

July 17 2008

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

The Honorable Donald L. Korb  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

Mr. William P. O'Shea  
Associate Chief Counsel for Passthroughs  
and Special Industries  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

HAND DELIVERED: Courier's Desk, CC:PA:LPD:PR (REG-147775-06)

RE: Proposed Regulations (REG-147775-06) Regarding Guidance on the Procedures for Granting an Extension of Time With Regard to the Generation-Skipping Transfer Tax Exemption Under Section 2642(g)(1)

Dear Messrs. Shulman, Korb, and O'Shea:

The American Institute of Certified Public Accountants (AICPA) is submitting comments on proposed regulations (REG-147775-06, 73 Fed. Reg. 20870 (Apr. 17, 2008) relating to procedures for granting an extension of time under section 2642(g)(1) to timely allocate generation-skipping transfer (GST) exemption or to make certain elections with regard to that exemption.

The AICPA is the national professional organization of certified public accountants comprised of approximately 350,000 members. Our members advise clients of 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 business, as well as America's largest businesses.

Section 2642(g)(1), added to the Internal Revenue Code by the Economic Growth and Tax Relief Reconciliation Act of 2001, directs the Secretary of the Treasury to issue regulations describing the circumstances and procedures under which an extension of time will be granted to allocate GST exemption or to make certain elections described in section 2632. Notice 2001-50, 2001-2 C.B. 189, provides that an extension of time under section 2642(g)(1) will be available under the provisions of reg. section 301.9100-3 if the taxpayer complies with the requirements of those regulations and establishes to the satisfaction of the Commissioner of the Internal Revenue Service (IRS) 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.

There is a long and established history for granting extensions of time for regulatory deadlines under the provisions of reg. section 301.9100-3. In addition, those provisions have been used by taxpayers to obtain extensions of time described in section 2642(g)(1) for the last seven years. We are unaware of any reason why those provisions should not be embodied in the proposed regulations and why there is a need for specific provisions set forth in the proposed regulations. We believe that having only one set of rules and one standard for granting extensions of time for all regulatory deadlines fosters simplicity for taxpayers and the IRS and allows all taxpayers to be treated consistently. We urge, therefore, that the regulations under section 2642(g)(1) refer to reg. section 301.9100-3 for the applicable rules.

If the regulations under section 2642(g)(1) contain their own rules, we urge that they incorporate the same standards as reg. section 301.9100-3 and that they be no more restrictive than reg. section 301.9100-3 in their application to taxpayers' situations. The remaining comments are applicable only if the regulations under section 2642(g)(1) contain their own set of rules.

Proposed reg. section 26.2642-7(f) provides:

A request for relief under this section does not reopen, suspend, or extend the period of limitations on assessment or collection of any estate, gift or GST tax under section 6501. Thus, the IRS may request that the transferor or the transferor's executor consent, under section 6501(c)(4), to an extension of the period of limitation on assessment or collection of any or all gift and GST taxes for the transfer(s) that are the subject of the requested relief. The transferor or transferor's executor has the right to refuse to extend the period of limitations, or to limit such extensions to particular issues or to a particular period of time. See section 6501(c)(4)(B).

We fail to see the relevance to extending the period of limitations on assessment or collection of the gift tax when the relief being sought deals with the GST tax, a totally separate tax. We believe that there is no connection between the allocation of GST exemption for purposes of determining whether a transfer may be subject to GST tax at some time in the future and the gift tax consequences currently applicable to the current transfer. In addition, by including the provision concerning the extension of the period of assessment and collection of the gift tax, as well as any extension that may be needed for the GST tax, the proposed regulations imply that the taxpayer will need to consent to an extension with respect to the gift tax in order to receive a favorable answer on the extension of time for allocating the GST exemption or making a GST election that affects only the GST tax.

According to the legislative history, the statutory change "...provides that the Treasury Secretary is authorized and directed to grant extensions of time to make the election to allocate generation-skipping transfer tax exemption and to grant exceptions to the time requirement, without regard to whether any period of limitations has expired." H.R. Conf. Rep. 107-84, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. 202 (2001). Indeed the preamble to the proposed regulations even cites the legislative history to the effect that whether the period of limitations has expired is immaterial to the determination of whether to grant relief.

As we previously discussed, the normal rules applicable to requests for extensions of time to make regulatory elections are contained in reg. section 301.9100-3. Reg. section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. If a similar standard were applied to extension requests under section 2642(g)(1), the only inquiry would be the status of the period of limitations with respect to the GST tax. Whether or not the period of limitations with respect to the gift tax has expired is irrelevant to the inquiry concerning the applicability of the GST exemption to the transfers reported on the Form 709.

We recommend, therefore, that the words "gift and" be deleted from the second sentence of prop. reg. section 26.2642-7(f) so that the provision addresses the possibility of extending the period of limitations on assessment or collection of only the GST tax. Only the GST tax is at issue when a taxpayer is seeking an extension of time to make an allocation of GST exemption or to make an election described in section 2632(b)(3) or (c)(5) so the period of limitations on the unrelated gift tax should not be part of the requirement.

In addition, prop. reg. section 26.2642-7(f) should be clarified to eliminate the implication that a period of limitation on assessment or collection of any tax may be reopened if the period has already expired. As it currently reads, the provision implies that because the request for relief does not reopen, suspend or extend the period of limitations on assessment or collection of any estate, gift or GST tax, the IRS may request that the taxpayer's consent to reopen the period of limitations on assessment of the gift and GST taxes. Section 6501(c)(4) provides that if the period of limitations on assessments has not expired, then the taxpayer and the IRS can consent to extend the period for any tax other than the estate tax. Once the period has expired, however, there is no ability to reopen it even with the consent of both parties. The regulatory provision should be redrafted to clarify this point.

We also note that in reg. section 301.9100-3(b)(1), the taxpayer is deemed to have acted reasonably and in good faith if one of five listed circumstances exists. Proposed reg. section 26.2642-7(d)(2) contains a list of factors that will be considered in determining whether the taxpayer acted reasonably and in good faith. It is unclear whether some or all of those factors must be satisfied by the taxpayer. Thus, unlike reg. section 301.9100-3(b)(1), prop. reg. section 26.2642-7(d)(2) provides no certainty as to when a taxpayer will be deemed to have acted reasonably and in good faith. We, therefore, suggest that final regulations under section 2642(g)(1) provide that the taxpayer has acted reasonably and in good faith if one of the listed circumstances exists. In addition, we recommend that the factor in reg. section 301.9100-3(b)(1)(i) (viz., if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS, the taxpayer is deemed to have acted reasonably and in good faith) be added to the list of factors that demonstrate the taxpayer is acting reasonably and in good faith under prop. reg. section 26.2642-7(d)(2). These suggestions will align the rules in prop. reg. section 26.2642-7(d)(2) with the well-established rules of Reg. Section 301.9100-3(b)(1). There is no indication in the legislative history that Congress intended the rules applicable to extensions

Messrs. Shulman, Korb, and O'Shea

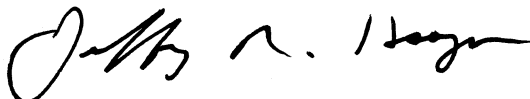
July 17, 2008

Page 4 of 4

of time under section 2642(g)(1) to be any different or any more restrictive than the rules applicable to all other extensions of time for regulatory deadlines. Again, we urge that the regulatory provisions adopted under section 2642(g)(1) incorporate or mirror those contained in reg. section 301.9100-3.

We thank you for the opportunity to present our comments and welcome the opportunity to discuss them further with you or others at the IRS. Please feel free to contact me at (212) 773-2858 or [jeffery.hoops@ey.com](mailto:jeffery.hoops@ey.com); Justin P. Ransome, Chair of the AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (202) 521-1520, or [justin.ransome@gt.com](mailto:justin.ransome@gt.com); or Eileen R. Sherr, AICPA Technical Manager, at (202) 434-9256, or [esherr@aicpa.org](mailto:esherr@aicpa.org), to discuss the above comments or if you require any additional information.

Sincerely,



Jeffrey R. Hoops

Chair, AICPA Tax Executive Committee

cc: The Honorable Eric Solomon, Assistant Secretary (Tax Policy), Treasury Department  
Ms. Catherine Hughes, Attorney Advisor, Treasury Department  
Mr. George L. Masnik, Chief Branch 4, Office of Associate Chief Counsel for  
Passthroughs and Special Industries, IRS  
Ms. Theresa M. Melchiorre, Attorney, Office of Associate Chief Counsel for  
Passthroughs and Special Industries, IRS