

Under § 26.2632-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the election out of the automatic allocation for direct skips must be made on a timely filed federal gift tax return. The Treasury Department and the Internal Revenue Service will issue regulations providing that the election out of the automatic allocation for indirect skips and the election to treat any trust as a GST trust must also be made on a timely filed federal gift tax return.

Under § 2642(b)(1) and § 26.2642-2(a)(1), with respect to lifetime transfers, the value of the property to which the GST exemption is allocated is its value at the date of the transfer if the GST exemption is automatically allocated or is allocated on a timely filed federal gift tax return. Under § 2642(b)(3), if the allocation is not made on a timely filed gift tax return, the value of the property to which the exemption is allocated is its value on the effective date of the allocation as described in § 26.2642-2(a)(2).

Section 2642(b)(2) describes allocations with respect to transfers at death and provides that the value of property to which the GST exemption is allocated is its value as determined for estate tax purposes. The allocation of the GST exemption to transfers at death may be made by the executor at any time prior to the due date of the federal estate tax return under § 26.2632-1(a). Unused GST exemption that has not been allocated by the executor is automatically allocated to transfers at death and lifetime transfers for which no allocation had previously been made as prescribed in § 2632(e)(1).

Section 2642(g)(1)(A), added by § 564(a) of the Act, authorizes the Treasury Department to issue regulations prescribing the circumstances and procedures under which extensions of time will be granted to make an allocation of the GST exemption described in § 2642(b)(1) and (2) or to make an election under § 2632(b)(3) and (c)(5). Section 2642(g)(1)(B) provides that in determining whether to grant relief, the time for making the allocation or election is to be treated as if not expressly prescribed by statute. If an extension of time is granted to make the allocation, then the gift or estate tax value of the transfer to the trust is used to determine the allocation of the GST exemption. H.R. Conf. Rep. No. 84,

107<sup>th</sup> Cong., 1<sup>st</sup> Sess. 202 (2001). Under § 564(b) of the Act, the provisions of § 2642(g)(1) apply to requests for relief pending on, or filed after, December 31, 2000.

#### REQUESTS FOR RELIEF UNDER § 2642(g)(1)

Section 301.9100-3 of the Procedure and Administration Regulations provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. Therefore, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

In general, under § 301.9100-3, relief will be granted if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that the grant of relief will not prejudice the interests of the government. Taxpayers requesting relief should follow the procedures for requesting a private letter ruling under § 301.9100 contained in section 5.02 of Rev. Proc. 2001-1 (or its successor), 2001-1 I.R.B. 1, 13.

#### EFFECTIVE DATE

This notice is effective with respect to requests for relief pending on, or filed after, December 31, 2000.

#### DRAFTING INFORMATION

The principal author of this notice is William L. Blodgett of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Blodgett at (202) 622-3090 (not a toll-free call).

## Listed Transactions Update

### Notice 2001-51

On February 28, 2000, the Internal Revenue Service issued Notice 2000-15, 2000-12 I.R.B. 826, identifying certain transactions as “listed transactions” for purposes of § 1.6011-4T(b)(2) of the temporary Income Tax Regulations and § 301.6111-2T(b)(2) of the temporary Procedure and Administration Regulations. This notice restates the list of transactions identified in Notice 2000-15 as “listed transactions” effective February 28, 2000, and updates the list by adding transactions identified in notices released subsequent to February 28, 2000.

Transactions that are the same as or substantially similar to transactions described in the list below have been determined by the Service to be tax avoidance transactions and are identified as “listed transactions” for purposes of § 1.6011-4T(b)(2) and § 301.6111-2T(b)(2). As a result, corporate taxpayers may need to disclose their participation in these listed transactions as prescribed in § 1.6011-4T, and promoters (or other persons responsible for registering tax shelter transactions) may need to register these transactions under § 301.6111-2T. In addition, promoters must maintain lists of investors and other information with respect to these listed transactions pursuant to § 301.6112-1T.

(1) Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year (identified as “listed transactions” on February 28, 2000));

(2) Notice 95-34, 1995-1 C.B. 309 (certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A of the Internal Revenue Code (identified as “listed transactions” on February 28, 2000));

(3) Notice 95-53, 1995-2 C.B. 334 (certain multiple-party transactions intended to allow one party to realize rental or other income from property or service contracts and to allow another party to report deductions related to that income

(often referred to as “lease strips”) (identified as “listed transactions” on February 28, 2000));

(4) Transactions described in Part II of Notice 98–5, 1998–1 C.B. 334 (transactions in which the reasonably expected economic profit is insubstantial in comparison to the value of the expected foreign tax credits (identified as “listed transactions” on February 28, 2000));

(5) Transactions substantially similar to those at issue in *ASA Investorings Partnership v. Commissioner*, 201 F.3d 505 (D.C. Cir. 2000), and *ACM Partnership v. Commissioner*, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as “listed transactions” on February 28, 2000));

(6) Treas. Reg. § 1.643(a)–8 (transactions involving distributions described in § 1.643(a)–8 from charitable remainder trusts (identified as “listed transactions” on February 28, 2000));

(7) Rev. Rul. 99–14, 1999–1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (that is, lease-in/lease-out or LILO transactions) (identified as “listed transactions” on February 28, 2000));

(8) Notice 99–59, 1999–2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as “listed transactions” on February 28, 2000));

(9) Treas. Reg. § 1.7701(l)–3, (transactions involving fast-pay arrangements as defined in § 1.7701(l)–3(b) (identified as “listed transactions” on February 28, 2000));

(10) Rev. Rul. 2000–12, 2000–11 I.R.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000));

(11) Notice 2000–44, 2000–36 I.R.B. 255 (transactions generating losses resulting from artificially inflating the basis of

partnership interests (identified as “listed transactions” on August 11, 2000));

(12) Notice 2000–60, 2000–49 I.R.B. 568 (transactions involving the purchase of a parent corporation’s stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent’s employees, and the eventual liquidation or sale of the subsidiary (identified as “listed transactions” on November 16, 2000));

(13) Notice 2000–61, 2000–49 I.R.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as “listed transactions” on November 21, 2000));

(14) Notice 2001–16, 2001–9 I.R.B. 730 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as “listed transactions” on January 18, 2001));

(15) Notice 2001–17, 2001–9 I.R.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation’s assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as “listed transactions” on January 18, 2001)); and

(16) Notice 2001–45, 2001–33 I.R.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as “listed transactions” on July 26, 2001)).

Notice 2000–15 is supplemented and superseded.

The principal author of this notice is David A. Shulman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Shulman at (202) 622-3080 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 61, 83, 721; 1.721–1.)

## Rev. Proc 2001–43

### SECTION 1. PURPOSE

This revenue procedure clarifies Rev. Proc. 93–27 (1993–2 C.B. 343) by providing guidance on the treatment of the

grant of a partnership profits interest that is substantially nonvested for the provision of services to or for the benefit of the partnership.

### SECTION 2. BACKGROUND

Rev. Proc. 93–27 provides that (except as otherwise provided in section 4.02 of the revenue procedure), if a person receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, the Internal Revenue Service will not treat the receipt of the interest as a taxable event for the partner or the partnership. For this purpose, section 2.02 of Rev. Proc. 93–27 defines a profits interest as a partnership interest other than a capital interest. Section 2.01 of Rev. Proc. 93–27 defines a capital interest as an interest that would give the holder a share of the proceeds if the partnership’s assets were sold at fair market value and then the proceeds were distributed in a complete liquidation of the partnership. Section 2.01 of Rev. Proc. 93–27 provides that the determination as to whether an interest is a capital interest generally is made at the time of receipt of the partnership interest.

### SECTION 3. SCOPE

This revenue procedure clarifies Rev. Proc. 93–27 by providing that the determination under Rev. Proc. 93–27 of whether an interest granted to a service provider is a profits interest is, under the circumstances described below, tested at the time the interest is granted, even if, at that time, the interest is substantially nonvested (within the meaning of § 1.83–3(b) of the Income Tax Regulations). Accordingly, where a partnership grants a profits interest to a service provider in a transaction meeting the requirements of this revenue procedure and Rev. Proc. 93–27, the Internal Revenue Service will not treat the grant of the interest or the event that causes the interest to become substantially vested (within the meaning of § 1.83–3(b) of the Income Tax Regulations) as a taxable event for the partner or the partnership. Taxpayers to which this revenue procedure applies need not file an election under section 83(b) of the Code.