

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****DEPARTMENT OF THE TREASURY****19 CFR PART 4**

[CBP Dec. 09–40]

RIN 1505–AB71

Foreign Repairs to American Vessels

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (19 CFR) to update provisions relating to the declaration, entry, and dutiable status of repair expenditures made abroad for certain vessels. The principal changes set forth in this document involve: conforming the regulations to statutory changes that provide an exemption from vessel repair duties for the cost of certain equipment, repair parts, and materials; and adding a provision to advise that certain free trade agreements between the United States and other countries may limit the duties due on vessel repair expenditures made in foreign countries that are parties to those agreements.

DATES: Final rule effective October 20, 2009.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Regulations and Rulings, Office of International Trade, (202) 325–0212.

SUPPLEMENTARY INFORMATION:**Background**

Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States are subject to declaration, entry and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under CBP interpretations. The regulations implementing 19 U.S.C. 1466 are found in § 4.14 of the CBP regulations (19 CFR 4.14).

Explanation of Amendments

Section 4.14(a), CBP regulations, states that, under 19 U.S.C. 1466, “purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry, and payment of duty.” However, section 1554 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2434) amended 19 U.S.C. 1466(h) by adding a new paragraph (4) providing for an exemption from the declaration, entry, and duty requirements of the statute for the cost of equipment, repair parts, and materials that are installed on certain vessels by members of the regular crew of such vessels while the vessels are on the high seas. As this amendment exempted most repairs performed while vessels are on the high seas from the assessment of vessel repair duties, CBP is amending the first sentence of § 4.14(a) to remove the words “including repairs made while those vessels are on the high seas”.

Section 1631 of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1164) amended 19 U.S.C. 1466(h)(4) to expand the exemption created by the 2004 amendment discussed above by also including the cost of equipment, repair parts, and materials that are installed on certain vessels by members of the regular crew of such vessels while the vessels are in foreign waters or in a foreign port, provided the installation does not involve foreign shipyard repairs by foreign labor. CBP is further amending § 4.14(a) of the CBP regulations in this document to add a provision reflecting the above 2004 and 2006 statutory changes.

Section 4.14(a) also provides that certain expenditures for vessel repairs and purchases made in Israel, Canada, and Mexico (countries that are parties to free trade agreements with the United States) are not subject to vessel repair duties, although they must be declared and entered. CBP believes it would be useful for the CBP regulations to indicate that other free trade agreements may also limit the duties due on vessel repair expenditures made in foreign countries that are parties to those agreements. Accordingly, this document amends § 4.14(a) by adding a sentence to that effect.

For purposes of clarity and transparency, CBP is making the above-discussed changes to § 4.14(a) as part of an overall reorganization of that paragraph. Specifically, CBP is dividing § 4.14(a) into three separate

subparagraphs that are headed “General”, “Expenditures not subject to declaration, entry, or duty”, and “Expenditures subject to declaration and entry but not duty”.

CBP also is amending § 4.14 by replacing the word “Customs” with the term “CBP” each place that it appears to reflect the change in the agency name and by replacing an incorrect reference to “office” in paragraph (f) with the correct word “agency”.

Inapplicability of Notice and Delayed Effective Date Requirements

The amendments set forth in this final rule document merely implement statutory changes and reorganize the CBP regulations relating to vessel repairs. Therefore, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be unnecessary to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this final rule to become effective immediately upon publication.

Regulatory Flexibility Act and Executive Order 12866

Because a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. This document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Entry procedures, Repairs, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

■ Accordingly, for the reasons set forth above, CBP is amending Part 4 of the CBP regulations (19 CFR part 4) as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for Part 4 and the specific authority citation for § 4.14 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

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■ 2. In § 4.14:

- a. Paragraph (a) is revised;
- b. Paragraph (d) is amended by removing the word “Customs” each place it appears and adding, in its place, the term “CBP”;
- d. Paragraph (e) is amended by removing the word “Customs” in the first sentence and adding, in its place, the term “CBP”;
- e. Paragraph (f) is amended by removing the word “office” in the tenth sentence and adding, in its place, the word “agency”;
- f. Paragraph (h) is amended by removing the word “Customs” in the first sentence of the introductory text and adding, in its place, the term “CBP”; and
- g. Paragraph (j)(1) is amended by removing the word “Customs” in the last sentence and adding, in its place, the term “CBP”.

Revised paragraph (a) reads as follows:

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

(a) *General provisions and applicability*—(1) *General*. Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States are subject to declaration, entry, and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under the U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under CBP interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles that have been imported into the United States and are later sent abroad for use.

(2) *Expenditures not subject to declaration, entry, or duty*. The following vessel repair expenditures are not subject to declaration, entry, or duty:

(i) Expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands because they are considered to have been made in the United States;

(ii) Reimbursements paid to members of the regular crew of a vessel for labor expended in making repairs to vessels; and

(iii) The cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

(3) *Expenditures subject to declaration and entry but not duty*. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are not subject to any vessel repair duties. Furthermore, certain free trade agreements between the United States and other countries also may reduce the duties on vessel repair expenditures made in foreign countries that are parties to those agreements, although the final duty amount may depend on each agreement's schedule for phasing in those reductions. In these situations and others where there is no liability for duty, it is still required, except as otherwise required by law, that all repairs and purchases be declared and entered.

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Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

Approved: October 15, 2009.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9-25220 Filed 10-19-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9468]

RIN 1545-BC56

Guidance Under Section 2053 Regarding Post-Death Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amount deductible from a decedent's gross

estate for claims against the estate under section 2053(a)(3) of the Internal Revenue Code (Code). In addition, the regulations update the provisions relating to the deduction for certain state death taxes to reflect the statutory amendments made in 2001 to sections 2053(d) and 2058. The regulations primarily will affect estates of decedents against which there are claims outstanding at the time of the decedent's death.

DATES: *Effective Date:* The regulations are effective on October 20, 2009.

Applicability Dates: For dates of applicability, see §§ 20.2051-1(c), 20.2053-1(f), 20.2053-3(e), 20.2053-4(f), 20.2053-6(h), 20.2053-9(f), and 20.2053-10(e).

FOR FURTHER INFORMATION CONTACT:

Karlene M. Lesho, (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 2001 of the Code imposes a tax on the transfer of the taxable estate, determined as provided in section 2051, of every decedent, citizen, or resident of the United States. Section 2031(a) generally provides that the value of the decedent's gross estate shall include the value at the time of decedent's death of all property, real or personal, tangible or intangible, wherever situated. Section 2051 provides that the value of the taxable estate is determined by deducting from the value of the gross estate the deductions provided for in sections 2051 through 2058. Pursuant to section 2053(a), “the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts: (1) For funeral expenses, (2) for administration expenses, (3) for claims against the estate, and (4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.”

The amount an estate may deduct for claims against the estate has been a highly litigious issue. See the Background in the notice of proposed rulemaking published in the **Federal Register** on April 23, 2007 (REG-143316-03, 72 FR 20080). Unlike section 2031, section 2053(a) does not contain a specific directive to value a deductible claim at its value at the time of the decedent's death. Section 2053 specifically contemplates expenses such