Proskauer

IRS Issues FAQs Regarding COVID-19 Relief for Estate and Gift Tax Filings

May 19, 2020

On April 23, 2020, the IRS issued FAQs regarding "COVID-19 Relief for Estate and Gift" in response to issues raised by the extension of time granted to taxpayers to fulfill their estate, gift and generation-skipping transfer (GST) tax obligations. The FAQs address: (1) due dates related to Form 706; (2) allocation of GST exemption; and (3) other miscellaneous items, like qualified disclaimers and refunds, among others.

(1) Form 706 Due Dates

The FAQs address due dates related to filing Form 706. For example, if Form 706 and payment of estate tax are due on May 15, 2020, the FAQs explain that the return and payment are now due on July 15, 2020. However, because Notice 2020-23 does not postpone a payment of tax that was due before April 1, 2020, interest will continue to accrue from the date payment was due until the actual date of payment. For instance, if Form 706 was due on November 15, 2019, and was extended to May 15, 2020, then Form 706 can be filed timely on or before July 15, 2020. However, if the return is filed on July 15, 2020, and additional payment is required, then interest on the underpayment amount will be calculated from November 15, 2019 (including for the entire period between April 1, 2020 and July 15, 2020).

If the time to file a request for a six-month extension for Form 706 expires on or after April 1, 2020, and before July 15, 2020, the extension request may be timely filed on or before July 15, 2020. However, the six-month extension will be calculated from the original due date. For example, if Form 706 is due on May 1, 2020, and the six-month extension request is filed on July 1, 2020, then the six-month extension applies to the May 1, 2020 due date, extending the time to file Form 706 to November 1, 2020.

Under Section 2032(d), an estate has until one year after the due date of Form 706 (including extensions) to make an alternate valuation election under Section 2032(a). If the one-year period after the due date of the Form 706 expires on or after April 1, 2020, and before July 15, 2020, then you have until July 15, 2020 to make the alternate valuation election. For instance, if the return was due (either with or without extension) on May 1, 2019, then you would have until July 15, 2020 to make an alternate valuation election.

A portability election must be made on a timely filed return. If Form 706 is required to be filed on or after April 1, 2020, and before July 15, 2020, then the due date for making a portability election is postponed to July 15, 2020.

(2) Allocation of GST Exemption

The FAQs also address the allocation of GST exemption. Any GST election or allocation made with respect to a 2019 transfer on Form 709 due on or after April 1, 2020, and before July 15, 2020, is timely (and, therefore, effective on the date of the transfer) if made on a Form 709 filed on or before July 15, 2020. There is no relief available for a late allocation of GST exemption: A late allocation of GST exemption made on or after April 1, 2020, and before July 15, 2020 (that is, an allocation of GST exemption to a transfer made before 2019) is effective on the date of filing. Therefore, the fair market value of the trust assets for the purpose of determining the trust's inclusion ratio is the value on the date of allocation or (if so elected pursuant to § 26.2642-2(a)(2)) the value on the first day of the month in which the allocation was made. A taxpayer may not elect, on a return filed on or before July 15, 2020, to treat an allocation to a 2019 transfer as a late allocation.

(3) Miscellaneous Items: Qualified Disclaimers and Refunds

Regarding qualified disclaimers, if the period of time to make a qualified disclaimer expires on or after April 1, 2020, and before July 15, 2020, then a taxpayer has until July 15, 2020 to make a qualified disclaimer, provided however that the disclaimer must be timely and valid under state law. This relief is provided through Notice 2020-23's incorporation of the relief provided in Rev. Proc. 2018-58. Regarding the time to file a claim for a refund of gift, estate or generation-skipping transfer tax, if the time for making a claim for refund expires on or after April 1, 2020, and before July 15, 2020, a taxpayer has until July 15, 2020 to make that claim for refund.

The full list of FAQs can be found at: https://www.irs.gov/businesses/small-businesses-self-employed/covid-19-relief-for-estate-and-gift

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Related Professionals

- **Henry J. Leibowitz**
  Partner