

Relief From Late Allocation of GST Exemption

Notice 2001-50

PURPOSE

This notice provides guidance regarding requests for an extension of time to make an allocation of generation-skipping transfer (GST) exemption under § 2642(b)(1) and (2) of the Internal Revenue Code in view of the enactment of § 2642(g) by The Economic Growth and Tax Relief Reconciliation Act of 2001 (the Act). Pub. L. 107-16, § 564, 115 Stat. 91. This notice also provides guidance regarding requests for an extension of time to make elections under § 2632(b)(3) and § 2632(c)(5) as added by § 561(a) of the Act.

BACKGROUND

Section 2601 imposes a tax on every GST. Each individual is allowed a GST exemption that may be allocated to transfers that would be subject to the GST tax. In general, an individual's GST exemption may be allocated to transfers at any time on or before the due date for filing the federal estate tax return for the individual's estate under § 2632(a)(1).

For lifetime transfers, available GST exemption is automatically allocated to a direct skip under § 2632(b), and to indirect skips made after December 31, 2000, under § 2632(c), unless the individual elects out of the automatic allocation under § 2632(b)(3) and § 2632(c)(5), respectively. Under § 2632(c)(3)(A), an indirect skip is a transfer of property, subject to gift tax, to a GST trust as defined in § 2632(c)(3)(B). An individual may elect to treat any trust as a GST trust under § 2632(c)(5)(A)(ii).

Under § 26.2632-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the election out of the automatic allocation for direct skips must be made on a timely filed federal gift tax return. The Treasury Department and the Internal Revenue Service will issue regulations providing that the election out of the automatic allocation for indirect skips and the election to treat any trust as a GST trust must also be made on a timely filed federal gift tax return.

Under § 2642(b)(1) and § 26.2642-2(a)(1), with respect to lifetime transfers, the value of the property to which the GST exemption is allocated is its value at the date of the transfer if the GST exemption is automatically allocated or is allocated on a timely filed federal gift tax return. Under § 2642(b)(3), if the allocation is not made on a timely filed gift tax return, the value of the property to which the exemption is allocated is its value on the effective date of the allocation as described in § 26.2642-2(a)(2).

Section 2642(b)(2) describes allocations with respect to transfers at death and provides that the value of property to which the GST exemption is allocated is its value as determined for estate tax purposes. The allocation of the GST exemption to transfers at death may be made by the executor at any time prior to the due date of the federal estate tax return under § 26.2632-1(a). Unused GST exemption that has not been allocated by the executor is automatically allocated to transfers at death and lifetime transfers for which no allocation had previously been made as prescribed in § 2632(e)(1).

Section 2642(g)(1)(A), added by § 564(a) of the Act, authorizes the Treasury Department to issue regulations prescribing the circumstances and procedures under which extensions of time will be granted to make an allocation of the GST exemption described in § 2642(b)(1) and (2) or to make an election under § 2632(b)(3) and (c)(5). Section 2642(g)(1)(B) provides that in determining whether to grant relief, the time for making the allocation or election is to be treated as if not expressly prescribed by statute. If an extension of time is granted to make the allocation, then the gift or estate tax value of the transfer to the trust is used to determine the allocation of the GST exemption. H.R. Conf. Rep. No. 84,

107th Cong., 1st Sess. 202 (2001). Under § 564(b) of the Act, the provisions of § 2642(g)(1) apply to requests for relief pending on, or filed after, December 31, 2000.

REQUESTS FOR RELIEF UNDER § 2642(g)(1)

Section 301.9100-3 of the Procedure and Administration Regulations provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. Therefore, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

In general, 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 the grant of relief will not prejudice the interests of the government. Taxpayers requesting relief should follow the procedures for requesting a private letter ruling under § 301.9100 contained in section 5.02 of Rev. Proc. 2001-1 (or its successor), 2001-1 I.R.B. 1, 13.

EFFECTIVE DATE

This notice is effective with respect to requests for relief pending on, or filed after, December 31, 2000.

DRAFTING INFORMATION

The principal author of this notice is William L. Blodgett of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Blodgett at (202) 622-3090 (not a toll-free call).