

DRAFTING INFORMATION

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26 CFR 601.201: Rulings and determination letters.
(Also: Part 1, §§ 2631; 2642; 301 9100-3.)

Rev. Proc. 2004-46

SECTION 1. PURPOSE

This revenue procedure provides a simplified alternate method for certain taxpayers to obtain an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) exemption in accordance with § 2642(b)(1) of the Internal Revenue Code (the Code). This alternate method may be used in lieu of the letter ruling process. No user fee is charged for requests filed under this revenue procedure.

SECTION 2. BACKGROUND

.01 Chapter 13 of the Code imposes a GST tax on all transfers, whether made directly or indirectly, to skip persons. Under § 2613(a), a skip person includes a person who is two or more generations below the generation of the transferor or a trust, if all of the interests are held by skip persons. Generally, under § 2652, the transferor is the individual who transfers property in a transaction subject to the federal gift or estate tax. Under § 2611(a), transfers that are subject to the GST tax are direct skips, taxable distributions, and taxable terminations.

.02 Section 2602 provides that the amount of GST tax imposed on a transfer is determined by multiplying the amount transferred by the applicable rate. Under § 2641, the applicable rate for a transfer is the maximum federal estate tax rate multiplied by the inclusion ratio, and the

inclusion ratio (defined under § 2642) is one minus the applicable fraction. The applicable fraction is a fraction the numerator of which is the amount of GST exemption allocated to the trust (or to the property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip) reduced by federal estate tax and state estate and death taxes actually recovered from the trust (or transferred property) and any charitable deduction allowed under § 2055 or 2522 with respect to the property.

.03 Section 2631 allows every transferor a GST exemption of \$1,000,000 that may be allocated to transfers made by the transferor either during the transferor's life or at death. For calendar years after 1998, the exemption amount has been indexed for inflation and, for transfers made between January 1, 2004, and December 31, 2009, inclusive, the exemption equals the amount that is exempted from transfer tax by the applicable credit amount described in § 2010.

.04 An outright transfer to an individual who is a skip person that qualifies for the gift tax exclusion under § 2503(b) or 2503(e) is deemed to have an inclusion ratio of zero and, thus, is not subject to the GST tax. A different rule, however, applies for a transfer to a trust that is a direct skip. Under § 2642(c)(2), a transfer to a trust for the benefit of one beneficiary that qualifies for the gift tax annual exclusion will be deemed to have a zero inclusion ratio only if certain requirements are met. Many trusts, however, have more than one beneficiary and thus will not have an inclusion ratio of zero by reason of § 2642(c)(2), even if the trust meets the other requirement of that section. In this case, the transferor must affirmatively allocate GST exemption to the trust if the transferor desires to reduce the inclusion ratio to zero.

.05 Affirmative allocations of GST exemption to transfers made during life generally are made on a federal gift tax return (Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*), and can be made whether or not the return is timely filed. Under § 2642(b)(1), if a transferor allocates GST exemption on a timely filed federal gift tax return, the transferor may allocate an amount of GST exemption equal to the value of the property on the date of the transfer to reduce the inclu-

sion ratio to zero. If, however, the transferor allocates GST exemption on a gift tax return that is not timely filed (late allocation), then under § 2642(b)(3), to reduce the inclusion ratio to zero, the transferor must allocate an amount of GST exemption equal to the value of the property either on the date the return is filed or on the first day of the month in which that return is filed.

.06 Automatic allocations of GST exemption are made under § 2632 to certain transfers made during life that are direct skips, so that the inclusion ratio for such transfers may be reduced to zero even without any affirmative allocation of GST exemption. As a result of The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, § 561, 115 Stat. 91, automatic allocations are also made to certain transfers made after 2000 that are not direct skips. With regard to pre-2001 transfers made during life, however, if a transferor failed to make an affirmative allocation of the GST exemption on a timely filed gift tax return, no relief was available, other than to make a late allocation based on the value of the property as of the filing of the late allocation.

.07 Section 564 of EGTRRA added § 2642(g) to the Code, which provides, generally, that the Secretary is to prescribe by regulations the circumstances and procedures under which an extension of time will be granted to affirmatively allocate GST exemption, and that the time for making the allocation shall be treated as if not expressly prescribed by statute. In response, the Internal Revenue Service issued Notice 2001-50, 2001-2 C.B. 189, which announced that transferors may seek an extension of time to make an allocation of GST exemption. That notice provides, generally, that under § 301.9100-3, relief will be granted if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that a grant of the requested relief will not prejudice the interests of the government. Thus, if relief is granted under § 301.9100-3 and the allocation is made, the amount of GST exemption necessary to reduce the inclusion ratio to zero is based on the value of the property on the date of the transfer and the allocation is effective as of the date of the transfer.

.08 To date, the Service has issued several letter rulings under § 301.9100-3 granting an extension of time to make a timely allocation in situations in which a transfer to a trust qualified for the gift tax annual exclusion under § 2503(b), but was not deemed to have a zero inclusion ratio because the trust did not meet one or more of the requirements of § 2642(c)(2) (for example, because there was more than one beneficiary of the trust). In most of these cases, the transferor failed to allocate GST exemption to the trust on a timely filed gift tax return because the transferor was not aware of the need to affirmatively allocate the exemption to the transfers. The Service believes that in these cases, it is appropriate to provide an alternate simplified method to obtain an extension of time to make an allocation of GST exemption, provided that certain requirements (set forth in sections 3 and 4 of this revenue procedure) are met. In such a case, the transferor's GST exemption remaining at the time the gift tax return is filed pursuant to this revenue procedure may be allocated to the transfer based on the value of the property as of the date of the transfer.

SECTION 3. SCOPE

.01 *In General.* This revenue procedure applies only to a taxpayer who satisfies the following requirements:

(1) On or before December 31, 2000, the taxpayer made or was deemed to have made a transfer by gift to a trust from which a GST may be made;

(2) At the time the taxpayer files the request for relief under this revenue procedure, no taxable distributions have been made and no taxable terminations have occurred;

(3) The transfer qualified for the annual exclusion under § 2503(b), and the amount of the transfer, when added to the value of all other gifts by the transferor to that donee in the same year, was equal to or less than the amount of the applicable annual exclusion for the year of the transfer;

(4) No GST exemption was allocated to the transfer, whether or not a Form 709 was filed;

(5) At the time the taxpayer files a request for relief under this revenue procedure, the taxpayer has unused GST exemption available to allocate to the transfer; and

(6) All requirements of section 4 of this revenue procedure are satisfied.

.02 *Failure to Qualify for Relief Under This Revenue Procedure.* Taxpayers who are denied relief or who are otherwise outside the scope of this revenue procedure may request an extension of time to allocate GST exemption by requesting a letter ruling under the provisions of § 301.9100-3. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2004-1, 2004-1 C.B. 1 (or its successors). If a letter ruling is requested after relief has been denied under this revenue procedure, the letter ruling request must indicate that relief was requested and denied under this revenue procedure. Rev. Proc. 2004-1, Appendix C, 2004-1 I.R.B. 70.

SECTION 4. RELIEF FROM LATE ALLOCATIONS OF GST EXEMPTION

.01 *Procedural Requirements.*

(1) File a Form 709 for the year of the transfer to the trust, regardless of whether a Form 709 had been previously filed for that year. State at the top of the Form 709 that the return is "FILED PURSUANT TO REV. PROC. 2004-46."

(2) Report on the Form 709 the value of the transferred property as of the date of the transfer.

(3) Allocate GST exemption to the trust by attaching a statement to the Form 709 entitled "Notice of Allocation." The notice of allocation must contain the following information:

(a) clear identification of the trust, including the trust's identifying number, as defined in § 6109 and the regulations thereunder, when applicable;

(b) the value of the property transferred as of the date of the transfer (adjusted to account for split gifts, if any);

(c) the amount of taxpayer's unused GST exemption at the time this Notice of Allocation is filed (taxpayers are reminded that they must have unused GST exemption at the time this Notice of Allocation is filed);

(d) the amount of GST exemption allocated to the transfer;

(e) the inclusion ratio of the trust after the allocation; and

(f) a statement that all of the requirements of section 3.01 of this revenue procedure have been met.

(4) Subject to any change in applicable instructions in future forms, instructions, or guidance published by the Service, send the Form 709 with attachments to the Cincinnati Service Center for processing.

(a) If a private delivery service is used, the Form 709 with attachments should be sent to:

Internal Revenue Service Center
201 W. Rivercenter Blvd.
Covington, KY 41012.

(b) If a private delivery service is not used, the Form 709 with attachments should be sent to:

Internal Revenue Service Center
Cincinnati, OH 45999.

(5) The Form 709 must be filed on or before the date prescribed for filing the federal estate tax return for the transferor's estate (determined with regard to any extensions actually obtained), regardless of whether an estate tax return is required to be filed.

.02 *Relief from Late GST Exemption Allocation.* Upon receipt of a request for relief under section 4.01 of this revenue procedure, the Service Center will determine whether the requirements for granting relief to make a GST exemption allocation under this revenue procedure have been satisfied and will notify the taxpayer of the result of this determination. If the Service Center determines that the requirements for granting relief to make a GST exemption allocation under this revenue procedure have been satisfied, the allocation will be effective as of the date of the transfer.

.03 *Subsequent Estate Tax Inclusion Period.* A grant of relief under this revenue procedure does not preclude a subsequent determination that the transfer is one described in § 2642(f), specifically an inter vivos transfer the value of which would be included in the transferor's gross estate under chapter 11 (other than by reason of § 2035) if the transferor died immediately after making the transfer. If it is determined that the transfer is one described in § 2642(f), the GST exemption allocated pursuant to this revenue procedure would not be changed, but the effective date and effect of that allocation of GST exemption would be governed by § 26.2632-1(c)

of the Generation-Skipping Transfer Tax Regulations.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2001-50 is modified.

SECTION 6. EFFECTIVE DATE

.01 *In General.* This revenue procedure is effective August 2, 2004.

.02 *Transition Rule for Pending Letter Ruling Requests.* If a taxpayer has filed a request for a letter ruling seeking an extension of time to allocate GST exemption and that request is pending in the national office on August 2, 2004, the taxpayer may withdraw that letter ruling request and receive a refund of the taxpayer's user fee if, prior to the earlier of September 16, 2004, or the issuance of the letter ruling, the taxpayer notifies the national office that it will withdraw its letter ruling request. Otherwise, the national office will process letter ruling requests pending on August 2, 2004, and will retain the user fee paid.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1895.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 4. This information is required to be submitted to the applicable service center in order to obtain an automatic extension of time to allocate GST exemption. This information will be used to determine whether the eligibility requirements for obtaining relief have been met. The collection of information is required to obtain a benefit. The likely respondents are individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 10 hours, depending on individual circumstances, with an estimated average burden of 7 hours to complete the statements required under this revenue procedure. The estimated number of respondents is 50.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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The principal author of this revenue procedure is Lian A. Mito of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Lian A. Mito at (202) 622-7830 (not a toll-free call).