



June 12, 2023

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**RE: OMB Control Number 1545-1143 Regarding Form 706-GS(D-1), Notification of Distribution from a Generation-Skipping Trust**

Dear Mr. Garcia and Ms. Liquerman:

On behalf of the American Institute of CPAs (AICPA), we are writing in response to the request for comment in [OMB Control Number 1545-1143 – Regarding Form 706-GS \(D-1\), Notification of Distribution from a Generation-Skipping Trust](#) (dated 5/8/23). We are providing to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) issues and recommendations for improvements to the [Form 706-GS\(D-1\)](#), Notification of Distribution from a Generation-Skipping Trust, and [instructions](#) and extensions, as well as guidance and regulations updates if Treasury and the IRS find that the issues are beyond changes to the form and instructions. Our recommendations will simplify filing for taxpayers and practitioners and will reduce the administrative burden on the IRS as well.

The Form 706-GS(D-1) is used by trustees to report certain distributions from a trust that are subject to the generation-skipping transfer tax (GSTT) and to provide the skip person distributee with information needed to figure the tax on the distribution. The skip person distributee uses the information provided on the Form to figure any GSTT on the distribution on Form 706-GS(D). The IRS uses the information to verify that the tax has been properly computed.

Our recommendations for improvements to Form 706-GS(D-1), instructions, and extensions are:

1. Provide an extension of time to file Form 706-GS(D-1) and include clarity on this in the Form 706-GS(D-1) instructions and add a line to the Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, to include Form 706-GS(D-1).
2. Provide clarity on when a taxable distribution occurs, including whether the taxable distribution occurs either (1) when the beneficiary is entitled to the distribution, or (2) when the beneficiary receives the distribution.

3. Provide clarity on how to properly describe and provide “enough detail that the IRS can value it” for certain types of property other than real estate, stocks and bonds and other personal property on Form 706-GS(D-1), Part II, Column 3b, including examples, such as for closely held entities, life insurance policies, art, collectibles, and digital assets.
4. Provide clarity and instructions (similar to what is provided in the instructions for Forms 709 and 706) regarding proper valuation methods for noncash distributions when reporting the value on Form 706-GS(D-1), Part II, Column 3e.

### **Specific Comments**

1. **Provide an extension of time to file for Form 706-GS(D-1) and include clarity on this in the Form 706-GS(D-1) instructions and add a line to the Form 7004 to include Form 706-GS(D-1).**

#### **Background**

Form 706-GS(D-1) is used by trustees to report certain distributions from a trust that are subject to the GSTT and to provide the skip person distributee with information needed to figure the tax on the distribution. The skip person distributee uses the information provided on the Form to figure any GST tax due on the distribution on Form 706-GS(D). The IRS uses the information to verify that the tax has been properly computed.

Currently, the IRS does not allow an extension of time to file Form 706-GS(D-1). Trustees must file Copy A with the IRS and send Copy B to the distributee by April 15<sup>th</sup> of the year following the calendar year when the distribution was made. If the due date falls on a Saturday, Sunday or legal holiday, the trustee must file on the next business day. The related Form 706-GS(D) can be automatically extended using Form 7004. The automatic extension period is 6 months.

#### **Recommendations**

Treasury and the IRS should revise and clarify Form 706-GS(D-1) and instructions to provide an extension of time to file for Form 706-GS(D-1). Treasury and the IRS should also revise Form 7004 to add a line to include Form 706-GS(D-1).

In a [prior comment letter](#) submitted September 13, 2022, we recommended that the IRS update Form 4768 to include Forms 706-GS(T) and 706-GS(D) so that the request for an extension of time to file and pay (under section 6161) would be made on the same form. If the extensions for Forms 706-GS(T) and 706-GS(D) are moved from Form 7004 to Form 4768, we recommend that the extension for Form 706-GS(D-1) also be made via Form 4768. We recommend that all 706-series forms be extended consistently on the same form.

## **Analysis**

The relationship between Form 706-GS(D-1) and Form 706-GS(D) is akin to the relationship between a Schedule K-1 and Forms 1065/1120-S. Therefore, Treasury and the IRS should make the same type of extension of time to file available for Form 706-GS(D-1).

There may be valuation issues that would result in the need for additional time to prepare the Form 706-GS(D-1). For example, the trustee may need more time to gather appraisals or other necessary information in order to properly report the distribution made to the distributee.

- 2. Provide clarity on when a taxable distribution occurs, including whether the taxable distribution occurs either (1) when the beneficiary is entitled to the distribution, or (2) when the beneficiary receives the distribution.**

## **Background**

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

It is not clear when the taxable distribution occurs. It may occur (1) when the skip person beneficiary becomes entitled to the distribution (for example: based on a provision in the trust agreement that states 1/3 of the trust must be paid to the beneficiary at age 35) or (2) when the skip person beneficiary actually receives the distribution.

Treasury Reg. § 26.2612-1(c)(1) states that if the property is subject to Federal estate or gift tax with respect to the distributee, the property is treated as having been distributed to that individual. Treasury Reg. § 26.2612-1(f), example 10, illustrates a trust wherein a grandchild is entitled to a distribution at age 35. It assumes that the distribution actually took place on the grandchild's 35<sup>th</sup> birthday. In doing so, the example fails to address the issue of the reportable date of transfer in a situation in which the actual distribution occurs after the 35<sup>th</sup> birthday.

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

## **Recommendation**

Treasury and the IRS should provide clarity to make it certain whether the taxable distribution occurs either (1) when the beneficiary is entitled to the distribution or (2) when the beneficiary receives the distribution.

### **Analysis**

Since the beneficiary is liable for the payment of the GSTT, the beneficiary would often need to have actually received the distribution in order to make the payment. If the date of distribution is applicable, there is the potential for the trustee to delay the distribution in order to allow the beneficiary to defer paying the GSTT. Having clarity on when the distribution occurs, would allow trustees to properly prepare Form 706-GS(D-1).

- 3. Provide clarity on how to properly describe and provide “enough detail that the IRS can value it” for certain types of property other than real estate, stocks and bonds and other personal property on Form 706-GS(D-1), Part II, Column 3b, including examples, such as for closely held entities, life insurance policies, art, collectibles, and digital assets.**

### **Background**

The instructions for Form 706-GS(D-1) as revised 11/2021 provide a list of information that must be included to describe distributions of real estate, stocks and bonds, and other personal property. For other personal property, it states that it must be “described in enough detail that the IRS can value it.”

### **Recommendation**

Treasury and the IRS should elaborate on “enough detail that the IRS can value it” for other personal property and include examples for additional types of property such as closely held entities, life insurance policies, art, collectibles, and digital assets.

### **Analysis**

There is currently no guidance on how to properly describe partnership interests, life insurance policies, art, collectibles, and digital assets that are distributed from a trust to a skip person distributee. Additional clarity would allow trustees to more accurately prepare the form and ensure the trustee is meeting the filing obligation.

- 4. Provide clarity and instructions (similar to what is provided in the instructions for Forms 709 and 706) regarding proper valuation methods for noncash distributions when reporting the value on Form 706-GS(D-1), Part II, Column 3e.**

### **Background**

Currently, there is no guidance in the Form 706-GS(D-1) instructions on how to properly value noncash distributions made to a skip person distributee. The instructions for Part II, Column 3e state “enter the value of the property distributed from the trust at the time of distribution.”

## **Recommendation**

Treasury and the IRS should provide instructions (similar to what is provided in the instructions for Forms 709 and 706) on how to value noncash distributions on Form 706-GS(D-1).

## **Analysis**

The current instructions do not provide clarity on how to properly report the value of noncash distributions to skip person distributees. Additional clarity would allow trustees to more accurately prepare the Form and ensure the trustee is meeting the filing obligation.

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We appreciate your consideration of our recommendations and welcome the opportunity to discuss our comments. If you have any questions, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or [Irene.C.Estrada@pwc.com](mailto:Irene.C.Estrada@pwc.com); Eileen Sherr, AICPA Director – Tax Policy & Advocacy, at (202) 434-9256 or [Eileen.Sherr@aicpa-cima.com](mailto:Eileen.Sherr@aicpa-cima.com); or me at (830) 372-9692 or [bvickers@alamo-group.com](mailto:bvickers@alamo-group.com).

Sincerely,



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