



*Home of the Trusted Professional*  
3 park avenue, at 34th street, new york, ny 10016-5991  
212.719.8300 • fax 212.719.3364  
www.nyscpa.org

July 11, 2008

Internal Revenue Service  
CC:PA:LPD:PR (REG-147775-06)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20224

Submitted electronically:

<http://www.regulations.gov/fdmspublic/component/main?main=SubmitComment&o=090000648050c2c2>

**Re: Proposed Regulations under § 2642(g)(1), Relief from  
Late Generation Skipping Transfer (GST) Elections**

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. The NYSSCPA thanks the Internal Revenue Service for the opportunity to comment on this release.

The NYSSCPAs Trust and Estate Administration Committee deliberated the proposed regulations for relief from late generation skipping transfer (GST) elections and prepared the attached comments. If you would like additional discussion with the committee, please contact Nathan H. Szerlip, chair of the Trust and Estate Administration Committee, at (212) 536-6908, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



Sharon Sabba Fierstein  
President

Attachment



*Home of the Trusted Professional*  
3 park avenue, at 34th street, new york, ny 10016-5991  
212.719.8300 • fax 212.719.3364  
www.nyscpa.org

**COMMENTS ON IRS PROPOSED REGULATIONS UNDER § 2642(g)(1)  
RELIEF FROM LATE GENERATION SKIPPING TRANSFER (GST)  
ELECTIONS**

**July 11, 2008**

**Principal Drafters**

**Warren M. Bergstein  
Ita M. Rahilly  
Nathan H. Szerlip**

**NYSSCPA 2008 – 2009 Board of Directors**

Sharon Sabba Fierstein, <i>President</i>	Scott M. Adair Edward L. Arcara	Gail M. Kinsella Nancy A. Kirby
David J. Moynihan, <i>President-elect</i>	John Barone Susan M. Barossi	J. Michael Kirkland Kevin Leifer
Richard E. Piluso, <i>Secretary/Treasurer</i>	S. David Belsky Warren M. Bergstein	Elliot A. Lesser David A. Lifson
Barbara S. Dwyer, <i>Vice President</i>	Thomas Boyd Anthony Cassella	Anthony J. Maltese Mark L. Meinberg
Joseph M. Falbo Jr., <i>Vice President</i>	Cynthia D. Finn Robert L. Goecks	Avery E. Neumark Robert A. Pryba, Jr.
Elliot L. Hendler, <i>Vice President</i>	David R. Herman Scott Hotalen	Joel C. Quall Ita M. Rahilly
Margaret A. Wood, <i>Vice President</i>	John B. Huttlinger, Jr. Martha A. Jaeckle	Judith I. Seidman Thomas M. VanHatten
Louis Grumet, <i>ex officio</i>	Suzanne M. Jensen Lauren L. Kincaid	Liren Wei Charles J. Weintraub

**NYSSCPA 2008 - 2009 Tax Division Oversight Committee**

Alan D. Kahn, <i>Chair</i>	Janice M. Johnson	Susan R. Schoenfeld
Scott M. Cheslowitz	Adam Lambert	P. Gerard Sokolski
Robert L. Goldstein	Stephen A. Sacks	Neil H. Tipograph
Paul E. Hammerschmidt	David Sands	Stephen P. Valenti
Richard L. Hecht	Theodore J. Sarenski	Cristina N. Wolff

**NYSSCPA 2008 - 2009 Trust and Estate Committee**

Nathan H. Szerlip, <i>Chair</i>	Mark Josephson	Ita M. Rahilly
Anthony F. Rappa, <i>Vice Chair</i>	Irving H. Kamsler	Stuart A. Rosenblatt
Frank J. Basile	Anna T. Korniczky	Erica F. Rubin
Warren M. Bergstein	Laura E. LaForgia	Michael Rudegear
Peter Brizard	Alfred J. LaRosa	Alan W. Saltzman
Eugene H. Fleishman	Jerome Levy	David Schaengold
Wil E. Goodison-Orr	Steven L. Lombrowski	Stanley Simon
Adam J. Gottlieb	Gerald L. Mayerhoff	Sidney Smolowitz
Charles D. Grossman	James B. McEvoy	Susan E. Van Velson

**NYSSCPA Staff**

Ernest J. Markezin  
William R. Lalli

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**Trust and Estate Administration Committee**

**Comments on IRS Proposed Regulations under § 2642(g)(1)**

***Relief from Late Generation Skipping Transfer (GST) Elections***

---

**Overview**

The Internal Revenue Service has issued proposed regulations under § 2642(g)(1) (published in the Federal Register on April 17, 2008: REG-147775-06) addressing circumstances in which the IRS will consider whether to grant a transferor or a transferor's estate an extension of time to:

- (1) Allocate the GST exemption, as defined in § 2631, to a transfer;
- (2) elect under § 2632(b)(3) (the election not to have the deemed allocation of GST exemption apply to certain lifetime direct skips);
- (3) elect under § 2632(c)(5)(A)(i) (the election not to have the deemed allocation of GST exemption apply to an indirect skip or transfers made to a particular trust);
- (4) elect under § 2632(c)(5)(A)(ii) (the election to treat any trust as a GST trust for purposes of § 2632(c)).

**Comments**

The Proposed Regulation requests comments on the following:

1. *Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS including whether the information will have practical utility.*

Under IRC § 2642(g)(1) (B) in determining whether to grant relief, the Secretary shall take into account 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.

The procedural requirements outlined under Proposed Regulations § 26.2642-7(h)(2), require a detailed affidavit and declaration from the transferor or the executor of the transferor's estate, describing the events that led to the failure to timely allocate GST exemption to a transfer or failure to timely elect under

§ 2632(b)(3) or (c)(5), and the events that led to the discovery of the failure.

Of more concern is Proposed Regulation § 26.2642-7(h)(3), which requires affidavits and declarations from other involved parties including each agent or legal representative of the transferor who participated in the transaction, the preparer of relevant Federal estate and gift tax returns, each individual who made a substantial contribution to the preparation of the above noted tax returns, and each tax professional who advised or was consulted by the transferor or the executor of the transferor's estate with regard to any aspect of the transfer.

If any of the above individuals refuses to provide an affidavit or dies before providing one, the Proposed Regulations require the taxpayer to provide an affidavit describing the relationship between the taxpayer and that individual, the reasons for the failure to obtain the individual's affidavit and the information that the taxpayer believes would have been provided had the affidavit been provided.

The Proposed Regulations § 26.26427(h)(2) and (3) demand much more substantiation from the taxpayers than is specified in IRC § 2642(g)(1)(B).

One of the parameters that must be met is that the Government's interest cannot be prejudiced when granting relief under this section. If the IRS were to focus on the Government's interest and the taxpayer's intent as provided by the transfer document and other supporting evidence without requiring the affidavits detailed in Proposed Regulations § 26.26427(h)(2) and (3), the intent of the law and the goal of relief under these provisions could be met. Evidence of the running of a statute of limitation period or the occurrence of taxable terminations or distributions is determinable from the required filings with the Government. Such evidence, indicative of prejudice to Governmental interests, is obtainable without unduly burdening either the taxpayer or the Government. We do not agree that the proposed collection of information as detailed in the Proposed Regulations is necessary for the proper performance of the functions of the IRS.

2. *The accuracy of the estimated burden associated with the proposed collection of information.*

As detailed in the Proposed Regulations, the estimated annual reporting burden is 1,800 hours comprised of an estimated annual burden of 2 hours and an estimated number of 900 respondents. The Proposed Regulations state that individual respondents may require greater or less time depending upon their particular circumstances. Based on the requirements detailed in Proposed Regulations § 26.26427(h)(2) and (3), we believe that the 2 hour estimated annual burden is drastically understated.

3. *How the quality, utility and clarity of the information to be collected may be enhanced.*

As indicated in 1. above, we think that adequate quality, utility and clarity of information is already obtained without going through the affidavit process for all involved parties.

4. *How the burden of complying with the proposed collection of information may be minimized including through the application of the automated collection techniques or other forms of information technology.*

As previously noted, we think that the burden imposed by the proposed regulations is excessive.

In addition to the burden associated with assembling the proposed documentation, the Proposed Regulations state that relief provided under § 2642(g)(1) will be granted through the IRS letter ruling program. Taxpayers and their advisors might not understand or might be unaware of the allocation rules and elections. Given the complexity of the rules and the frequency of changes to them, the Treasury Department should grant relief under this regulation without a user fee. Under other circumstances, the IRS had developed simplified procedures that do not necessitate a private letter ruling request. The compliance burden would be eased significantly if a simplified procedure were developed.

We thank the Internal Revenue Service for the opportunity to submit our comments on the proposed regulations.