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Re: Early Termination of Charitable Remainder Trusts

Dear Mr. O'Shea and Ms. Lerner:

This letter addresses two recently issued Private Letter Rulings ("PLRs"), PLR 200725044 and PLR 200733014, which set forth the calculation method of the income interest upon early termination of a net income with makeup charitable remainder unitrust (a "NIMCRUT"). As discussed below, the calculation method provided in the two PLRs with respect to early termination of NIMCRUTs is inconsistent with previous guidance provided by the Internal Revenue Service (the "IRS") with respect to the calculation method to be used upon creation of a NIMCRUT. We request that the IRS issue guidance that eliminates this inconsistency.

PLR 200725044 and PLR 200733014 both indicate that "one" reasonable method of calculating the actuarial value of the income interest in a NIMCRUT upon termination is to use the lower of the stated percentage distribution rate of the NIMCRUT or the Code § 7520 rate in effect for the month of termination. The authority cited in PLR 200725044 for its conclusion is Treas. Reg. § 1.7520-3(b)(1)(ii), which provides that the valuation of a beneficial interest subject to a contingency, power or restriction must take into account the contingency, power or restriction. Treas. Reg. § 1.7520-3(b)(1)(ii) refers to Treas. Reg. § 1.7520-3(b)(4) Example 2, for an illustration involving a transfer in which an income beneficiary has a 50% probability of dying within one year. PLR 200733014 gives no authority for its conclusion.

The valuation method used in PLR 200725044 and PLR 200733014 will always minimize the value of the income interest, regardless of the circumstances. Use of this method indicates that the IRS may be concerned that a NIMCRUT may distribute less than the stated percentage distribution rate of the NIMCRUT to an

income beneficiary so that valuation of the income interest based on the stated percentage distribution rate in an early termination of a NIMCRUT could possibly overvalue the income interest.

This contrasts with the valuation method used for computing the charitable contribution deduction upon the creation of a NIMCRUT which expressly requires the assumption that the NIMCRUT will distribute the stated percentage distribution rate of the NIMCRUT. Treas. Reg. §§ 1.664-4(a)(3) and 1.664-3(a)(1)(i)(a). Neither PLR 200725044 nor PLR 200733014 suggest that a NIMCRUT should take into account any contingency, power or restriction in computing the charitable contribution deduction upon the creation of a NIMCRUT.

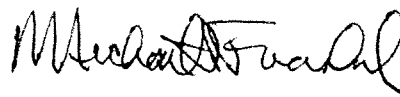
Before issuing PLR 200725044 and PLR 200733014, the IRS had issued numerous rulings dealing with the termination of a charitable remainder trust which are listed in the attached chart. Two of those rulings, PLR 200127023 and PLR 200408031, do not discuss a valuation method. However, all of the other rulings substantially provide that:

The actuarial value of the income interest will be calculated using the discount rate in effect under Code § 7520 on the date of termination and the methodology under Treas. Reg. § 1.664-4 for valuing interests in a charitable remainder trust.

Treas. Reg. § 1.664-4 provides for a methodology using the assumption that the stated percentage distribution rate is distributed to the income beneficiary. Included among the 14 PLRs listed on the attached chart are two PLRs involving NIMCRUTs. In PLR 200208039, the specified reason for early termination of the 8% NIMCRUT was *precisely because* the NIMCRUT was earning only 3%. PLR 200208039 approved a division based upon the 8% stated percentage distribution rate. PLRs 200725044 and 200733014 represent a clear break from the prior PLRs.

A consistent approach to valuation of the income interest when the NIMCRUT is created and upon early termination protects all parties. Given the existing authority of Treas. Reg. §§ 1.664-4(a)(3) and 1.664-3(a)(1)(i)(a), we urge you to issue a published ruling confirming that the proper method for valuing the income interest and the remainder interest of a NIMCRUT that is being terminated early is the same method that is used to value those interests when a NIMCRUT is created, and that is used in the PLRs listed in the attached table.

Respectfully submitted,



Michael I. Frankel  
Chair, Estate & Gift Taxation Committee

*Contributing member:*  
Brit L. Geiger

## Schedule 1

### Private Letter Rulings Involving Termination of Charitable Remainder Trusts

PLR	Comments
200127023	No valuation method discussed
200208039	8% NIMCRUT and 3% return
200252092	
200304025	5% NIMCRUT
200314021	
200324035	
200403051	
200408031	No valuation method discussed
200441024	
200543061	
200525014	15% NIMCRUT revoked by PLR 200614032
200548023	
200552015	Revoked by PLR 200616035
200616035	Same case as 200552015