



April 2, 2024

Mr. Andres Garcia
Internal Revenue Service, Room 6526
1111 Constitution Avenue, NW
Washington, DC 20224
pra.comments@irs.gov

Ms. Karlene Lesho
Chief, Branch 4 (Estate & Gift)
Office of Chief Counsel
Passthroughs and Special Industries (PSI)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20044
Karlene.Lesho@irscounsel.treas.gov

RE: Comment Request for Election Out of Generation-Skipping Tax (GST) Exemption Deemed Allocations (OMB Control Number 1545 -1892 and Regulation Project Number TD 9208)

Dear Ms. Lesho and Mr. Garcia:

On behalf of the American Institute of CPAs (AICPA), we are writing in response to the request for comment in [OMB control number 1545 -1892 and regulation project number TD 9208](#) regarding the election out of Generation-Skipping Tax (GST) exemption deemed allocations (dated February 5, 2024). We request Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) provide simplified procedures for when taxpayers either fail to make a timely election out of automatic allocation of GST exemption or make a section¹ 2632(c) election inadvertently. Our recommendations will simplify filing for taxpayers and practitioners and will reduce the administrative burden on the IRS as well.

Our recommendations include:

1. A simplified procedure for obtaining an extension of time to elect out of automatic allocation of GST exemption to indirect skips, similar to [Rev. Proc. 2004-46](#).²
2. A procedure for retroactively revoking an inadvertent section 2632(c) election.

¹ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

² This recommendation was included in previously submitted AICPA comments, “[AICPA Request for Simplified Procedure to Obtain Extension of Time to Elect Out of Automatic Allocation of GST Exemption to Indirect Skips, Similar to Rev. Proc. 2004-46](#),” June 26, 2007.

Specific Comments

1. A simplified procedure for obtaining an extension of time to elect out of automatic allocation of GST exemption to indirect skips, similar to Rev. Proc. 2004-46.

Background

Rev. Proc. 2004-46, 2004-31 I.R.B. 142, provides a simplified method for obtaining an extension of time under Treasury Regulation § 301.9100-3 to allocate a donor's GST exemption to transfers in certain limited situations. In order to be able to use this simplified method, the following requirements must be met:

- The transfer must have occurred on or before December 31, 2000;
- At the time the request is filed, no taxable distributions were made and no taxable terminations have occurred;
- The transfer must have qualified for the gift tax annual exclusion under section 2503(b); and
- The amount of the transfer must have been equal to or less than the gift tax annual exclusion for the year of transfer when combined with all other gifts to that donee in the same year.

Additionally, taxpayers can utilize section 9100 relief ("9100 relief") for making a late opt-in or opt-out election under section 2632(c). However, the process is complicated for taxpayers to follow and has significant associated costs. The simplified method under Rev. Proc. 2004-46 is more simple and less costly to the taxpayer than the normal method for obtaining an extension of time through a private letter ruling request. There is currently no simplified method for obtaining an extension of time to elect in or elect out of the automatic allocation of a donor's GST exemption for post December 31, 2000 transfers.

Recommendation

Treasury and IRS should provide a similar revenue procedure to Rev. Proc. 2004-46 for situations in which the donor's GST exemption is automatically allocated to a transfer, but the donor did not want GST exemption to be allocated.

Analysis

While section 9100 relief offers a safety net for missed elections, its high cost and complexity make it an impractical solution for many taxpayers. A simpler, more affordable method for requesting an extension of time to make opt-out elections would reduce unnecessary burdens on taxpayers and the IRS.

Many trusts unintentionally fall under the "GST trust" definition in section 2632(c)(3)(B), triggering automatic allocation of the transferor's GST exemption even when the deemed allocation is not in line with the transferor's intent. This situation can occur, for example, when the trust does not qualify for any exceptions under section 2632(c)(3)(B), but the transferor expects their children (non-skip persons) to fully deplete the assets, leaving nothing for future generations

(skip persons) to inherit. If the transfers to the trust are present interest gifts worth less than the amount of the gift tax annual exclusions, the tax practitioner may be unaware of the transfers or, even if aware of the transfers, may not consider the application of the automatic allocation rules to the transfers.

It would be helpful to taxpayers if a simplified method for obtaining an extension of time to elect out of the automatic allocation of GST exemption is available in this situation. The amount of GST exemption used may be relatively small so that the cost of obtaining an extension of time through the private letter ruling process is relatively prohibitive. The amount of GST exemption unnecessarily used in this scenario could be significant to certain taxpayers. Unlike Rev. Proc. 2004-46, the simplified procedure for making a late election to opt-out of the automatic allocation rules should not be limited to present interest gifts equal to or smaller than the annual exclusion.

Treasury and IRS may be concerned that a simplified late opt-out election procedure would lend itself to abuse, allowing taxpayers to utilize hindsight for advantageous tax positions. To mitigate this risk, any such simplified method should explicitly require the same standards outlined in Treas. Reg. § 301.9100-3, similar to the requirements for a late portability election under [Rev. Proc. 2022-32](#). Treasury Regulation § 301.9100-3 mandates that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government.

2. A procedure for retroactively revoking an inadvertent section 2632(c) election.

Background

Under current IRS regulations and guidance, the process surrounding elections under section 2632(c) is designed with specific procedural steps and conditions that must be met for such elections to be made or terminated. The regulations provide mechanisms for making elections, but they do not provide a procedure for reversing or undoing an inadvertent election once it has been made. Section 2631(b) states that allocations of GST exemption are irrevocable. Treas. Reg. § 26.2631-1 generally states that the termination of an election out will not revoke the election for any prior year transfer.

The regulations assume that elections are made deliberately and with clear intent. However, in practice, there are instances where taxpayers inadvertently make an election under section 2632(c) that does not reflect their true intent. For instance, a taxpayer unfamiliar with the intricacies of section 2632(c) might instruct their tax preparer to make an election that ultimately proves detrimental. Similarly, a tax preparer's error, by selecting the wrong election due to technical complexities or misunderstandings, could go unnoticed by a taxpayer lacking the expertise to identify the mistake before the return is filed.

Currently, it is our understanding that section 9100 relief will not be granted to undo a section 2632(c) election. The proposed regulations under section 2642(g) are designed to provide relief for late elections, indicating a framework for extending deadlines for making such elections, rather than undoing them. This lack of flexibility disadvantages taxpayers; an inadvertent opt-in election

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results in a waste of the taxpayer's GST exemption, while an inadvertent opt-out election leaves a trust vulnerable to a potential substantial burden of the generation-skipping transfer tax (GSTT).

Recommendation

Treasury and IRS should provide a procedure for taxpayers to retroactively revoke inadvertent section 2632(c) elections.

Analysis

Implementing a streamlined process for taxpayers to retroactively revoke inadvertent elections would benefit both taxpayers and the IRS. Taxpayers would gain peace of mind knowing they can rectify mistakes without facing undue hardship. This would reduce stress, potential penalties, and the need for complex legal challenges. The implementation of a simplified procedure would promote efficiency, reduce compliance costs, and align with broader efforts to simplify tax administration.

Such a process could be achieved either through an expansion of section 9100 relief mechanisms to encompass retroactive termination of inadvertent elections or by establishing an alternative administrative method to address these situations. Similar to the prior recommendation above, to mitigate the risk of abuse, any such method or procedure should explicitly require the same standards outlined in Treas. Reg. § 301.9100-3, similar to the requirements for a late portability election under Rev. Proc. 2022-32.

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The AICPA is the world's largest member association representing the CPA profession, with more than 415,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our recommendations and welcome the opportunity to discuss our comments. If you have any questions, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or Irene.C.Estrada@pwc.com; Eileen Sherr, AICPA Director – Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com. [mailto:](mailto:bvickers@alamo-group.com)

Sincerely,



Blake Vickers, CPA
Chair, AICPA Tax Executive Committee

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cc: Ms. Catherine Hughes, Estate and Gift Tax Attorney-Advisor, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury
Ms. Lisa Piehl, Program Manager, Estate and Gift Tax Policy, SE:S:E:HQ:SP:E>P, IRS
Mr. Daniel Gespass, Senior Technician Reviewer, Office of Associate Chief Counsel (PSI), IRS