

§ 20.2053-7

(1) The decedent's liability for the period (as determined in this paragraph) reduced by the amounts already contributed by the decedent toward payment of the joint liability, or

(2) If there is an enforceable agreement between the decedent and his spouse or between the executor and the spouse relative to the payment of the joint liability, the amount which pursuant to the agreement is to be contributed by the estate toward payment of the joint liability.

If the decedent's estate and his surviving spouse are entitled to a refund on account of an overpayment of a joint income tax liability, the overpayment is an asset includible in the decedent's gross estate under section 2033 in the amount to which the estate would be entitled under local law, as between the estate and the surviving spouse. In the absence of evidence to the contrary, the includible amount is presumed to be the amount by which the decedent's contributions toward payment of the joint tax exceeds his liability determined in accordance with the principles set forth in this paragraph (other than subparagraph (1) of this paragraph).

(g) *Post-death adjustments of deductible tax liability.* Post-death adjustments increasing a tax liability accrued prior to the decedent's death, including increases of taxes deducted under this section, will increase the amount of the deduction available under section 2053(a)(3) for that tax liability. Similarly, any refund subsequently determined to be due to and received by the estate or its successor in interest with respect to taxes deducted by the estate under this section reduce the amount of the deduction taken for that tax liability under section 2053(a)(3). Expenses associated with defending the estate against the increase in tax liability or with obtaining the refund may be deductible under § 20.2053-3(d)(3). A protective claim for refund of estate taxes may be filed before the expiration of the period of limitation for filing a claim for refund in order to preserve the estate's right to claim a refund if the amount of a deductible tax liability may be affected by such an adjustment or refund. The applica-

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tion of this section may be illustrated by the following examples:

Example 1. Increase in tax due. After the decedent's death, the Internal Revenue Service examines the gift tax return filed by the decedent in the year before the decedent's death and asserts a deficiency of \$100x. The estate pays attorney's fees of \$30x in a non-frivolous defense against the increased deficiency. The final determination of the deficiency, in the amount of \$90x, is paid by the estate prior to the expiration of the limitation period for filing a claim for refund. The estate may deduct \$90x under section 2053(a)(3) and \$30x under § 20.2053-3(c)(2) or (d)(3) in connection with a timely claim for refund.

Example 2. Refund of taxes paid. Decedent's estate timely files D's individual income tax return for the year in which the decedent died. The estate timely pays the entire amount of the tax due, \$50x, as shown on that return. The entire \$50x was attributable to income received prior to the decedent's death. Decedent's estate subsequently discovers an error on the income tax return and timely files a claim for refund of income tax. Decedent's estate receives a refund of \$10x. The estate is allowed a deduction of only \$40x under section 2053(a)(3) for the income tax liability accrued prior to the decedent's death. If D's estate had claimed a deduction of \$50x on D's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), the deduction claimed under section 2053(a)(3) will be allowed only to the extent of \$40x upon examination by the Commissioner.

(h) *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 at T.D. 9468, 74 FR 53664, Oct. 20, 2009]

§ 20.2053-7 Deduction for unpaid mortgages.

A deduction is allowed from a decedent's gross estate of the full unpaid amount of a mortgage upon, or of any other indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon to the date of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is included in the value of the gross estate. If the decedent's estate is liable for the amount of the mortgage or indebtedness, the full value of the property subject to the mortgage or indebtedness must be included as part of

the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if the decedent's estate is not so liable, only the value of the equity of redemption (or the value of the property, less the mortgage or indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043-1. Only interest accrued to the date of the decedent's death is allowable even though the alternate valuation method under section 2032 is selected. In any case where real property situated outside the United States no deduction may be taken of any mortgage thereon or any other indebtedness does not form a part of the gross estate, in respect thereof.

[T.D. 6684, 28 FR 11409, Oct. 24, 1963]

§ 20.2053-8 Deduction for expenses in administering property not subject to claims.

(a) Expenses incurred in administering property included in a decedent's gross estate but not subject to claims fall within the second category of deductions set forth in § 20.2053-1, and may be allowed as deductions if they—

(1) Would be allowed as deductions in the first category if the property being administered were subject to claims; and

(2) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

Usually, these expenses are incurred in connection with the administration of a trust established by a decedent during his lifetime. They may also be incurred in connection with the collection of other assets or the transfer or clearance of title to other property included in a decedent's gross estate for estate tax purposes but not included in his probate estate.

(b) These expenses may be allowed as deductions only to the extent that they would be allowed as deductions under the first category if the property were subject to claims. See § 20.2053-3. The

only expenses in administering property not subject to claims which are allowed as deductions are those occasioned by the decedent's death and incurred in settling the decedent's interest in the property or vesting good title to the property in the beneficiaries. Expenses not coming within the description in the preceding sentence but incurred on behalf of the transferees are not deductible.

(c) The principles set forth in paragraphs (b), (c), and (d) of § 20.2053-3 (relating to the allowance of executor's commissions, attorney's fees, and miscellaneous administration expenses of the first category) are applied in determining the extent to which trustee's commissions, attorney's and accountant's fees, and miscellaneous administration expenses are allowed in connection with the administration of property not subject to claims.

(d) The application of this section may be illustrated by the following examples:

Example (1). In 1940, the decedent made an irrevocable transfer of property to the X Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent for the duration of his life and upon his death, distribute the corpus of the trust among designated beneficiaries. The property was included in the decedent's gross estate under the provisions of section 2036. Three months after the date of death, the trustee distributed the trust corpus among the beneficiaries, except for \$6,000 which it withheld. The amount withheld represented \$5,000 which it retained as trustee's commissions in connection with the termination of the trust and \$1,000 which it had paid to an attorney for representing it in connection with the termination. Both the trustee's commissions and the attorney's fees were allowable under the law of the jurisdiction in which the trust was being administered, were reasonable in amount, and were in accord with local custom. Under these circumstances, the estate is allowed a deduction of \$6,000.

Example (2). In 1945, the decedent made an irrevocable transfer of property to Y Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent during his life. If the decedent's wife survived him, the trust was to continue for the duration of her life, with Y Trust Company and the decedent's son as co-trustees, and with income payable to the decedent's wife for the duration of her life. Upon the