



September 15, 2023

Ms. Karlene Lesho
Branch Chief, Branch 4
Office of Associate Chief Counsel (PSI)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Karlene.Lesho@irs.counsel.treas.gov

Mr. Daniel Gespass
Senior Technician Reviewer
Office of Associate Chief Counsel (PSI)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Daniel.J.Gespass@irs.counsel.treas.gov

RE: Request for Regulation to Clarify Timing of Taxable Distributions from a Generation-Skipping Trust

Dear Ms. Lesho and Mr. Gespass:

On behalf of the American Institute of CPAs (AICPA), we are writing to provide more information regarding the timing of taxable distributions from a generation-skipping trust. These comments are in addition to our [prior comments](#) submitted June 12, 2023 in response to the request for comment in [OMB Control Number 1545-1143 – Regarding Form 706-GS \(D-1\), Notification of Distribution from a Generation-Skipping Trust](#) (dated 5/8/23).¹ We are providing to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) a recommendation for guidance in the form of a regulation related to section 2612(b), taxable distribution. Our recommendation will simplify filing for taxpayers and practitioners and will reduce the administrative burden on the IRS as well.

Our recommendation regarding timing of taxable distributions is to provide a regulation that clarifies when a taxable distribution occurs, specifically that the taxable distribution occurs when the beneficiary receives the distribution.

Specific Comments

Background

A taxable distribution under section 2612(b) is any distribution from a trust to a skip person (other than a taxable termination or direct skip). Generation-skipping transfer tax (GSTT) is imposed on the amount received by the beneficiary based on the value of the distribution and the inclusion ratio of the trust. The beneficiary is liable for the payment of the GSTT.

It is not clear when the taxable distribution occurs. It may occur (1) when the skip person beneficiary becomes entitled to the distribution (for example: based on a provision in the trust

¹ See AICPA letter, [OMB Control Number 1545-1143 Regarding Form 706-GS\(D-1\), Notification of Distribution from a Generation-Skipping Trust](#), June 12, 2023.

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agreement that states 1/3 of the trust must be paid to the beneficiary at age 35) or (2) when the skip person beneficiary actually receives the distribution.

Treasury Reg. § 26.2612-1(f), example 10, illustrates a trust where a grandchild is entitled to a distribution at age 35. It assumes that the distribution actually took place on the grandchild's 35th birthday. In doing so, the example fails to address the issue of the reportable date of transfer in a situation in which the actual distribution occurs after the 35th birthday.

The issue was raised in *Robertson v. U.S.* (2006-1 USTC 60,522 (N.C. Tex. 2006)), where beneficiaries were entitled to assets in 2001, but actual distributions were not made until 2002. The court determined that the taxable distribution event was taxable when the distribution actually occurred in 2002.

Recommendation

Provide a regulation that clarifies when a taxable distribution occurs, specifically that the taxable distribution occurs when the beneficiary receives the distribution.

Analysis

Since the beneficiary is liable for the payment of the GSTT, the beneficiary would likely need to receive the distribution in order to make the payment. Thus, using an effective date of the date of distribution is equitable. Treasury Reg. §1.641(b)-3(b) states that "a reasonable time is permitted after such event for the trustee to perform the duties necessary to complete the administration of the trust" in relation to the termination of the trust. A similar approach should be applied to the administration of taxable distributions. Having clarity on when the distribution occurs, would allow trustees to properly prepare Form 706-GS(D-1) and; would allow beneficiaries to timely file Form 706-GS(D) and timely pay the GSTT when due.

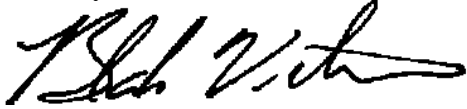
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The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, 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.

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Sincerely,

A handwritten signature in black ink, appearing to read "Blake Vickers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Blake Vickers, CPA
Chair, AICPA Tax Executive Committee

cc: Ms. Catherine Hughes, Estate and Gift Tax Attorney-Advisor, Office of Tax Legislative
Counsel, Office of Tax Policy, Department of the Treasury