

this paragraph are not required to be identical to the targets established by the State Highway Safety Office for the common performance measures.

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PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

■ 3. The authority citation for part 1300 continues to read as follows:

Authority: 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 25024, Pub. L. 117–58, 135 Stat. 879; delegation or authority at 49 CFR 1.95.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

■ 4. Amend § 1300.12 by revising paragraph (b)(1)(ii) to read as follows:

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(b) * * *

(1) * * *

(ii) The State may add performance measures based on updated traffic safety problem identification or as part of an application for a grant under section 405, but may not amend existing performance targets. Provided, however, that States may amend common performance targets developed under § 1300.11(b)(3)(iv) only if necessary to submit identical targets to FHWA in the HSIP annual reports.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 301, and 602

[TD 9996]

RIN 1545–BH63

Relief Provisions Respecting Timely Allocation of GST Exemption and Certain GST Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that provide guidance describing the circumstances and procedures under which an extension of time will be granted to make certain allocations and elections related to the generation-skipping transfer (GST) tax. The statutory provision underlying these rules was enacted as part of the Economic Growth and Tax Relief

Reconciliation Act of 2001 (EGTRRA). The guidance affects individuals (or their estates) who failed to make a timely allocation of GST exemption, a timely election out of the GST automatic allocation rules, or certain other timely GST elections.

DATES:

Effective date: These regulations are effective on May 6, 2024.

Applicability date: For dates of applicability, see §§ 26.2642–7(j), 301.9100–2(f)(2), and 301.9100–3(g)(2).

FOR FURTHER INFORMATION CONTACT:

Mayer R. Samuels at (202) 317–6859 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations in 26 CFR parts 26, 301, and 602 that provide guidance on the application of section 2642(g)(1) of the Internal Revenue Code (Code), which describes the circumstances and procedures under which an extension of time will be granted to make certain allocations and elections related to the GST tax.

Congress added section 2642(g)(1) to the Code by enacting section 564 of the EGTRRA, Public Law 107–16, section 564, 115 Stat. 91 (2001). Section 2642(g)(1) directs the Secretary of the Treasury or her delegate (Secretary) to issue regulations prescribing the circumstances and procedures under which an extension of time will be granted to make an allocation of GST exemption, as described in section 2631 of the Code, to a transfer, and the following three elections under section 2632 of the Code: (1) an election under section 2632(b)(3) not to have the deemed (automatic) allocation of GST exemption apply to a direct skip (generally, a transfer subject to gift or estate tax made to a person more than one generation below the transferor); (2) an election under section 2632(c)(5)(A)(i) not to have the deemed (automatic) allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust; and (3) an election under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c). In determining whether to grant relief, section 2642(g)(1) directs that all relevant circumstances be considered, including evidence of intent contained in the trust instrument or the instrument of transfer.

The legislative history accompanying section 2642(g)(1) indicates that Congress believed that, in appropriate circumstances, an individual should be granted an extension of time to allocate

GST exemption regardless of whether any period of limitations had expired. Those circumstances include situations in which the taxpayer intended to allocate GST exemption and the failure to allocate the exemption was inadvertent. H.R. Conf. Rep. No. 107–84, 202 (2001).

After the enactment of section 2642(g)(1), the IRS issued Notice 2001–50 (2001–2 CB 189), which provided guidance for transferors seeking an extension of time to make an allocation of GST exemption or an election described in sections 2632(b)(3) or (c)(5). Notice 2001–50 provides, generally, that relief will be granted under § 301.9100–3 of the Procedure and Administration Regulations (regarding requests of extensions of time for certain regulatory elections) if the taxpayer satisfies the requirements of those regulations and establishes to the satisfaction of the Commissioner of Internal Revenue or his delegate (Commissioner) 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. If relief is granted under § 301.9100–3 and the allocation is made, the amount of GST exemption allocated to the transfer is the Federal gift or estate tax value of the property as of the date of the transfer and the allocation is effective as of the date of the transfer. Notice 2001–50 will be made obsolete upon the publication of this Treasury decision in the **Federal Register**.

On August 2, 2004, the IRS issued Rev. Proc. 2004–46 (2004–2 CB 142), which provides a simplified alternate method to obtain an extension of time to allocate GST exemption in certain situations. Generally, this method is available only with respect to an inter vivos transfer to a trust from which a GST may be made and only if each of the following requirements is met: (1) The transfer qualified for the gift tax annual exclusion under section 2503(b) of the Code; (2) the sum of the amount of the transfer and all other gifts by the transferor to the donee in the same year did not exceed the applicable annual exclusion amount for that year; (3) no GST exemption was allocated to the transfer; (4) the taxpayer has unused GST exemption to allocate to the transfer as of the filing of the request for relief; and (5) no taxable distributions or taxable terminations have occurred as of the filing of the request for relief.

On August 9, 2004, the IRS issued Rev. Proc. 2004–47 (2004 CB 169), which provides alternative relief for taxpayers who failed to make a reverse qualified terminable interest property (QTIP) election on an estate tax return.

On April 17, 2008, proposed regulations (REG-147775-06) were published in the **Federal Register** (73 FR 20870). The proposed regulations provided guidance on the application of section 2642(g)(1) by identifying the standards that the IRS will apply in determining whether to grant a transferor or a transferor's estate an extension of time to make an allocation of GST exemption, as described in section 2631, to property transferred by the transferor and the following three elections under section 2632: (1) an election under section 2632(b)(3) not to have the automatic allocation of GST exemption apply to a direct skip; (2) an election under section 2632(c)(5)(A)(i) not to have the automatic allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust; and (3) an election under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c). In addition to proposing these standards, the proposed regulations included procedural requirements for establishing eligibility for the requested relief, including identification of the various persons from whom affidavits would be required.

In order to evaluate the necessity for and determine the burden imposed by the requirement to produce affidavits under proposed § 26.2642-7(h), the proposed regulations requested comments specifically as to (1) whether the affidavits are necessary for the proper performance of the functions of the IRS, including whether the information provided by the affidavits will have practical utility, (2) the accuracy of the estimated burden associated with preparing the affidavits, (3) how the quality, utility, and clarity of the information to be provided by the affidavits may be enhanced, (4) how the burden of providing the affidavits may be minimized, including through the application of automated collection techniques or other forms of information technology, and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the affidavits.

The proposed regulations also identified situations that do not satisfy the standards for granting relief, and thus when the IRS will not grant the requested relief.

The IRS received a total of five comments, three of which explicitly addressed the procedural requirements of proposed § 26.2642-7(h), redesignated in the final regulations as § 26.2642-7(i). After careful consideration of the comments received on the proposed regulations, this Treasury decision adopts the proposed

regulations with clarifying changes and additional modifications in response to comments as described in the Summary of Comments and Explanation of Revisions. Relief provided under section 2642(g)(1) will be granted through the IRS private letter ruling program.

Section 301.9100-1 generally provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I (section 9100 provisions). On and after the date of publication of these final regulations, relief under section 2642(g)(1) no longer will be granted under § 301.9100-3. In addition, because these final regulations provide a replacement for the automatic six-month extension under § 301.9100-2(b) without substantive difference, the extension under § 301.9100-2(b) no longer will be available to transferors or transferor's estates qualifying for relief under proposed § 26.2642-7(h)(1), redesignated in the final regulations as § 26.2642-7(i)(1), on and after the date of publication of these final regulations. Accordingly, the final regulations amend §§ 301.9100-2(b) and 301.9100-3 to provide that relief under section 2642(g)(1) cannot be obtained through the provisions of §§ 301.9100-2(b) and 301.9100-3. However, requests that are pending with the IRS on the date of publication of these final regulations will continue to be processed under the section 9100 provisions unless the taxpayer requesting relief opts to withdraw the request and instead seek relief under these final regulations. In that case, the taxpayer's user fee will be refunded and a new user fee will be required with the new request. Furthermore, the procedures contained in Revenue Procedure 2004-46 and Revenue Procedure 2004-47 will remain effective for transferors within the scope of those revenue procedures.

The Department of the Treasury (Treasury Department) and the IRS are mindful that the proposed regulations were issued 16 years ago on April 17, 2008. Insofar as there have been no intervening legislative or regulatory changes regarding allocations of GST exemption or GST elections and because the issues addressed by the commenters on the proposed regulations continue to remain relevant, the Treasury Department and the IRS have determined that a new notice of proposed rulemaking or a further opportunity for public comment would be unlikely to generate different comments and, moreover, would unnecessarily delay further this

rulemaking to the continued detriment of taxpayers seeking relief. In addition, the IRS has a ruling position that, because of the provisions of the 2008 proposed regulations, relief cannot be granted in certain otherwise appropriate situations until the 2008 proposed regulations have been superseded by the issuance of these final regulations. For such situations, the issuance of a new notice of proposed rulemaking or a reopening of the comment period would further delay, and in some cases prevent, the grant of needed relief to taxpayers.

The Treasury Department and the IRS currently are developing a new rulemaking that will complement these final regulations. In contrast to these final regulations, which address the standards for granting relief under section 2642(g)(1) for a failure to make a timely allocation or election, the forthcoming proposed regulations would address the practical effect of a grant of relief and would clarify the interplay between affirmative allocations and automatic allocations. Paragraphs in these final regulations have been reserved to accommodate the forthcoming proposed regulations.

Summary of Comments and Explanation of Revisions

I. Scope of Authority To Issue Regulations

Section 2642(g)(1) gives the Secretary the authority to issue regulations setting forth the "circumstances and procedures" under which extensions of time will be granted to make certain allocations of GST exemption and elections, taking into consideration all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1) makes the late allocations and elections referenced in that section eligible for consideration for relief. Because deadlines prescribed by statute are not eligible for relief under § 301.9100-3, section 2642(g)(1)(B) concludes with the sentence, for purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. Some commenters maintained that this sentence, creating eligibility for a grant of relief, limits the authority of the Treasury Department and the IRS to issue regulations that provide standards for relief that are more restrictive than those under § 301.9100-3. Neither the statute nor its legislative history suggests that the standards for relief

under section 2642(g)(1) are required to be equivalent or limited to the standards set forth in § 301.9100–3, nor is there any implication that the enactment of section 2642(g) prohibits or forecloses the possibility of any future change to the regulatory standards in § 301.9100–3. Nevertheless, the final regulations adopt burden reducing provisions as explained later in this preamble.

II. Proposed § 26.2642–7(d)(2)—Reasonableness and Good Faith

Proposed § 26.2642–7(d)(2) provides a nonexclusive list of circumstances (the underlying facts of which may be either helpful or harmful to the taxpayer's request for relief) that the IRS will consider in determining whether the transferor or the transferor's executor acted reasonably and in good faith.

Commenters requested that the Treasury Department and the IRS modify proposed § 26.2642–7(d)(2) to provide that the transferor or the executor of the transferor's estate will be deemed to have acted reasonably and in good faith if the taxpayer establishes the existence of any one of the various factors listed in § 26.2642–7(d)(2). Alternatively, commenters requested that § 26.2642–7(d)(2) be clarified to denote the sufficiency or relative importance of the factors listed.

Section 2642(g)(1) directs the Treasury Department and the IRS to issue regulations that “prescribe such circumstances and procedures” under which the IRS will grant relief. Since the enactment of section 2642(g) and through the IRS private letter ruling program, the IRS has applied a facts and circumstances methodology in considering requests for relief. Given the inherent complexity of the GST exemption rules, no single factor can be determinative. While § 301.9100–3(b)(1) deems the reasonableness and good faith requirements to have been met if the taxpayer establishes any one of the factors therein, that rule is expressly made subject to the requirement of the absence of the use of hindsight and the other factors described in § 301.9100–3(b)(3) and (c), and thus is not a one-factor test. Accordingly, proposed § 26.2642–7(d)(2) seeks to delineate the many factors implicit in such a facts and circumstances inquiry, and the final regulations adopt the same methodology.

The IRS's experience with requests for relief under section 2642(g)(1) indicates that no one factor has more importance in all cases than any other factor. Further, the satisfaction of one factor alone may or may not be sufficient, in the context of the facts and circumstances of that particular

taxpayer, to persuade the IRS that relief under section 2642(g)(1) is warranted. Therefore, the recommendation to allow one factor to be determinative has not been adopted in the final regulations. Nevertheless, the final regulations clarify that not all of these factors may be relevant in a particular situation (and those that are not relevant would not need to be addressed in the request for relief). In addition, based on all the facts and circumstances, a single factor listed in § 26.2642–7(d)(2) may (or may not) be determinative.

Section 301.9100–3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. A commenter requested that this circumstance be added to the factors listed in this provision. Thus, a taxpayer would be considered to have acted reasonably and in good faith if the taxpayer's request for relief was filed before the failure to make the allocation or regulatory election is discovered by the IRS. For purposes of section 2642(g)(1), the Treasury Department and the IRS have determined that this circumstance is not material because, in the context of a request for relief under section 2642(g)(1), the Treasury Department and the IRS believe that the party that first discovers the failure to make the allocation or election (be it the IRS or the taxpayer) generally has no correlation with the taxpayer's good faith or reasonable action. Particularly because of the significant length of time that often elapses between the transfer and the discovery of a missed GST election or allocation, the discovery by the IRS does not necessarily signify a lack of good faith or reasonable action by the taxpayer. At the same time, the taxpayer's discovery generally does not guarantee the existence of good faith and reasonable action by the taxpayer. Therefore, this factor has not been added to the final regulations. However, a delay in requesting relief, after the need for relief is discovered, may have an adverse effect on the availability of relief. See, for example, the circumstances described in § 26.2642–7(d)(3)(ii) and (e)(3).

III. Proposed § 26.2642–7(d)(2)(iv)—Consistency

Proposed § 26.2642–7(d)(2)(iv) provides that one of the factors to be considered in determining whether the taxpayer has acted reasonably and in good faith is whether the transferor acted consistently with regard to the allocation of the transferor's GST exemption. Section 26.2642–7(d)(2)(iv)

is designed to elicit information relevant to the intent of the transferor with regard to allocating exemption or making an election. For instance, a transferor's pattern of allocating GST exemption in an amount equal to the value of transfers to a trust in three or more years (whether or not consecutive) tends to support an assumption that the transferor intended to have that trust be exempt from GST tax and thus supports a presumed intent to allocate exemption to a transfer to that same trust taking place in a year in which an allocation in fact was not made.

A commenter requested that this provision be clarified to provide that the enactment of the statute itself be deemed to be a change in circumstance that could explain any post-enactment deviations from pre-enactment decisions regarding the allocation of GST exemption. In response to this comment, § 26.2642–7(d)(2)(iv) has been modified in the final regulations to confirm that relief under this provision will not be denied merely because a pattern does not exist or because the existing pattern changed at some point, whether in response to the enactment of a statute or to some other factor unrelated to either a lack of reasonableness or good faith or prejudice to the interests of the government.

IV. Proposed § 26.2642–7(d)(3)—Prejudice to the Interests of the Government

One commenter queried the placement of two of the factors under § 26.2642–7(d)(3) pertaining to whether a grant of relief would prejudice the interests of the government. These two factors are (i) the extent to which the requested relief is an attempt to benefit from hindsight, and (ii) the extent to which a delay in the filing of the request for relief was an attempt to deprive the IRS of sufficient time to challenge the claimed identity of the transferor of the transferred property that is the subject of the request for relief, the value of that transferred property for Federal gift or estate tax purposes, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. The commenter recommended that these two factors, to the extent they deal with the transferor's subjective intentions, be moved from proposed § 26.2642–7(d)(3) to proposed § 26.2642–7(d)(2), which relates to reasonableness and good faith.

While these two factors may reflect unreasonableness or bad faith on the part of the transferor or the transferor's executor, each of these factors also represents an instance in which granting relief would prejudice the interests of

the government. Therefore, the Treasury Department and the IRS have not adopted this suggestion in the final regulations.

V. Proposed § 26.2642-7(d)(3)(i)—Hindsight

Proposed § 26.2642-7(d)(3)(i) provides, in part, that one of the relevant factors in determining whether the government's interests would be prejudiced is whether the grant of the requested relief would permit an economic advantage or other benefit that would not have been available if the allocation or election had been timely made. A commenter suggested that the definition of the term "economic advantage" is vague and may be overbroad, in that no request for relief is ever made unless the grant of relief will be advantageous to the taxpayer by producing an economic advantage in the form of a reduction of tax liability. This provision, however, is intended to limit the reference to economic advantage to an advantage that may not have been available through a timely allocation or election. One example of an economic advantage that would not have been available at the time of a timely allocation of GST exemption would be a request to allocate exemption to only one of two trusts (specifically, to the trust with the greater appreciation) if the two trusts were created on the same date with the same beneficiaries but with different assets. Therefore, the Treasury Department and the IRS have not adopted this suggestion in the final regulations.

VI. Proposed § 26.2642-7(d)(3)(ii)—Timing of the Request for Relief

Proposed § 26.2642-7(d)(3)(ii) provides, in part, that the expiration of any period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief will not by itself prohibit a grant of relief. The proposed regulation further states that the combination of the expiration of a period of limitations with the fact that the asset or interest was valued with the use of a valuation discount will not by itself prohibit a grant of relief. A commenter indicated that the relevance of the use of valuation discounts and the period of limitations in determining whether to grant section 2642(g)(1) relief is not clear. The commenter stated that the use of valuation discounts that are consistent with established valuation methods neither prejudices the government nor constitutes an act of bad faith and therefore should not be considered, even in combination with other factors,

in determining whether relief should be granted. The commenter also stated that any consideration given to the expiration of the period of limitations is contrary to the legislative history of section 2642(g), which clearly directs that the IRS is to disregard the expiration of any period of limitations in considering requests for relief. The commenter maintains that the IRS should not use hindsight to deny relief simply because the IRS failed to challenge the valuation of transferred property or any other aspect of the transaction reported on a return prior to the expiration of a limitations period.

The sentences of proposed § 26.2642-7(d)(3)(ii) that discuss the expiration of the period of limitations and the use of valuation discounts as factors that are considered for relief are removed from the final regulations. Section 26.2642-7(d)(3)(iv) is added to the final regulations to confirm that, subject to the considerations related to the timing of the request for relief described in § 26.2642-7(d)(3)(ii), the expiration of the period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief generally is not relevant to the determination of whether the requirements for a grant of relief under section 2642(g)(1) have been met. Section 26.2642-7(d)(3)(iv) provides, however, that if the IRS concludes that the value of the transferred asset or assets as reported by the transferor or the executor of the transferor's estate on the Federal gift or estate tax return was so understated that it is likely to have satisfied the definition of a "gross valuation misstatement" as defined in section 6662(h)(2)(C) of the Code, the IRS will consider the purported transfer tax undervaluation in determining whether a grant of relief would prejudice the interests of the government. This provision is tied to the definition of a gross valuation misstatement to confirm that the perceived understatement in value would have to be exceptional in degree to raise the possibility of prejudice to the interests of the government. This provision is relevant only if the period of limitations on assessment or collection for transfer tax purposes expired before the filing of the request for relief.

VII. Proposed § 26.2642-7(d)(3)(iii)—Intervening Taxable Events

Proposed § 26.2642-7(d)(3)(iii) provides that the occurrence and effect of an intervening taxable termination or taxable distribution will be considered in determining whether the interests of the government would be prejudiced by

granting relief. The proposed regulations further state that the interests of the government may be prejudiced if a taxable termination or taxable distribution occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under this section was filed. A commenter requested that this language be removed from the final regulations and replaced with a sentence or example indicating that the existence of a GST tax liability when relief is requested is not relevant in determining whether relief under section 2642(g)(1) will be granted. Alternatively, the commenter requested that the final regulations provide that these rules not apply if the period of limitations on the assessment of resulting GST tax has not expired when relief is requested. In addition, the commenter requested that the final regulations provide transferors with the option of paying the GST tax resulting from the taxable termination or taxable distribution occurring prior to submission of the request for relief, or of forfeiting any refund of GST tax to which the transferor otherwise would be entitled upon the grant of relief.

These recommendations have not been adopted in the final regulations. Although an intervening taxable distribution or taxable termination itself does not necessarily bar a grant of relief under section 2642(g)(1), it may be relevant in identifying the existence of hindsight or in ascertaining the intent of the transferor. In addition, the difficulty and complexity of making all of the related adjustments caused by a grant of relief (including, for example, the grantor's willingness to pay any GST tax liability and any transfer tax consequences of that payment), some of which might also impact other taxpayers, will be a factor to be considered in determining whether the government's interests would be prejudiced.

VIII. Proposed § 26.2642-7(e)(1)—Timely Allocations and Elections

Proposed § 26.2642-7(e)(1) provides that relief will not be granted to decrease or revoke a timely allocation of GST exemption as described in § 26.2632-1(b)(4)(ii)(A)(1), or to revoke an election under section 2632(b)(3) or (c)(5) made on a timely filed Federal gift or estate tax return. Section 2631(b) provides that an allocation of GST exemption under section 2631(a), once made, is irrevocable. No statute, however, provides that an election made under section 2632(b)(3) or (c)(5) is irrevocable.

Accordingly, proposed § 26.2642–7(e)(1), redesignated in the final regulations as § 26.2642–7(e)(2), does not include the statement that relief is not available to revoke an election under section 2632(b)(3) or (c)(5) made on a timely filed Federal gift or estate tax return. Such relief may be available provided that the requirements of § 26.2642–7 of these final regulations are satisfied. Further, as described below, the final regulations, as they pertain to timely allocations, include three narrow exceptions that allow for relief from affirmative allocations of GST exemption.

Proposed § 26.2642–7(e)(1), redesignated in the final regulations as § 26.2642–7(e)(2), has been further modified to clarify that the allocation and election referred to is an affirmative (not an automatic) allocation or election. The Treasury Department and the IRS will address the effect of a grant of relief on automatic allocations in future guidance to be issued under section 2642(g).

A commenter indicated that it is not clear whether proposed § 26.2642–7(e)(1) also applies to allocations of GST exemption with respect to transfers made at death. This rule has been clarified in the final regulations to encompass transfers made at death and confirms that relief will not be granted to decrease or revoke an affirmative allocation (as opposed to an automatic allocation) of GST exemption, regardless of whether the transfer or the allocation of exemption was made during a transferor's life or upon the transferor's death.

The commenter further requested that the provision be modified to provide that affirmative allocations (as opposed to automatic allocations) of exemption or elections made on a timely filed estate tax return of the estate of a decedent dying prior to 2001 be exempted from this provision because section 2642(g)(1) relief was not available before December 31, 2000. Although this recommendation has not been adopted in the final regulations for all such allocations of exemption, relief from the problem raised by this comment is provided by the third of the exceptions included in the final regulations, as described in the following paragraphs.

The final regulations have been modified to include three narrow exceptions that allow for relief from affirmative allocations and elections. The first exception is that an allocation of GST exemption to a transfer or a trust (other than a charitable lead annuity trust (CLAT) or a trust subject to an estate tax inclusion period (ETIP) before

the termination of the lead interest or ETIP, respectively) is void to the extent that the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero. See § 26.2632–1(b)(4)(i). (The allocation of exemption to a CLAT upon its creation may turn out to be insufficient or excessive for the purpose of making the CLAT fully GST exempt, but the allocation will not be voided. The allocation of exemption to a trust subject to an ETIP does not become irrevocable until the termination of the ETIP.)

The second exception is that an allocation is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the transferor making the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. See § 26.2632–1(b)(4)(i).

The third exception is that a late allocation (as defined in section 2642(b)(3)) will be deemed to be void as part of the relief granted under section 2642(g) if the late allocation was made in an effort to mitigate the tax consequences of the missed allocation that is the subject of the grant of relief and that was not eligible for relief prior to the enactment of section 2642(g)(1). Specifically, such a late allocation is deemed to be void if (1) prior to December 31, 2000, a transfer was made to a trust with GST potential with respect to the transferor; (2) a timely allocation of GST exemption to the trust was not made; (3) prior to December 31, 2000, a late allocation of GST exemption was made to the trust; (4) the late allocation is disclosed as part of the request for relief or during the IRS's consideration of that request; and (5) relief under section 2642(g)(1) is granted to make a timely allocation to the transfer made prior to December 31, 2000.

Finally, the commenter questioned what effect a grant of relief under section 2642(g)(1) has on a timely allocation (whether affirmative or automatic) of the same transferor's GST exemption to a transfer made subsequent to the transfer for which relief is requested. The commenter suggested that, if relief is granted under section 2642(g)(1) to timely allocate GST exemption to an earlier transfer, the GST exemption timely allocated (whether affirmatively or automatically) to a later transfer could be reduced or eliminated. The commenter suggested that the grant of relief for the earlier transfer could be conditioned on payment of the GST tax that may be due if the inclusion ratio with respect to the subsequent transfer is increased by the

grant of relief. The Treasury Department and the IRS believe that, because the response to this comment may go beyond the scope of the proposed regulations, this issue is among those they intend to address in subsequent guidance.

IX. Proposed § 26.2642–7(f)—Period of Limitations Under Section 6501

Proposed § 26.2642–7(f), redesignated in the final regulations as § 26.2642–7(g), provides that a request for relief does not reopen, suspend, or extend the period of limitations on assessment or collection of any estate, gift, or GST tax under section 6501 of the Code. 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 limitations on assessment or collection of any or all gift and GST taxes.

A commenter requested that the references to gift tax be removed from this provision, apparently in an effort to eliminate the possibility that the grant of relief might be conditioned on the taxpayer's agreement to extend the gift tax period of limitations. The commenter's rationale for this request is that the request for relief relates only to the GST tax. The references to gift tax in this provision, however, complement § 26.2642–7(d)(3)(ii) of the final regulations, in effect, by allowing the taxpayer to avoid a finding of prejudice to the interests of the government by agreeing to an extension of the gift tax period of limitations. An agreement to extend the period of limitations is voluntary and declining to agree to an extension would not necessarily mean that relief would be denied, but it is a factor that may be taken into consideration. By retaining this reference to the gift tax, the government would be given adequate time to consider the reported identity of the transferor, the valuation of the transferred interest that will eventually determine the amount of GST exemption that may be allocated to the transfer, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. Therefore, this reference has not been deleted from the final regulations.

A taxpayer who seeks relief under section 2642(g)(1) will not be regarded as having filed a claim for refund or credit merely by requesting such relief.

X. Proposed § 26.2642–7(h)(2) and (3)—Affidavits and Declarations

Commenters recommended against requiring affidavits that provide more information than is required under § 301.9100–3(e)(2) and (3). One

commenter characterized the proposed procedural requirements as more burdensome than the corresponding procedural requirements under the section 9100 provisions and stated that these “more burdensome” requirements for relief are inconsistent with the statutory mandate in section 2642(g). Since the enactment of section 2642(g), the IRS has issued a significant number of private letter rulings granting relief under section 2642(g)(1). After considering the circumstances in the requests, the IRS has concluded that certain information in addition to that specified in § 301.9100–3(e)(2) and (3) is necessary to determine whether relief should be granted. Accordingly, based on the IRS’s experience in evaluating such requests for relief, the Treasury Department and the IRS have not adopted this recommendation in the final regulations.

Another commenter maintained that the affidavits required by proposed § 26.2642–7(h) are not necessary for the proper performance of the functions of the IRS and, therefore, the quality, utility, and clarity of the information to be provided by the affidavits cannot be enhanced. In support, the commenter argued that the affidavits demand more substantiation from taxpayers than is contemplated by section 2642(g)(1)(B). In addition, the commenter asserted that the IRS can grant relief under section 2642(g)(1) without requiring these affidavits if the IRS focuses on the government’s interest and the transferor’s intent as evidenced in the transfer documents and other supporting documents. Finally, the commenter stated that the IRS could determine from the documents previously filed with the IRS that the period of limitations had expired or that a taxable termination or distribution had occurred, both factors that may be indicative of prejudice to the government.

In the course of issuing private letter rulings under § 301.9100–3, the IRS has determined that, while transfer instruments and other relevant documents provided by the transferor or the transferor’s executor provide useful information, these documents do not necessarily provide all of the information needed to evaluate properly a request for relief under section 2642(g)(1). Accordingly, the final regulations retain the requirement that requests for relief include detailed affidavits. However, after consideration of the comments and review of the proposed regulations, the Treasury Department and the IRS have modified the regulations by decreasing the amount of information required in

affidavits in order to replicate more closely the requirements of § 301.9100–3(e)(2) and (3). As a result, the final regulations reduce the burden the proposed regulations would have imposed.

Commenters also requested a narrowing of the categories of individuals from whom affidavits will be required. In addition to individuals involved in the preparation of the tax return, proposed § 26.2642–7(h)(3) also includes in this group each tax professional who advised or was consulted on “any aspect of the transfer” or on the trust, and each agent or legal representative of the transferor who participated “in the transaction.” Commenters noted that this group may include advisors, agents, or legal representatives of the transferor who had nothing to do with preparing the return or with the decision or failure to allocate exemption or to make an election on that return.

In response to these comments, the Treasury Department and the IRS have modified the regulations by narrowing the categories of individuals required to submit affidavits under proposed § 26.2642–7(h)(3), redesignated in the final regulations as § 26.2642–7(i)(4). Specifically, the final regulations do not include in this group of required affiants any tax professional unless that professional participated in or provided advice with regard to the GST tax exemption allocation or election, or with regard to the preparation of the return. As a result, the final regulations reduce the burden the proposed regulations would have imposed.

The final regulations, however, also have been modified to confirm that the IRS, consistent with current procedures in the IRS private letter ruling program, may require affidavits and copies of writings from persons not included in the more narrow group described in § 26.2642–7(i)(4) in cases in which the IRS believes additional information is required or would be helpful in making the determination as to whether relief under section 2642(g)(1) will be granted.

XI. Proposed § 26.2642–7(h)(3)(iii)—Affidavits of Other Parties

Proposed § 26.2642–7(h)(3)(iii) provides that a party making an affidavit must attach to each affidavit copies of any writing (including, without limitation, notes and emails) and other contemporaneous documents within the possession of the affiant relevant to the transferor’s intent with regard to the application of GST tax to the transaction. A commenter requested that this provision be modified to provide that a lawyer or accountant is not

deemed to possess any documents that are in the possession of his or her law firm or accounting firm. In response to this comment, this provision of the final regulations, redesignated in the final regulations as § 26.2642–7(i)(4)(iii), clarifies that the writings to be submitted under these regulations are those that the affiant discovers by conducting, in good faith, a reasonably diligent search of records in the possession of or accessible to the affiant, or subject to the affiant’s control. A reasonably diligent search generally would include, without limitation, a review of the records in the possession or control of the affiant or the firm with which the affiant is employed or associated relating to the transaction or tax return at issue.

XII. Proposed § 26.2642–7(h)(3)(v)—Death or Incapacity

Proposed § 26.2642–7(h)(3)(v) provides that, if a person who would be required to provide an affidavit under proposed § 26.2642–7(h)(3)(i) has died or is not competent, the transferor or the transferor’s executor must include a statement to that effect in the affidavit of that transferor or executor.

A commenter suggested that this proposed provision would require the transferor or the transferor’s executor to determine the competency of a person and that such a requirement would be inappropriate. Further, the commenter noted that, in addition to death and incompetence, serious physical illness or other physical impairment also could render a person unable to provide an affidavit. The commenter recommended that this provision be modified to provide that the transferor or the transferor’s executor may satisfy the requirements of this provision with a statement that such transferor or executor, despite his or her best efforts in good faith, was unable to obtain the affidavit required under proposed § 26.2642–7(h)(3)(i) and an explanation of the basis for the transferor’s or executor’s conclusion, based on his or her best knowledge and reasonable belief that such affidavit was not obtainable.

The corresponding provision in the final regulations (§ 26.2642–7(i)(4)(vi)) has been modified to apply to persons who have died or who are unwilling or unable to provide the required affidavit at the time relief is requested. For purposes of this provision, the term *unwilling* refers to a person who does not (other than one who is unable to) provide the required affidavit, despite the best efforts of the transferor or the transferor’s executor, made in good faith, to obtain the required affidavit.

The unwillingness of certain persons to provide an affidavit, however, may be considered by the IRS in determining whether or not to grant the requested relief. In addition, for purposes of this provision, the term *unable* refers to a permanent condition such as physical or mental incapacity that prevents a person from providing the required affidavit, but not a temporary condition such as a temporary physical or mental incapacity or a person's inability due to a leave of absence, travel, or a contractual requirement such as a confidentiality agreement.

XIII. User Fee and Estimated Burden

A commenter noted that taxpayers have to pay a user fee when seeking relief under section 2642(g)(1) through the IRS private letter ruling program. The commenter proposed that, given the complexity of the rules and the frequency of changes to the rules, relief under section 2642(g)(1) should be granted without charging a user fee. The commenter noted that, under other circumstances, the IRS has developed simplified procedures that do not necessitate a private letter ruling request and suggested that the compliance burden would be eased significantly if a simplified procedure to administer relief under section 2642(g)(1) were developed.

The Treasury Department and the IRS believe that the most efficient way to address these requests for relief continues to be through the IRS private letter ruling program. The user fee is imposed to recover the government's full cost for providing the service. The Treasury Department and the IRS agree that the compliance burden would be eased significantly if it was possible to develop a simplified procedure to administer relief under section 2642(g)(1). For instance, Rev. Proc. 2004-46 (2004-2 CB 142) and Rev. Proc. 2004-47 (2004-2 CB 169) identify situations in which the Treasury Department and the IRS believe that relief may be granted without adversely affecting the interests of the government. See § 601.601(d)(2)(ii)(b). The Treasury Department and the IRS are prepared to issue additional revenue procedures or other guidance when they identify situations for which simplified or automatic relief under section 2642(g)(1) would be appropriate and administrable. Until such guidance is issued, however, the IRS private letter ruling program will continue to allow the IRS to obtain and evaluate the information necessary to identify such situations. The user fee would follow the same schedule and amount as rulings under § 301.9100-1. See

Appendix A of Rev. Proc. 2024-1, 2024-1 I.R.B. 1, 85.

The IRS had estimated in the proposed regulations that the annual burden to prepare the affidavits was two hours. Many commenters mentioned that the estimated burden was drastically underestimated due to the numerous requirements of the proposed regulations. In response to these comments, the IRS has reconsidered this estimate of the annual burden and has increased the estimated annual burden to 20 hours.

Effect on Other Documents

Notice 2001-50, 2001-2 CB 189, is obsolete as of May 6, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), information collection requirements contained in these final regulations are in § 26.2642-7(i)(3) and (4). These provisions require transferors or the executors of transferors' estates to provide one or more affidavits when requesting relief under section 2642(g)(1) of the Internal Revenue Code. The IRS will use the information in the affidavits to determine whether to grant a transferor or a transferor's estate an extension of time to (1) allocate GST exemption as defined in section 2631, (2) elect under section 2632(b)(3) not to have the automatic allocation of GST exemption apply to a direct skip, (3) elect under section 2632(c)(5)(A)(i) not to have the automatic allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust, and (4) elect under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c).

The reporting burden associated with the information collection in the final regulations are included in the aggregate burden estimates for OMB control number 1545-2116. The estimated number of respondents, who are mainly attorneys representing the taxpayers, for each year is estimated to be 50. The estimated burden for each respondent to prepare the private letter ruling request

and the accompanying affidavits is 20 hours per respondent. Thus, the total annual burden is estimated to be 1000 hours. It should be noted that the burden is not an annual burden for each taxpayer, as taxpayers do not need to request a private letter ruling each year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any Internal Revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The applicability of these regulations is limited to individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there may be a beneficial economic impact for some small entities, including entities that provide tax and legal services that assist individuals in the IRS private letter ruling program, any benefit to those entities would be indirect. Further, this indirect benefit will not affect a substantial number of these small entities because only a limited number of individuals (or their estates) and trusts would submit a private letter ruling request under this rule. Therefore, only a small fraction of tax and legal services entities would generate business or benefit from this rule. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received in response.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated

annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Drafting Information

The principal author of these regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 26, 301, and 602 as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Paragraph 1.** The authority citation for part 26 is amended by adding an entry for § 26.2642–7 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 26.2642–7 also issued under 26 U.S.C. 2642(g).

* * * * *

■ **Par. 2.** Section 26.2642–7 is added to read as follows:

§ 26.2642–7 Relief under section 2642(g)(1).

(a) *In general.* Under section 2642(g)(1)(A) of the Internal Revenue Code (Code), the Secretary of the Treasury or her delegate (Secretary) has the authority to issue regulations describing the circumstances in which a transferor, as defined in section 2652(a) of the Code, or the executor of a transferor’s estate, as defined in section 2203 of the Code, will be granted an extension of time to allocate generation-skipping transfer (GST) exemption as described in section 2642(b)(1) and (2). The Secretary also has the authority to issue regulations describing the circumstances under which a transferor or the executor of a transferor’s estate will be granted an extension of time to make the elections described in section 2632(b)(3) and (c)(5) of the Code. Section 2632(b)(3) provides that an election may be made by or on behalf of a transferor not to have the transferor’s GST exemption automatically allocated under section 2632(b)(1) to a direct skip, as defined in section 2612(c), made by the transferor during life. Section 2632(c)(5)(A)(i) provides that an election may be made by or on behalf of a transferor not to have the transferor’s GST exemption automatically allocated under section 2632(c)(1) to an indirect skip, as defined in section 2632(c)(3)(A), or to any or all transfers made by such transferor to a particular trust. Section 2632(c)(5)(A)(ii) provides that an election may be made by or on behalf of a transferor to treat any trust as a GST trust, as defined in section 2632(c)(3)(B), for purposes of section 2632(c) with respect to any or all transfers made by that transferor to the trust. This section generally describes the factors that the Internal Revenue Service (IRS) will consider when an extension of time is sought by or on behalf of a transferor to timely allocate GST exemption or to make an election under section 2632(b)(3) or (c)(5). If the time period for an automatic six-month extension under paragraph (i)(1) of this section has passed, relief provided under this section can be requested through the IRS private letter ruling program. See paragraph (i) of this section.

(b) *Effect of relief—(1) In general.* If an extension of time to allocate GST exemption is granted under this section, the allocation of GST exemption, once made, will be considered effective as of the date of the transfer. Further, the amount of the transferor’s GST exemption required to be allocated in

order to produce a zero inclusion ratio solely with regard to that transfer will be the value of the property transferred for purposes of chapter 11 or chapter 12 of the Code as of the date of the transfer. If an extension of time to elect out of the automatic allocation of GST exemption under section 2632(b)(3) or (c)(5)(A)(i) is granted under this section, the election, once made, will be considered effective as of the date of and immediately prior to the transfer. If an extension of time to elect to treat any trust as a GST trust under section 2632(c)(5)(A)(ii) is granted under this section, the election, once made, will be considered effective as of the date of and immediately prior to the first (or each) transfer covered by that election. See paragraph (h) of this section with regard to preserving a taxpayer’s eligibility for a refund generated by a grant of relief, if applicable.

(2) [Reserved]

(3) *Effect on other transfers.* Except as otherwise provided in paragraph (e)(2)(ii) of this section, an allocation of exemption or an election made pursuant to a grant of relief under this section does not reduce or eliminate any affirmative allocation or void any election made with respect to any other transfer occurring contemporaneously with or subsequent to the transfer or transfers for which relief has been granted.

(c) *Limitation on relief.* The amount of GST exemption that may be allocated to a transfer as the result of relief granted under this section in no event may exceed the amount of the transferor’s unused GST exemption under section 2631(c) of the Code as of the date of the transfer. Thus, if, by the time of the making of the allocation or election pursuant to relief granted under this section, the GST exemption amount under section 2631(c) has increased to an amount in excess of the amount in effect for the date of the transfer, no portion of the increased amount may be applied to that earlier transfer by reason of the relief granted under this section.

(d) *Basis for determination—(1) In general.* Requests for relief under this section will be granted when and to the extent that the transferor or the executor of the transferor’s estate provides evidence (including the affidavits described in paragraph (i) of this section) establishing to the satisfaction of the IRS that the transferor or the executor of the transferor’s estate acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government. Paragraphs (d)(2) and (3) of this section set forth nonexclusive lists of factors the IRS will consider in determining whether this

standard of reasonableness, good faith, and lack of prejudice to the interests of the government has been met so that such relief will be granted. In making this determination, the IRS will consider those factors set forth in paragraphs (d)(2) and (3) of this section, as well as all other facts and circumstances not specifically set forth herein that are relevant to the particular situation. Paragraph (e) of this section sets forth some situations in which this standard is not met and, as a result, in which relief under this section will not be granted.

(2) *Reasonableness and good faith.* The following is a nonexclusive list of factors that will be considered in determining whether the transferor or the executor of the transferor's estate acted reasonably and in good faith for purposes of this section. Not all of these factors may be relevant in a particular situation (and those that are not relevant are not required to be addressed in the request for relief made in accordance with paragraph (i) of this section). Further, it is possible that the evidence relating to any one of these factors, in the context of all of the facts and circumstances of the particular situation, may be sufficient to persuade the IRS that the grant of relief under section 2642(g)(1) would be appropriate. However, as a general rule, no single factor (whether listed or not) will be determinative in all cases. The factors are as follows:

(i) *Intent.* The intent of the transferor to timely allocate GST exemption to a transfer or to timely make an election under section 2632(b)(3) or (c)(5), as evidenced in the trust instrument, the instrument of transfer, or other relevant documents contemporaneous with the transfer, such as Federal gift and estate tax returns and correspondence. This may include evidence of the intended GST tax status of the transfer or the trust (for example, exempt, non-exempt, or partially exempt), or more explicit evidence of intent with regard to the allocation of GST exemption or the election under section 2632(b)(3) or (c)(5).

(ii) *Intervening events.* Intervening events beyond the control of the transferor or of the executor of the transferor's estate that caused the failure to allocate GST exemption to a transfer or the failure to make an election under section 2632(b)(3) or (c)(5).

(iii) *Lack of awareness.* Lack of awareness, despite the exercise of reasonable diligence, by the transferor or the executor of the transferor's estate of the need to allocate GST exemption to the transfer, taking into account the experience of the transferor or the

executor of the transferor's estate and the complexity of the GST tax issue, as the cause of the failure to allocate GST exemption to a transfer or to make an election under section 2632(b)(3) or (c)(5).

(iv) *Consistency.* Consistency by the transferor with regard to the allocation of the transferor's GST exemption to one or more trusts or skip persons. For example, the transferor's consistent pattern of allocation of GST exemption to transfers (whether or not made in consecutive years) to skip persons or to a particular trust, or the transferor's consistent pattern of electing not to have the automatic allocation of GST exemption apply to transfers (whether or not made in consecutive years), will be taken into consideration. Evidence of consistency may be less relevant if there has been a change of circumstances or a change of trust beneficiaries that otherwise would explain a deviation from prior GST exemption allocation decisions. Relief under this section will not be denied merely because a pattern of allocation or election does not exist or because the existing pattern changed at some point, whether in response to the enactment of section 2642(g) or to some other factor unrelated to either a lack of reasonableness or good faith or prejudice to the interests of the government.

(v) *Qualified tax professional.* Reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional retained or employed by one or both of them and either the failure of the tax professional, or, in reliance on or consistent with (or in the absence of) that tax professional's advice, the failure of the transferor or the executor, to allocate GST exemption to the transfer or to make an election described in section 2632(b)(3) or (c)(5). Reliance on a qualified tax professional will not be considered to have been reasonable if the transferor or the executor of the transferor's estate knew or should have known that the professional either—

(A) Was not competent to render advice on the GST exemption; or
(B) Was not aware of all relevant facts.

(3) *Prejudice to the interests of the government.* The following is a nonexclusive list of factors that will be considered to determine whether the interests of the government would be prejudiced for purposes of this section:

(i) *Hindsight.* An attempt to benefit from hindsight will be deemed to prejudice the interests of the government. A factor relevant to this determination is whether the grant of the requested relief would permit an economic advantage or other benefit

that would not have been available if the allocation or election had been timely made. For example, there may be prejudice if a grant of the requested relief would permit an economic advantage or other benefit that results from the selection of one out of a number of alternatives (other than whether or not to make an allocation or election) that were available at the time the allocation or election could have been timely made, if hindsight makes the selected alternative more beneficial than the other alternatives. Prejudice also would exist if the transferor failed to make the allocation or election in order to wait to see (thus, with the benefit of hindsight) whether making an allocation of exemption or election would be more beneficial than not making the allocation or election. For instance, assume that a transferor funds several trusts with different property interests on the same date, and does not allocate GST exemption to any trust. Several years later, the transferor seeks relief to allocate GST exemption to the trust that enjoyed the greatest asset appreciation and thus constitutes the most effective use of the transferor's GST exemption. Relief will not be granted because the transferor attempted to benefit from hindsight and thereby acquire an economic advantage.

(ii) *Timing of the request for relief.* The timing of the request for relief will be considered in determining whether the interests of the government would be prejudiced by granting relief under this section. The interests of the government would be prejudiced if delay by the transferor or the executor of the transferor's estate in the filing of the request for relief was intended to deprive the IRS of a sufficient period of time in which to challenge any element of the transfer that is the subject of the request for relief, such as the value of the transferred property for Federal gift or estate tax purposes, the claimed identity of the transferor of the transferred property, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. For this purpose, such intent will be presumed, but may be rebutted by evidence persuasive to the IRS of the existence of other reasons for or circumstances causing the delay.

(iii) *Intervening taxable events.* The occurrence and effect of an intervening taxable termination or taxable distribution will be considered in determining whether and to what extent the interests of the government would be prejudiced by a grant of relief under this section. The interests of the government may be prejudiced if a taxable termination or a taxable

distribution occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under this section was filed. The impact of a grant of relief on (and the difficulty of adjusting) the GST tax consequences of that intervening termination or distribution will be considered in determining whether the occurrence of a taxable termination or taxable distribution constitutes prejudice.

(iv) *Closed years.* Subject to the considerations described in paragraph (d)(3)(ii) of this section, the expiration of any period of limitations on the assessment or collection of transfer taxes prior to the filing of a request for relief under this section generally is not relevant to the determination of whether the requirements for a grant of relief under this section have been met. If that period has expired, however, and if the IRS concludes that the value of the transferred asset or assets as reported on a Federal gift or estate tax return by the transferor or the executor of the transferor's estate is likely to have satisfied the definition of a gross valuation misstatement as defined in section 6662(h)(2)(C) of the Code, the IRS will consider the purported undervaluation in determining whether a grant of relief will prejudice the interests of the government.

(e) *Situations in which the standard of reasonableness, good faith, and lack of prejudice to the interests of the government has not been met—(1) In general.* Relief under this section will not be granted if the IRS determines that the transferor or the executor of the transferor's estate has not acted reasonably and in good faith, or that the grant of relief would prejudice the interests of the government. The following situations illustrate some circumstances in which the standard of reasonableness, good faith, and lack of prejudice to the interests of the government has not been met, and as a result, in which relief under this section will not be granted.

(2) *Affirmative allocations—(i) In general,* relief will not be granted under this section to the extent that it would decrease or revoke an affirmative (but not automatic) allocation of GST exemption under section 2632(a) or 2642(b) that was made on a Federal gift or estate tax return, regardless of whether the transfer or the allocation of exemption was made during the transferor's life or upon the transferor's death.

(ii) There are three exceptions to this general rule, as follows. No request for

relief is required for either of the first two exceptions:

(A) An allocation of GST exemption is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the property transferred or to the trust. This provision does not apply to charitable lead annuity trusts, nor does it apply to an allocation made to a trust subject to an estate tax inclusion period before the termination of that period. See § 26.2632-1(b)(4)(i).

(B) An allocation is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the transferor making the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. See § 26.2632-1(b)(4)(i).

(C) A late allocation of GST exemption, as described in section 2642(b)(3), to a transfer or to a trust will be deemed void upon the grant of relief under this section if—

(1) Prior to December 31, 2000, a transfer is made that is subject to GST tax or to a trust that has GST potential with respect to the transferor;

(2) A timely allocation of GST exemption was not made to the transfer or the trust, and this missed allocation was not eligible for relief prior to the enactment of section 2642(g)(1);

(3) Prior to December 31, 2000, a late allocation of GST exemption was made to the transfer or the trust;

(4) The late allocation is disclosed as part of the request for relief or during the IRS's consideration of that request; and

(5) Relief under this section is granted to make a timely allocation to the transfer or the trust described in paragraph (e)(2)(ii)(C)(1) of this section.

(3) *Timing.* Relief will not be granted with regard to a transfer reported on the transferor's gift tax return in the situation in which the transferor filed the request for relief shortly after the expiration of the period during which an assessment of gift tax could be made with respect to that transfer, the IRS reasonably concludes that the transferor intentionally delayed that filing for the purpose of preventing an IRS examination of the reported value of the property subject to that transfer or the claimed identity of the transferor or other fact relevant for transfer tax purposes, and the transferor is unable to produce evidence sufficient to convince the IRS that the filing delay was attributable to some other reason or purpose.

(4) *Failure after being accurately informed.* Relief will not be granted

under this section if the decision made by the transferor or the executor of the transferor's estate (who had been accurately informed in all material respects by a qualified tax professional retained or employed by either (or both) of them with regard to the allocation of GST exemption or an election described in section 2632(b)(3) or (c)(5)) was reflected or implemented by the action or inaction that is the subject of the request for relief.

(5) *Hindsight.* Relief under this section will not be granted if the IRS determines that the requested relief is an attempt to benefit from hindsight by waiting to see which of multiple transfers, made at substantially the same time but consisting of different property interests, enjoyed the greatest appreciation and thus would constitute the most effective use of the transferor's GST exemption.

(f) [Reserved]

(g) *Period of limitations under section 6501.* 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 of the Code. The IRS may request that the transferor or the transferor's executor consent, under section 6501(c)(4) and prior to the expiration of that period of limitations, to an extension of the period of limitations on assessment or collection of any or all gift and GST taxes for the transfer or transfers that are the subject of the requested relief. The transferor or the transferor's executor has the right to refuse to extend the period of limitations, or to limit any such extension to particular issues or to a particular period of time. See section 6501(c)(4)(B). Because a consent to an extension (whether or not limited) may eliminate prejudice to the interests of the government described in paragraphs (d)(3)(ii) and (e)(3) of this section, a refusal to consent to an extension is a factor that may adversely impact the availability of the requested relief.

(h) *Refunds.* The filing of a request for relief under section 2642(g)(1) with the IRS does not constitute a claim for refund or credit of an overpayment and no implied right to refund will arise from the filing of such a request for relief. Similarly, the filing of such a request for relief does not extend the period of limitations under section 6511 of the Code for filing a claim for refund or credit of an overpayment. If the grant of relief under section 2642(g)(1) results in the decrease of a trust's inclusion ratio or a reduction in the amount of a direct skip, and thus in a potential claim for refund or credit of an overpayment of tax, no such refund or credit will be

allowed to the taxpayer or to the taxpayer's estate if the period of limitations under section 6511 for filing a claim for a refund or credit of the Federal gift, estate, or GST tax that was reduced by the granted relief has expired, unless a claim for refund or credit was filed before the expiration of that period. The taxpayer or the taxpayer's estate is responsible for preserving any potential claim for refund or credit.

(i) *Procedural requirements—(1) Automatic 6-month extension.* An automatic extension of 6 months from the due date of the gift or estate tax return, or of the Form 8939, *Allocation of Increase in Basis for Property Acquired From a Decedent*, of a decedent dying in calendar year 2010, (in each case, excluding extensions) is granted to file a supplemental return or Form 8939 on which the transferor or the executor of the transferor's estate may allocate GST exemption or make an election under section 2632(b)(3) or (c)(5). This extension, however, is available only if the transferor (or the executor of a transferor's estate) both timely filed the gift or estate tax return or the Form 8939 on which the GST exemption should have been allocated or the election should have been made, and, within that 6-month extension period, files a supplemental return or other supplementary filing. On the supplemental return or other filing, the taxpayer must comply with all of the requirements for allocating GST exemption under section 2632 or for making the election under section 2632(b)(3) or (c)(5) for the year the allocation or election should have been made to make a valid allocation or election. Any supplemental return filed pursuant to this paragraph must say *FILED PURSUANT TO § 26.2642-7(i)(1)* on the front page of the return or the Form 8939, and must be sent to the same address that a timely return or Form 8939 on which the allocation or election should have been made would have been sent, subject to address changes in future forms or instructions or guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. No request for a private letter ruling is required and, as a result, no user fee is required to be paid.

(2) *Private letter ruling program.* Except for the automatic 6-month extension provided in paragraph (i)(1) of this section, the relief described in this section is provided through the IRS's private letter ruling program. Requests for relief may be submitted in accordance with the applicable procedures for requests for a private letter ruling.

(3) *Affidavit and declaration of transferor or the executor of the transferor's estate.* (i) The transferor or the executor of the transferor's estate must submit a detailed affidavit describing the events that led to the failure to timely allocate GST exemption to a transfer or the failure to timely elect under section 2632(b)(3) or (c)(5), and the events that led to the discovery of the failure. In situations described in paragraph (i)(4)(vi) of this section, this affidavit also must include the additional information and statements described in that paragraph. If the transferor or the executor of the transferor's estate relied on a tax professional for advice with respect to the allocation or election, the affidavit also must describe—

(A) The scope of the engagement;
 (B) The responsibilities the transferor or the executor of the transferor's estate believed the professional had assumed; and
 (C) The extent to which the transferor or the executor of the transferor's estate relied on the professional.
 (ii) Attached to each affidavit must be copies of any writings (including, without limitation, notes and emails) and other contemporaneous documents within the possession or control of the affiant relevant to the determination of the transferor's intent with regard to the application of GST tax to the transaction for which relief under this section is requested.

(iii) The affidavit must be accompanied by a dated declaration, signed by the transferor or the executor of the transferor's estate, that states: Under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and to the best of my knowledge and belief, this affidavit, including any attachments thereto, is true, correct, and complete. In addition, under penalties of perjury, I declare that I have examined all the documents included as part of this request for relief, and that, to the best of my knowledge and belief, these documents collectively contain all the relevant facts relating to the request for relief and such facts are true, correct, and complete.

(4) *Affidavits and declarations from other parties.* (i) The transferor or the executor of the transferor's estate must submit detailed affidavits from the individuals specified in paragraphs (i)(4)(i)(A) through (D) of this section and other individuals who have knowledge or information about the events that led to the failure to allocate GST exemption or to elect under section 2632(b)(3) or (c)(5), or to the discovery of the failure. These individuals may

include individuals whose knowledge or information is not within the personal knowledge of the transferor or the executor of the transferor's estate. The individuals described in this paragraph must include—

(A) Each agent or legal representative of the transferor who participated in the consideration of, or the decision with regard to, the allocation of GST exemption or the election under section 2632(b)(3) or (c)(5), or the preparation of the return for which relief is being requested;

(B) The preparer of the relevant Federal estate or gift tax return or returns;

(C) Each individual (including an employee of the transferor or of the executor of the transferor's estate) who provided information or advice with regard to, or otherwise made a significant contribution to, the decision concerning the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), or the preparation of the relevant Federal estate and/or gift tax return or returns; and

(D) Each tax professional who advised or was consulted by the transferor or the executor of the transferor's estate with regard to the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), or the preparation of the relevant Federal estate or gift tax return or returns.

(ii) Each affidavit must describe the scope of the engagement and the responsibilities of the individual as well as the advice or service the individual provided to the transferor or the executor of the transferor's estate.

(iii) Attached to each affidavit must be a copy of each writing (including, without limitation, notes and emails) and other contemporaneous documents within the possession of the affiant relevant to the transferor's intent or the affiant's advice with regard to the application of GST tax to the transaction for which relief under this section is requested. The documents that the affiant discovers by conducting in good faith a reasonably diligent search of records in the possession of or accessible to the affiant, or subject to the affiant's control, will be sufficient to satisfy the requirements of this paragraph (i)(4)(iii). A reasonably diligent search generally would include, without limitation, a review of the records in the possession or control of the affiant or the firm at which the affiant is employed or associated relating to the transaction or tax return at issue.

(iv) The IRS may require additional affidavits from persons not set forth in paragraph (i)(4)(i) of this section as well

as additional documents when additional information or documents with respect to a transfer is believed by the IRS to be required or helpful in making its determination as to whether relief under this section should be granted.

(v) Each affidavit also must include the name and current address of the affiant, and must be accompanied by a dated declaration signed by the affiant that states:

Under penalties of perjury, I declare that I have personal knowledge of the information set forth in this affidavit, including any attachments thereto. In addition, under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and, to the best of my knowledge and belief, the affidavit contains all the relevant facts and the attachments include copies of all relevant writings or other documents resulting from a reasonably diligent search, conducted in good faith, of all records within my possession, accessible to me, or subject to my control, relating to the allocation of GST exemption, the election under section 2632(b)(3) or (c)(5), and the preparation of the tax return at issue in the request for relief filed by or on behalf of [transferor or executor of transferor's estate], and such facts and attached documents are true, correct, and complete.

(vi) If an individual who would be required to provide an affidavit under paragraph (i)(4)(i) of this section has died or is unwilling or otherwise unable to provide the required affidavit, the affidavit required under paragraph (i)(3) of this section must include a statement to that effect, as well as a statement describing the relationship between that individual and the transferor or the executor of the transferor's estate; the information or knowledge the transferor or the executor of the transferor's estate believes that individual had about the events that led to the failure to make the allocation or the election or to the discovery of that failure; and, in cases other than the death of the individual, a detailed description of the efforts made to obtain the affidavit from the individual. The unwillingness of certain affiants to provide an affidavit, however, may be considered by the IRS in determining whether to grant the requested relief. For purposes of this paragraph (i)(4)(vi), the term *unwilling* refers to a person who is apparently able but refuses or otherwise fails, despite the best efforts, made in good faith, of the transferor or the transferor's executor, to provide the required affidavit. In addition, for purposes of

this paragraph, the term *unable* refers to a permanent or potentially long-term condition such as physical or mental incapacity that prevents the person from providing the required affidavit, but not a temporary condition such as a temporary physical or mental incapacity or a person's inability due to a leave of absence, travel, or a contractual requirement such as a confidentiality agreement.

(5) *Additional rules regarding relief.* For purposes of relief under paragraphs (i)(1) and (2) of this section, the grant of relief in the form of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. In addition, notwithstanding the provisions of this section, an extension of time will not be granted under this section if alternative relief is provided by a statute, a regulation published in the **Federal Register**, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(j) *Applicability date.* This section applies to requests for relief to which section 2642(g)(1) applies that are filed on or after May 6, 2024, regardless of the date of the transfer.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** Section 301.9100–2 is amended by adding paragraph (f) to read as follows:

§ 301.9100–2 Automatic extensions.

* * * * *

(f) *Automatic 6-month extension for certain generation-skipping transfer tax allocations and elections—(1) Availability.* Paragraph (b) of this section is not available to obtain an automatic 6-month extension to allocate generation-skipping transfer (GST) exemption to a transfer pursuant to section 2632 or to make an election under section 2632(b)(3) or (c)(5). An automatic 6-month extension to allocate GST exemption under section 2632 or to make an election under section 2632(b)(3) or (c)(5) is available to transferors or the executors of transferors' estates pursuant to § 26.2642–7(i)(1) of this chapter if the requirements of that provision are satisfied.

(2) *Applicability date.* Paragraph (f) of this section applies to any gift or estate tax return or Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, for which the date

prescribed for filing is on or after May 6, 2024 (excluding extensions), regardless of the date of the transfer.

■ **Par. 5.** Section 301.9100–3 is amended by adding paragraph (g) to read as follows:

§ 301.9100–3 Other extensions.

* * * * *

(g) *Relief under section 2642(g)(1)—(1) Procedures.* The procedures set forth in this section are not applicable for requests for relief under section 2642(g)(1). For requests for relief under section 2642(g)(1), see § 26.2642–7 of this chapter.

(2) *Applicability date.* This paragraph (g) applies to requests for relief to which section 2642(g)(1) applies that are filed on or after May 6, 2024, regardless of the date of the transfer.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 7.** In § 602.101, amend the table in paragraph (b) by adding an entry in numerical order for “§ 26.2642–7(i)(3) and (4)” to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
26.2642–7(i)(3) and (4)	1545–2116
* * * * *	* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: March 12, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury
(Tax Policy).

[FR Doc. 2024–09644 Filed 5–3–24; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

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Privacy Act of 1974; Implementation

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