of each Donor's Life Income Gift on the date it enters the Fund. The original unit of participation shall be $93.6432. When new Life Income Gifts are added to the Fund, the number of units shall be increased accordingly. The number of units assigned to each new Life Income Life Income Gift which is transferred to the Fund on a valuation date, shall be determined by dividing the fair market value of the new Life Income Gift on the date it is transferred to the Fund by the fair market value of each existing unit in the Fund at the time of the transfer.
The fair market value of each existing unit in the Fund at the time of the transfer of a new Life Income Gift 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 value of each unit in the Fund will fluctuate with each new transfer of a Life Income Gift to the Fund in relation to the appreciation or depreciation in the fair market value of the Fund's property, but all units in the Fund will always have equal value.
The number of units assigned to each new Life Income Gift which is transferred to the Fund on other than a valuation date shall be based on a method whereby the fair market value of the property in the Fund at the time of such transfer is deemed to be the average of the fair market values of the property in the Fund on the valuation 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. Such valuation shall be consistent with the method illustrated in the example in Treasury Regulation Section 1.642(c)-5(c)(2)(iii).

4. **Valuation.** The Fund's assets shall be valued on January 1st of each year and on the last business day of each month. The Fund's assets shall also be valued on June 30, 1971, the first day of the first taxable year. In computing the fair market value of the Fund's assets, there shall be taken into account all accrued assets and liabilities. The amount of any income earned by or accrued to the Fund but not yet distributed on a valuation date shall be excluded from the Fund's fair market value. All determinations of the fair market value of Life Income Gifts added to the Fund, of the Fund's assets and of Life Income Gifts to be withdrawn from the Fund shall be consistent with customary fiduciary accounting practices and any United States treasury regulations and Internal Revenue Service rulings, procedures and guidelines shall prevail over customary fiduciary accounting practices and any inconsistent provisions of this Plan

5. **Distribution of Income.** The net income (as determined under section 643(b) of the Internal Revenue Code and the regulations thereunder) of the Fund shall be computed on an accrual basis. In determining net income, there shall be deducted the expenses of administering the Fund, which expenses may include reasonable investing management, custodian, and similar fees. The income shall be distributed ratably to the income beneficiaries of participating Life Income Gifts quarterly on the basis of income accrued and received. The apportionment of income for each quarter shall be determined on the last day of each quarter and income for each quarter shall be distributed currently.

6. **Withdrawal of Life Income Gifts.** At the first valuation date following the death of the last income beneficiary entitled to receive income from a Life Income Gift, the General Conference shall withdraw from the Fund (in cash, in kind, or partly in each) and pay to the Charitable Remainderman specified in the agreement creating the Life Income Gift, an amount equal to the then total fair market value of that Life Income Gift's units in the Fund valued as of the valuation date next following the termination of that Life Income Gift's income interest. This amount shall be determined by multiplying the value per unit (the then total fair market value of the Fund divided by the total number of units then outstanding) by the number of units to be withdrawn. If at the time of such withdrawal of the remainder interest, a Charitable Remainderman is not a public charity (an organization described in clauses (i) to (vi) of section 170(b)(A) of the Internal Revenue Code), its share of the remainder interest shall be transferred to such other public charity (including the General Conference) selected by the General Conference.

7. **Investment Powers.** In addition to the powers conferred upon it by law, the General Conference is authorized to retain or sell the property transferred to the Fund and may invest and reinvest the Fund in any kind of property without diversification as to kind or amount and without regard to the limitations imposed by law on investments except that it may not accept or invest in securities the income from which is exempt from tax (under subtitle A of the Internal Revenue Code), interests in real estate investment trusts, or organizations similarly treated under the Internal Revenue Code, depreciable real or personal property, wasting assets, or in any property which would in any way result in the denial of any charitable contribution deduction to which the Donors to the Fund (and

their estates) may be entitled under the Internal Revenue Code. The Fund may be invested and reinvested jointly with other funds maintained by the General Conference (including, but not limited to, the General Conference Income Fund). Where such joint investment or reinvestment is made, records must be maintained sufficiently identifying the portion of the total fund owned by this Fund and the income earned by and attributable to such portion.

8. **Additional Restrictions.** The General Conference as Trustee of the Fun may not engage in any act of self-dealing (as defined in section 4941(d) of the Internal Revenue Code), retain any excess business holdings (as defined in section 4943(c) of the Internal Revenue Code), make any investment which jeopardizes the Fund's charitable purposes (as defined in Section 4944 of the Internal Revenue Code), or make any taxable expenditure (as defined in section 4943(d) of the Internal Revenue Code). If section 4942 of the Internal Revenue Code is deemed applicable to the Fund by reason of section 508(e) of the Code or otherwise, the General Conference as Trustee of the Fund shall distribute the Fund's income for each taxable year at such time and in such manner as not to subject the Fund to tax under section 4942. No donor or income beneficiary (other than the General Conference) of a Life Income Gift may be a trustee of the Fund. No trustee, officer, director, or other official of the General Conference who is a donor to or beneficiary of the Fund may directly or indirectly have general responsibilities with respect to the Fund which are ordinarily exercised by a trustee. The General Conference shall always maintain control over the Fund.

9. **Principal and Income Allocation.** The following shall during each taxable year be allocated to and permanently set aside as part of the Fund principal and shall not be paid as income: (1) gains from the sale, exchange, redemption, or other disposition of any investments; (2) stock dividends; (3) capital gains dividends of regulated investment companies (mutual funds); (4) liquidating distributions; and (5) any other dividends or distributions not deemed taxable as income under the Internal Revenue Code. Any losses from the sale, exchange, redemption or other distribution or any investments shall be allocated to the Fund principal. If interest-bearing securities are acquired at a premium over par or other stated value, the premium shall be amortized from income so as to restore the premium to principal.

10. **Limited Right of Amendment.** The General Conference shall have the power, acting alone, to amend the Plan and agreements under which Life Income Gifts have been transferred to the Fund in any manner required for the sole purpose of insuring that the Fund in any manner required for the sole purpose of insuring that the Fund qualifies as a pooled income fund within the meaning of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder.