

preserve the estate's right to claim a refund for the amount of the fee that is subsequently paid or that subsequently meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 2. Amount of claim not ascertainable. Prior to death, Decedent (D) is sued by Claimant (C) for \$100x in a tort proceeding and responds asserting affirmative defenses available to D under applicable local law. C and D are unrelated. D subsequently dies and D's Form 706 is due before a final judgment is entered in the case. The executor of D's estate (E) may not claim a deduction with respect to C's claim on D's Form 706 under the special rule contained in paragraph (d)(4) of this section because the deductible amount cannot be ascertained with reasonable certainty. However, E may file a timely protective claim for refund in accordance with paragraph (d)(5) of this section in order to preserve the estate's right to subsequently claim a refund at the time a final judgment is entered in the case and the claim is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 3. Amount of claim payable out of property qualifying for marital deduction. The facts are the same as in *Example 2* except that the applicable credit amount, under section 2010, against the estate tax was fully consumed by D's lifetime gifts, D is survived by Spouse (S), and D's estate passes entirely to S in a bequest that qualifies for the marital deduction under section 2056. Even though any amount D's estate ultimately pays with respect to C's claim will be paid from the assets qualifying for the marital deduction, in filing Form 706, E need not reduce the amount of the marital deduction claimed on D's Form 706. Instead, pursuant to the protective claim for refund filed by E, the marital deduction will be reduced by the claim once a final judgment is entered in the case. At that time, a deduction will be allowed for the amount that is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

(e) *Disallowance of double deductions.* See section 642(g) and §1.642(g)-1 with respect to the disallowance for income tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28719, Dec. 29, 1972; T.D. 9468, 74 FR 53657, Oct. 20, 2009; T.D. 9468, 74 FR 61525, Nov. 25, 2009]

§ 20.2053-2 Deduction for funeral expenses.

Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of §20.2053-1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053-3 Deduction for expenses of administering estate.

(a) *In general.* The amounts deductible from a decedent's gross estate as "administration expenses" of the first category (see paragraphs (a) and (c) of §20.2053-1) are limited to such expenses as are actually and necessarily, incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions* (1) Executors' commissions are deductible to the extent permitted by §20.2053-1 and this section, but no deduction may be taken if no commissions are to be paid. In addition, the amount of the commissions claimed as a deduction must be in accordance with the usually accepted

standards and practice of allowing such an amount in estates of similar size and character in the jurisdiction in which the estate is being administered, or any deviation from the usually accepted standards or range of amounts (permissible under applicable local law) must be justified to the satisfaction of the Commissioner.

(2) A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the terms of the will set forth the compensation payable to the executor for services to be rendered in the administration of the estate, a deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice and to the extent permitted by § 20.2053-1.

(3) Except to the extent that a trustee is in fact performing services with respect to property subject to claims which would normally be performed by an executor, amounts paid as trustees' commissions do not constitute expenses of administration under the first category, and are only deductible as expenses of the second category to the extent provided in § 20.2053-8.

(c) *Attorney's fees*—(1) Attorney's fees are deductible to the extent permitted by § 20.2053-1 and this section. Further, the amount of the fees claimed as a deduction may not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate, the law and practice in the jurisdiction in which the estate is being administered, and the skill and expertise of the attorneys.

(2) A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time the deficiency is contested or the refund claim is prosecuted. A deduction for reasonable attorney's fees actually incurred in contesting an asserted deficiency or in prosecuting a claim for refund will be allowed to the extent permitted by § 20.2053-1 even though the deduction, as such, was not claimed on the estate tax return or in the claim for refund. A deduction for these fees shall not be denied, and the sufficiency of a claim for refund shall not be questioned, solely by reason of the fact that

the amount of the fees to be paid was not established at the time that the right to the deduction was claimed.

(3) Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney's fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate.

(d) *Miscellaneous administration expenses*. (1) Miscellaneous administration expenses include such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate, including the cost of storing or maintaining property of the estate if it is impossible to effect immediate distribution to the beneficiaries, are deductible to the extent permitted by § 20.2053-1. Expenses for preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is reasonably required to retain the property.

(2) Expenses for selling property of the estate are deductible to the extent permitted by § 20.2053-1 if the sale is necessary in order to pay the decedent's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution. The phrase "expenses for selling property" includes brokerage fees and other expenses attending the sale, such as the fees of an auctioneer if it is reasonably necessary to employ one. Where an item included in the gross estate is disposed of in a bona fide sale (including a redemption) to a dealer in such items at a price below its fair market value, for purposes of this paragraph there shall be treated as an expense for selling the item whichever of the following amounts is the lesser: (i) The amount by which the fair market value of the property on the applicable valuation date exceeds the proceeds of the sale, or (ii) the amount by which the fair

market value of the property on the date of the sale exceeds the proceeds of the sale. The principles used in determining the value at which an item of property is included in the gross estate shall be followed in arriving at the fair market value of the property for purposes of this paragraph. See §§ 20.2031-1 through 20.2031-9.

(3) Expenses incurred in defending the estate against claims described in section 2053(a)(3) are deductible to the extent permitted by § 20.2053-1 if the expenses are incurred incident to the assertion of defenses to the claim available under the applicable law, even if the estate ultimately does not prevail. For purposes of this paragraph (d)(3), “expenses incurred in defending the estate against claims” include costs relating to the arbitration and mediation of contested issues, costs associated with defending the estate against claims (whether or not enforceable), and costs associated with reaching a negotiated settlement of the issues.

(e) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6826, 30 FR 7708, June 15, 1965; 44 FR 23525, Apr. 20, 1979; T.D. 9468, 74 FR 53660, Oct. 20, 2009]

§ 20.2053-4 Deduction for claims against the estate.

(a) *In general—(1) General rule.* For purposes of this section, liabilities imposed by law or arising out of contracts or torts are deductible if they meet the applicable requirements set forth in § 20.2053-1 and this section. To be deductible, a claim against a decedent’s estate must represent a personal obligation of the decedent existing at the time of the decedent’s death. Except as otherwise provided in paragraphs (b) and (c) of this section and to the extent permitted by § 20.2053-1, the amounts that may be deducted as claims against a decedent’s estate are limited to the amounts of bona fide claims that are enforceable against the decedent’s estate (and are not unenforceable when paid) and claims that—

(i) Are actually paid by the estate in satisfaction of the claim; or

(ii) Meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

(2) *Effect of post-death events.* Events occurring after the date of a decedent’s death shall be considered in determining whether and to what extent a deduction is allowable under section 2053. See § 20.2053-1(d)(2).

(b) *Exception for claims and counterclaims in related matter—(1) General rule.* If a decedent’s gross estate includes one or more claims or causes of action and there are one or more claims against the decedent’s estate in the same or a substantially-related matter, or, if a decedent’s gross estate includes a particular asset and there are one or more claims against the decedent’s estate integrally related to that particular asset, the executor may deduct on the estate’s United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) the current value of the claim or claims against the estate, even though payment has not been made, provided that—

(i) Each such claim against the estate otherwise satisfies the applicable requirements set forth in § 20.2053-1;

(ii) Each such claim against the estate represents a personal obligation of the decedent existing at the time of the decedent’s death;

(iii) Each such claim is enforceable against the decedent’s estate (and is not unenforceable when paid);

(iv) The value of each such claim against the estate is determined from a “qualified appraisal” performed by a “qualified appraiser” within the meaning of section 170 of the Internal Revenue Code and the corresponding regulations;

(v) The value of each such claim against the estate is subject to adjustment for post-death events; and

(vi) The aggregate value of the related claims or assets included in the decedent’s gross estate exceeds 10 percent of the decedent’s gross estate.

(2) *Limitation on deduction.* The deduction under this paragraph (b) is limited to the value of the related claims or particular assets included in decedent’s gross estate.

(3) *Effect of post-death events.* If, under this paragraph (b), a deduction is claimed on Form 706 for a claim