

June 26, 2007

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**RE: 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**

Dear Mr. Korb, Mr. O'Shea, and Mr. Hogan:

The American Institute of Certified Public Accountants (AICPA) is submitting this letter to suggest that a simplified procedure be established by the Internal Revenue Service (IRS) for obtaining an extension of time to elect out of automatic allocation of generation-skipping transfer (GST) exemption to indirect skips, similar to Rev. Proc. 2004-46.

The AICPA is the national professional organization of certified public accountants comprised of approximately 330,000 members. 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 business, as well as America's largest businesses.

Rev. Proc. 2004-46, 2004-31 I.R.B. 142, provides a simplified method for obtaining an extension of time under reg. section 301.9100-3 to allocate a donor's generation-skipping transfer (GST) tax exemption to transfers in certain limited situations. In order to be able to use this simplified method, the transfer must have qualified for the annual exclusion under section 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. The simplified method is easier and less costly to the taxpayer than the normal method for obtaining an extension of time through a private letter ruling request.

In the past, the AICPA's Trust, Estate, and Gift Tax Technical Resource Panel has requested the expansion of the circumstances in which taxpayers may use a simplified method to receive an extension of time to make elections relating to the GST exemption. One specific area in which the simplified method would be useful is circumstances that are essentially the opposite of the circumstances in which Rev. Proc. 2004-46 is applicable. That revenue procedure applies to situations in which the GST exemption is not automatically allocated to a transfer but the donor wanted it allocated. We are requesting a similar revenue procedure for situations in which the GST exemption is automatically allocated to a transfer but the donor did not want it so allocated. These situations arise because a donor's available GST exemption is automatically allocated to a transfer, made after December 31, 2000, that is an indirect skip within the meaning of section 2632(c)(3)(A).

Often transfers that qualify for section 2503(b) are made to trusts in which the donor's children are the primary beneficiaries. However, because of the possibility that a child may die before the trust terminates, in which case the child's share passes to grandchildren, the trust meets the requirements of a GST trust. As a result, transfers to the trust are indirect skips to which the donor's available GST exemption is automatically allocated. If the transfers to the trust are 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 very helpful to taxpayers if a simplified method for obtaining an extension of time to elect out of the automatic allocation of GST exemption were 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 would be relatively prohibitive. Nevertheless, the amount of GST exemption unnecessarily used in this scenario could be significant. For example, if a gift qualifying for an annual exclusion were made to the same trust, for each year since the automatic allocation rules for indirect transfers came into effect would total \$66,000 as of the end of 2006.

While we would appreciate an expansion of the circumstances in which a simplified 9100 method could be used, we believe that there is an ongoing reason to allow a simplified method for obtaining an extension of time to elect out of the automatic rules in circumstances similar to those described in Rev. Proc. 2004-46 (gifts that qualify for, and do not exceed the amount of, the gift tax annual exclusion). If there is concern about the potential use of hindsight, the revenue procedure could require, for example, that the terms of the trust provide for the distribution of trust assets to the children upon the earlier of the death of the donor/parents or the child reaching age 46. These factors are based on factors in section 2632(c)(3)(B)(i) and (ii), either of which would prevent the trust from being considered a GST trust if the factor were the only factor set forth as an absolute in the trust agreement. These trusts are intended to pass the assets to the children, and the assets would pass to the grandchildren only if a child died before his or her parents or before reaching the age 46. Thus, these are situations in which taxpayers would not want to allocate their GST exemption, but frequently neither they nor their tax preparers are aware of the necessity to elect out of the automatic allocation rules under these circumstances.

Mr. Donald Korb and Mr. William O'Shea

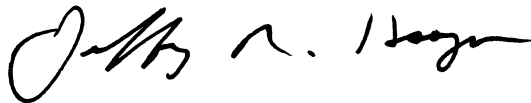
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We thank you for the opportunity to present our suggestion and welcome the opportunity to discuss our comments further with you or others at the IRS. Please feel free to contact me at (212) 773-2858 or [jeffrey.hoops@ey.com](mailto:jeffrey.hoops@ey.com); or Steven A. Thorne, Chair of the AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (312) 486-9847 or [stethorne@deloitte.com](mailto:stethorne@deloitte.com); or Eileen R. Sherr, AICPA Technical Manager, at (202) 434-9256 or [esherr@aicpa.org](mailto:esherr@aicpa.org); to discuss the above suggestion or if you require any additional information.

Sincerely,



Jeffrey R. Hoops  
Chair, AICPA Tax Executive Committee

cc: Mr. Eric Solomon, Assistant Secretary for Tax Policy, Treasury Department (Fax: (202) 622-0605)  
Ms. Catherine Hughes, Attorney Advisor, Treasury Department (Fax (202) 622-9260)  
Mr. George Masnik, IRS Branch Chief, Branch Chief, Passthroughs and Special Industries (Fax: (202) 622-4451)  
Mr. James F. Hogan, IRS Attorney – Senior Technical Reviewer, Passthroughs and Special Industries (Fax: (202) 622 -4451)