

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 Guantánamo 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.*

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**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, and (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

as funeral and administration expenses, which are only determinable after the decedent's death.

The lack of consistency in the case law has resulted in different estate tax treatment of estates that are similarly situated, depending only upon the jurisdiction in which the executor resides. The Treasury Department and the IRS believe that similarly-situated estates should be treated consistently by having section 2053(a)(3) construed and applied in the same way in all jurisdictions.

Accordingly, in an effort to further the goal of effective and fair administration of the tax laws, the Treasury Department and the IRS published proposed regulations in the **Federal Register** on April 23, 2007. In formulating the proposed rule, the Treasury Department and the IRS carefully considered: The statutory framework and legislative history of section 2053 and its predecessors; the existing regulatory provisions under section 2053, particularly those that are generally applicable to all amounts deductible under section 2053; the numerous judicial decisions involving an issue under section 2053(a)(3) and the analysis and conclusion in each; and, the practical consequences of various possible alternatives for determining the amount deductible under section 2053(a)(3).

The proposed regulations proposed amendments to the regulations under section 2053 to clarify that events occurring after a decedent's death are to be considered when determining the amount deductible under all provisions of section 2053 and that deductions under section 2053 generally are limited to amounts actually paid by the estate in satisfaction of deductible expenses and claims. The proposed regulations also proposed amendments to address more specifically issues involving final court decisions, settlements, protective claims, reimbursed amounts, claims that are potential, unmatured, or contested, claims involving multiple defendants, claims by a family member or beneficiary of a decedent's estate, unenforceable claims, recurring payments, and the changes made to section 2053(d) in 2001.

Written comments were received on the proposed regulations and a public hearing was held on August 6, 2007. After careful consideration of the written and oral comments, the proposed regulations are adopted as revised by this Treasury decision. In addition, the Treasury Department and the IRS plan to issue additional guidance, including additional proposed regulations, in order to

respond to certain comments and emerging issues that the Treasury Department and the IRS believe merit further consideration, as indicated in the Summary.

The comments and revisions to the proposed regulations are discussed in this preamble.

### Summary of Comments and Explanation of Revisions

#### 1. Comments Relating to Prop. Reg. § 20.2051-1

One commentator suggested that the sentence relating to the computation of the taxable estate of a decedent who was not a citizen or resident of the United States should continue to reference the regulations under section 2106, and not the regulations under section 2051. The final regulations restore the reference to the regulations under section 2106.

#### 2. Comments Relating to the Standard for Deductibility Set Forth in the Proposed Regulation

The proposed regulations generally provide that only claims actually paid by the estate may be deducted under section 2053(a)(3). Many commentators disagreed with this approach and suggested that claims against a decedent's estate be valued on the basis of what was reasonably known on the date of the decedent's death. These commentators cited the line of cases following the decision in *Ithaca Trust v. Commissioner*, 279 U.S. 151 (1929), to support the same valuation rule for both claims against the estate and claims for inclusion purposes under section 2031. Commentators were concerned that the approach of the proposed regulations could lengthen the process of estate administration (on account of the anticipated increase in the need for protective claims), cause tax motivations to factor into litigation strategy, and produce liquidity shortfalls in estates with both claims by and claims against a decedent. The divergence of court opinions on this issue is evidence that the proper way to deduct claims against an estate is a very difficult issue. After giving serious consideration to the comments submitted on this issue, the Treasury Department and the IRS continue to believe that a deduction for claims under section 2053(a)(3) only for amounts actually paid by the estate most closely aligns with the legislative intent behind section 2053 and its predecessors and best furthers the goal of effective and fair administration of the tax laws. Accordingly, the final regulations generally maintain the approach of the proposed regulations.

Notwithstanding the adherence to the general approach of the proposed regulations, however, the Treasury Department and the IRS acknowledge that, as was pointed out in many of the comments, there are practical difficulties associated with each of the alternatives, including the approach taken in the proposed regulations. In order to make the practical application of the approach more administrable, the final regulations include several exceptions to the approach of the proposed regulations. The final regulations include an exception for claims against the estate with respect to which there is an asset or claim includible in the gross estate that is substantially related to the claim against the estate. See paragraph 10 of this "Summary of Comments and Explanation of Revisions" and § 20.2053-4(b). The final regulations also include an exception for claims against the estate that, collectively, do not exceed \$500,000 (not including those deductible as ascertainable amounts). See paragraph 5 of this "Summary of Comments and Explanation of Revisions" and § 20.2053-4(c). Although both exceptions provide an opportunity to claim a deduction at the time of filing the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), in each case, the amount of the deduction is subject to adjustment to reflect post-death events, consistent with the general approach of the regulations.

#### 3. Comments Relating to the Effect of a Court Decree in Prop. Reg. § 20.2053-1(b)(2)

The proposed regulations changed the language regarding a court decree from "the court passes upon the facts upon which deductibility depends" to "the court reviewed the facts relating to the expenditures." A commentator suggested that such a change in language may give the unintended impression that this constitutes a substantive change. Thus, these final regulations remove the language of the proposed regulations and reinstate the original language.

A commentator also requested that an example be added to clarify that the last sentence of Prop. Reg. § 20.2053-1(b)(2)(i) would apply to jurisdictions in which a court approves the administration of an estate without specifically approving expenses and claims, absent a challenge from an interested party. The final regulations include such an example.

Some commentators recommended the removal of the requirement that a

settlement be within the range of reasonable outcomes under applicable state law in order for a settlement amount to be deductible because the requirement places the Commissioner or a court in the position of having to evaluate the legal merits of a claim adjudicated in another court proceeding. The commentators also maintained that the requirement is superfluous in light of the existing requirements that the settlement resolve a bona fide issue in an active and genuine contest and that adverse parties negotiate at arm's length. The final regulations eliminate the separate requirement that the settlement be within the range of reasonable outcomes under applicable state law.

Some commentators claimed that the rules relating to settlements did not recognize that, in some instances, the cost of defending a claim and the delay associated with litigating the claim will factor into the decision to settle a claim. The final regulations clarify that a deduction will not be denied for a settlement amount otherwise deductible under section 2053 if an estate can establish that the cost of defending the claim or contesting the expense, the delay associated with litigating such claim or expense, or another significant factor will impose a higher burden on the estate relative to the amount paid to settle the claim or the contested expense.

#### 4. *Comments Relating to the Rule for Estimated Amounts in Prop. Reg. § 20.2053-1(b)(4)*

The rule provided in Prop. Reg. § 20.2053-1(b)(4) involving estimated amounts is now provided in § 20.2053-1(d)(4) of these final regulations and the paragraph heading is changed from "[e]stimated amounts" to "[e]xception for certain ascertainable amounts." The final regulations use a consistent description of the rule contained in § 20.2053-1(d)(4) where applicable in the remainder of the regulation. No substantive change is intended; rather, the modified paragraph heading in the final regulations is intended to describe the substance of the rule more accurately.

A commentator noted that use of the language "will be paid" in Prop. Reg. § 20.2053-1(b)(4) may be inconsistent with the language in Prop. Reg. § 20.2053-3(b)(1) ("may reasonably be expected to be paid") and in Prop. Reg. § 20.2053-4(b)(7)(i) (claims cannot be estimated if there is "reasonable likelihood that full satisfaction of the liability will not be made"). The commentator suggested modification of the language in Prop. Reg. § 20.2053-

1(b)(4) to incorporate the reasonableness standard found in the other sections and requested conforming changes throughout the regulation for consistency purposes. The final regulations do not add a reasonableness component to the standard for meeting the "will be paid" requirement, although the final regulations clarify that a deduction is allowed under the rule for deducting certain ascertainable amounts to the extent that the Commissioner is reasonably satisfied that the amount to be paid is ascertainable with reasonable certainty and will be paid. The final regulations use consistent language where applicable in describing the standard for meeting the "will be paid" requirement in each reference to the rule for deducting certain ascertainable amounts.

In addition, some commentators requested clarification on whether the rule previously provided in Prop. Reg. § 20.2053-1(b)(4) applies not only to claims but to administration expenses as well. The final regulations make the requested clarification and § 20.2053-1(d)(4) provides that the rule for deducting certain ascertainable amounts applies to both a claim and an expense.

A commentator suggested that the statement in Prop. Reg. § 20.2053-1(b)(4) prohibiting a deduction for "a vague or uncertain estimate" be omitted because it puts forth a subjective standard open to a wide range of interpretations. The Treasury Department and the IRS believe that the rule previously provided in Prop. Reg. § 20.2053-1(b)(4), now provided in § 20.2053-1(d)(4) of these final regulations, sets forth clear requirements for determining the amount allowable as a deduction under section 2053. Because the statement in Prop. Reg. § 20.2053-1(b)(4) merely clarifies this rule, the statement has been retained in the final regulations.

A commentator suggested that the language in Prop. Reg. § 20.2053-1(b)(4), indicating that a deduction in advance of payment will be disallowed if the payment is thereafter waived or otherwise left unpaid, negates the purpose of allowing a deduction for an estimated amount and should be deleted. However, the Treasury Department and the IRS believe that there is an important difference. The rule for deducting certain ascertainable amounts previously provided in Prop. Reg. § 20.2053-1(b)(4), and now provided in § 20.2053-1(d)(4) of these final regulations, provides an estate with the opportunity to claim a deduction at the time of filing Form 706, even though the amount ultimately

allowable as a deduction under this rule will take into account events occurring after the date of a decedent's death. The ability to deduct an ascertainable amount does not change the general rule that the amount of the deduction is to reflect post-death events.

Some commentators questioned whether the proposed regulations impose a duty on the executor to report amounts that were claimed as deductions on the estate tax return, but were subsequently not paid or not paid in full, and whether such a duty could be enforced after the period of limitations on assessment has expired. The Treasury Department and the IRS did not intend for the proposed regulations to impose a duty on the executor that could be enforced after the expiration of the period of limitations on assessment. As a result, the final regulations eliminate this provision. The final regulations also include a provision clarifying the period during which post-death events will be considered.

#### 5. *Comments Relating to Protective Claims*

A commentator expressed concern that the protective claim procedures in the proposed regulations would result in increased administrative costs and a delay in the administration of the estate because filing a protective claim effectively would keep the period of limitations open to the extent of the amount of the claim for refund. The Treasury Department and the IRS believe that protective claims for refund are an appropriate and necessary component of these regulations, as they provide a mechanism to ensure that the deductibility rule provided for in these regulations is implemented in a fair and equitable manner. Nevertheless, the Treasury Department and the IRS acknowledge that the commentator's concern is valid. In an effort to make the regulation more administrable for both taxpayers and the Commissioner, the final regulations in § 20.2053-4(c) include an exception for claims against the estate that do not exceed, in the aggregate, \$500,000. Because the purpose of this provision is to provide certain relief from the need to file a protective claim, a claim is not eligible for this provision unless the entire amount of the claim may be covered within this cap. This rule allows an estate a deduction on Form 706 for claims against the estate. However, consistent with the general approach of the final regulations, the amount of the deduction is subject to adjustment to reflect post-death events. To address the commentator's concern regarding the

effect of a protective claim for refund on the applicable period of limitations, the Treasury Department and the IRS are issuing, concurrent with this regulation, a Notice announcing the IRS's decision to limit the review of a return, in certain circumstances, when a timely-filed claim for refund of estate taxes that is based on a deduction under section 2053 ripens after the expiration of the limitations period on assessment.

Some commentators requested more detailed guidance on the procedures for filing a protective claim for refund. In response to this comment, the final regulations include a provision under § 20.2053-1(d)(5) to explain the protective claim for refund process. The Treasury Department and the IRS also intend to provide, by publication in the Internal Revenue Bulletin, further procedural guidance on protective claims for refund due to section 2053 claims or expenses. In addition, a commentator suggested that Form 706 be revised to incorporate a protective claim for refund so that a separate form need not be filed. The Treasury Department and the IRS believe this suggestion will make the final regulations more administrable and are contemplating amending Form 706 to implement this suggestion.

Another commentator suggested that the IRS be lenient in granting extensions of time to pay the estate tax under section 6161 when an estate is confronting a liquidity issue arising from the inability to deduct a claim that is the subject of a protective claim for refund. Although in many cases the illiquidity resulting from a not-yet-deductible claim may be reasonable cause for granting an extension of time to pay the estate tax for purposes of section 6161, the Treasury Department and the IRS believe that any regulatory provision implementing this suggestion would be outside the scope of this regulation.

#### 6. Comments Relating to the Effect on the Marital and Charitable Deductions

Some commentators requested clarification of the impact of the approach taken in the proposed regulations on the marital and charitable deductions in estates where a claim or expense is payable in whole or in part from a bequest that qualifies for the marital or charitable deduction. Commentators requested that the final regulations include a rule confirming that, if a claim or expense is the subject of a protective claim for refund under section 2053 and is payable out of a fund that meets the requirements for a charitable or marital deduction under section 2055 or 2056, respectively, the

charitable or marital deduction will not be reduced by the amount of the claim or expense until the amount is actually paid. In the interest of enhancing the administrability of these regulations, such a rule is included in § 20.2053-1(d)(5)(ii). The Treasury Department and the IRS view this rule as similar to the rules in the regulations under sections 2055 and 2056 that provide, respectively, for the reduction of the value of the charitable or marital share by the amount of estate transmission expenses paid from the charitable or marital share. For purposes of the estate tax charitable deduction under section 2055, a claim or expense that is the subject of a protective claim for refund under section 2053 will not render the charitable deduction, to the extent of the amount of that claim or expense, contingent and thus nondeductible under section 2055.

#### 7. Comments Relating to Reimbursements, Prop. Reg. § 20.2053-1(b)(3)

The proposed regulations provide that a deduction is not allowed to the extent that the expense or claim is or could be compensated for by insurance or is or could be otherwise reimbursed. A commentator recommended that the final regulations explain the method by which an executor may establish that there is no available reimbursement either from another party or insurance. In response to this comment, the final regulations provide that an executor may certify on Form 706 that no reimbursement is available for a claim or expense if the executor neither knows nor reasonably should have known of the availability of any such reimbursement.

Additionally, some commentators recommended that the final regulations reflect the possibility that the cost of obtaining the reimbursement might outweigh the benefit of reimbursement. In response, the final regulations provide that an executor need not reduce the amount of a claim or expense deductible under section 2053 by the amount of a potential reimbursement if the executor provides a reasonable explanation on Form 706 for his or her reasonable determination that the burden of necessary collection efforts would outweigh the anticipated benefits from those efforts.

#### 8. Comments Relating to Deduction for Expenses of Administering Estate Under Prop. Reg. § 20.2053-3

A commentator recommended removing from Prop. Reg. § 20.2053-3(b) and (c) any language restating the general requirements for deductibility

set forth in Prop. Reg. § 20.2053-1 and the general rules regarding protective claims. The commentator suggested that duplicating the language in Prop. Reg. § 20.2053-3(b) and (c) was unnecessary and perhaps confusing. In response, the final regulations remove the language that merely restates the general rules set forth in Prop. Reg. § 20.2053-1.

Some commentators recommended omitting the sentence in Prop. Reg. § 20.2053-3(d)(3) that prohibits a deduction for expenses incurred merely for the purpose of unreasonably extending the time for payment, or incurred other than in good faith. The commentators stated that a situation where litigation has been intentionally prolonged other than in good faith is rare and unlikely to occur. Furthermore, the commentators expressed concern that the rule may subject the estate's legal strategy to IRS inquiry. Finally, the commentators maintained that it would be extremely difficult to prove that litigation expenses have not been incurred to unreasonably extend the time for payment or other than in good faith. The Treasury Department and the IRS find these comments persuasive and additionally believe that including this sentence in the final regulations is not necessary because expenses incurred merely for the purpose of unreasonably extending the time for payment or other than in good faith will not be considered actually and necessarily incurred in the administration of the decedent's estate and, therefore, are not deductible for that reason.

#### 9. Comments Relating to Claims Against the Estate, Prop. Reg. § 20.2053-4(a)

The proposed regulations provide that deductible claims against a decedent's estate are limited to legitimate and bona fide claims. A commentator stated that the terms "legitimate" and "bona fide" in Prop. Reg. § 20.2053-4(a)(1) are redundant. The final regulations remove the term "legitimate" and provide that deductible claims against a decedent's estate are limited to bona fide claims.

A commentator requested clarification that the Commissioner shall be bound in the same manner as the estate to consider events occurring after the date of a decedent's death when determining the amount deductible by the decedent's estate. The Treasury Department and the IRS believe that the rule of Prop. Reg. § 20.2053-4(a)(2) sets forth a general principle that governs the determination of the amount deductible against a decedent's estate, and that therefore is binding on both estates and the Commissioner. Accordingly, no change is believed to be necessary.

#### 10. Comments Relating to Claims and Counterclaims

Some commentators, citing fairness and liquidity concerns, suggested allowing a deduction for a claim against the estate on the initial filing of Form 706 if the value of the gross estate includes a claim in the same or a substantially-related matter or includes an asset integrally related or subject to the claim against the estate. The Treasury Department and the IRS find this suggestion persuasive when a decedent's substantially-related claim against a third party or a decedent's integrally-related asset constitutes a significant percentage of the gross estate. The final regulations under § 20.2053-4(b) provide that the current value of a claim against the estate with respect to which there is one or more substantially-related claims or integrally-related assets that are included in a decedent's gross estate may be deducted on Form 706, provided that the related claim or asset of the estate constitutes at least 10 percent of the decedent's gross estate, 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 Code and the corresponding regulations), and the value of each such claim against the estate is subject to adjustment to reflect post-death events. The deductible amount of each such claim is limited to the value of the related asset or claim included in the gross estate. The amount of the claim against the estate in excess of this limitation may be the subject of a protective claim for refund.

#### 11. Comments Relating to Prop. Reg. § 20.2053-4(b)(4), Claims by Family Members, Related Entities, or Beneficiaries

The proposed regulations include a rebuttable presumption that claims by a family member of the decedent, a related entity, or a beneficiary of the decedent's estate or a revocable trust are not legitimate and bona fide. Many commentators requested that the rebuttable presumption be removed from the regulation. A commentator suggested that the presumption be replaced by a provision requiring close scrutiny of claims by family members, related entities, or beneficiaries. Although such claims are in fact closely scrutinized during the examination of a return, the Treasury Department and the IRS believe that a regulatory provision prescribing the level of scrutiny to be given a particular item is not appropriate for this regulation.

Other commentators stated that the presumption is inconsistent with the burden of proof provision of section 7491 and that such a presumption should apply only when the facts indicate possible collusion. After careful consideration, the Treasury Department and the IRS have concluded that the rebuttable presumption in the proposed regulations does not conflict with section 7491.

Some commentators maintained that the presumption is unfair and unwarranted because the proposed regulations and the burden of proof provisions adequately deter the manipulation of claims by family members, related entities or beneficiaries. The Treasury Department and the IRS carefully considered these comments and, in response to the enumerated concerns with the creation of a rebuttable presumption, have removed the presumption from the final regulations. Instead, the final regulations continue to include the generally applicable requirement that any claim or expense deductible under section 2053 must be bona fide in nature, but also include a paragraph that (as suggested by a commentator) provides a nonexclusive list of factors indicative of the bona fide nature of a claim or expense involving a family member, related entity, or beneficiary of the estate of a decedent.

#### 12. Comments Relating to Payments in Prop. Reg. § 20.2053-4(b)(5)

A commentator suggested removing the rule in Prop. Reg. § 20.2053-4(b)(5) providing that claims that are unenforceable prior to or at the decedent's death are not deductible even if paid. The Treasury Department and the IRS believe that this rule is mandated by the statutory requirement that only amounts allowable by the laws of the jurisdiction under which the estate is being administered may be deducted from the value of the gross estate. Therefore, this suggestion has not been adopted.

#### 13. Comments Relating to Recurring Payments in Prop. Reg. § 20.2053-4(b)(7)

The proposed regulations provide that certain recurring, noncontingent obligations may be deducted as estimated amounts. Some commentators suggested that not allowing an estate to deduct the value of a contingent obligation is inefficient and inequitable because it forces the estate to remain open unless the estate purchases a commercial annuity. The Treasury Department and the IRS acknowledge that a contingent obligation may extend

the period of estate administration unless the estate purchases a commercial annuity to satisfy the obligation or makes distributions that are encumbered by the contingent obligation. However, the Treasury Department and the IRS believe that allowing a deduction for a noncontingent recurring payment as an ascertainable amount (deductible under § 20.2053-1(d)(4) of the final regulations), but not allowing a deduction for a contingent recurring payment until paid is a necessary component of the rules of deductibility provided for in these regulations. Nevertheless, the Treasury Department and the IRS believe that the purchase of a commercial annuity (with a cost determined by the market and based on the particular contingency) to fund a contingent obligation should be deemed to be substantially equivalent to a reasonably ascertainable (and thus deductible) noncontingent obligation for purposes of section 2053 and these regulations.

Some commentators requested clarification on whether death or remarriage is considered a contingency with respect to decedent's obligation to make a recurring payment. The final regulations clarify that, for purposes of section 2053, an obligation subject to death or remarriage is treated as a noncontingent obligation under § 20.2053-4(d)(6)(i).

Some commentators suggested that the disparate treatment afforded noncontingent obligations (deduction for present value of obligations) versus contingent obligations (dollar-for-dollar deduction as paid) is inequitable and produces an inconsistent result without meaningful justification. These commentators requested that the final regulations allow an estate to choose between deducting the present value of a noncontingent recurring payment on the estate tax return, or instead deducting the amounts paid in the same manner as provided for a contingent obligation (after filing an appropriate protective claim for refund). The Treasury Department and the IRS find the arguments against the disparate treatment of noncontingent and contingent obligations to be persuasive. The final regulations eliminate the disparate treatment by removing the present value limitation applicable only to noncontingent recurring payments. The Treasury Department and the IRS believe that the issue of the appropriate use of present value in determining the amount of the deduction allowable under section 2053 merits further consideration. The final regulations

reserve § 20.2053–1(d)(6) to provide future guidance on this issue.

A commentator requested clarification on whether the rule in Prop. Reg. § 20.2053–4(b)(7) will or will not apply to mortgages and other indebtedness under a note. The final regulations clarify that the rules applicable to recurring payments do not apply to payments made in connection with a mortgage or other indebtedness described in § 20.2053–7.

Finally, a commentator requested further guidance on the commercial annuity provision; specifically, whether the executor must transfer ownership of the purchased annuity to the creditor or to a third party who will use the annuity to make payments to the creditor, or whether granting the creditor a security interest in the annuity is sufficient in order for the amount paid for the annuity to be deductible under section 2053. For income tax purposes, the transfer of the annuity is likely to cause immediate gain recognition of the entire amount to the transferee unless the annuity meets several specific requirements. In light of the purpose and intent of these regulations, the Treasury Department and the IRS believe that the purchase of a commercial annuity, and the nonrefundable and generally significant costs involved in that purchase, should be sufficient to permit a deduction of the cost of the annuity for purposes of section 2053. For these reasons, the final regulations clarify that the estate may be permitted to own the annuity.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Karlene M. Lesho, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the IRS and the

Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 20 is amended as follows:

### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*

■ **Par. 2.** Section 20.2051–1 is revised to read as follows:

#### § 20.2051–1 Definition of taxable estate.

(a) *General rule.* The taxable estate of a decedent who was a citizen or resident (see § 20.0–1(b)(1)) of the United States at death is determined by subtracting the total amount of the deductions authorized by sections 2053 through 2058 from the total amount which must be included in the gross estate under sections 2031 through 2044. These deductions are in general as follows—

(1) Funeral and administration expenses and claims against the estate (including certain taxes and charitable pledges) (section 2053).

(2) Losses from casualty or theft during the administration of the estate (section 2054).

(3) Charitable transfers (section 2055).

(4) The marital deduction (section 2056).

(5) Qualified domestic trusts (section 2056A).

(6) Family-owned business interests (section 2057) to the extent applicable to estates of decedents.

(7) State death taxes (section 2058) to the extent applicable to estates of decedents.

(b) *Special rules.* See section 2106 and the corresponding regulations for special rules regarding the computation of the taxable estate of a decedent who was not a citizen or resident of the United States. See also § 1.642(g)–1 of this chapter concerning the disallowance for income tax purposes of certain deductions allowed for estate tax purposes.

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

■ **Par. 3.** Section 20.2053–1 is amended by:

- 1. Revising paragraphs (a), (b)(2), (b)(3), and adding paragraph (b)(4).
- 2. Redesignating paragraph (d) as paragraph (e).
- 3. Adding paragraphs (d) and (f).

The revisions and additions read as follows:

#### § 20.2053–1 Deductions for expenses, indebtedness, and taxes; in general.

(a) *General rule.* In determining the taxable estate of a decedent who was a citizen or resident of the United States at death, there are allowed as deductions under section 2053(a) and (b) amounts falling within the following two categories (subject to the limitations contained in this section and in §§ 20.2053–2 through 20.2053–10)—

\* \* \* \* \*

(b) \* \* \*

(2) *Bona fide requirement*—(i) *In general.* Amounts allowed as deductions under section 2053(a) and (b) must be expenses and claims that are bona fide in nature. No deduction is permissible to the extent it is founded on a transfer that is essentially donative in character (a mere cloak for a gift or bequest) except to the extent the deduction is for a claim that would be allowable as a deduction under section 2055 as a charitable bequest.

(ii) *Claims and expenses involving family members.* Factors indicative (but not necessarily determinative) of the bona fide nature of a claim or expense involving a family member of a decedent, a related entity, or a beneficiary of a decedent's estate or revocable trust, in relevant instances, may include, but are not limited to, the following—

(A) The transaction underlying the claim or expense occurs in the ordinary course of business, is negotiated at arm's length, and is free from donative intent.

(B) The nature of the claim or expense is not related to an expectation or claim of inheritance.

(C) The claim or expense originates pursuant to an agreement between the decedent and the family member, related entity, or beneficiary, and the agreement is substantiated with contemporaneous evidence.

(D) Performance by the claimant is pursuant to the terms of an agreement between the decedent and the family member, related entity, or beneficiary and the performance and the agreement can be substantiated.

(E) All amounts paid in satisfaction or settlement of a claim or expense are reported by each party for Federal income and employment tax purposes, to the extent appropriate, in a manner that is consistent with the reported nature of the claim or expense.

(iii) *Definitions.* The following definitions apply for purposes of this paragraph (b)(2):

(A) *Family members* include the spouse of the decedent; the grandparents, parents, siblings, and lineal descendants of the decedent or of the decedent's spouse; and the spouse and lineal descendants of any such grandparent, parent, and sibling. Family members include adopted individuals.

(B) A *related entity* is an entity in which the decedent, either directly or indirectly, had a beneficial ownership interest at the time of the decedent's death or at any time during the three-year period ending on the decedent's date of death. Such an entity, however, shall not include a publicly-traded entity nor shall it include a closely-held entity in which the combined beneficial interest, either direct or indirect, of the decedent and the decedent's family members, collectively, is less than 30 percent of the beneficial ownership interests (whether voting or non-voting and whether an interest in stock, capital and/or profits), as determined at the time a claim described in this section is being asserted. Notwithstanding the foregoing, an entity in which the decedent, directly or indirectly, had any managing interest (for example, as a general partner of a partnership or as a managing member of a limited liability company) at the time of the decedent's death shall be considered a related entity.

(C) *Beneficiaries* of a decedent's estate include beneficiaries of a trust of the decedent.

(3) *Court decrees and settlements*—(i) *Court decree.* If a court of competent jurisdiction over the administration of an estate reviews and approves expenditures for funeral expenses, administration expenses, claims against the estate, or unpaid mortgages (referred to in this section as a “claim or expense”), a final judicial decision in that matter may be relied upon to establish the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations provided that the court actually passes upon the facts on which deductibility depends. If the court does not pass upon those facts, its decree may not be relied upon to establish the amount of the claim or expense that is otherwise deductible under section 2053. It must appear that the court actually passed upon the merits of the claim. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary.

Any amount meeting the requirements of this paragraph (b)(3)(i) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(ii) *Claims and expenses where court approval not required under local law.* A deduction for the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations will not be denied under section 2053 solely because a local court decree has not been entered with respect to such amount, provided that no court decree is required under applicable law to determine the amount or allowability of the claim or expense.

(iii) *Consent decree.* A local court decree rendered by consent may be relied on to establish the amount of a claim or expense that is otherwise deductible under section 2053 and these regulations provided that the consent resolves a bona fide issue in a genuine contest. Consent given by all parties having interests adverse to that of the claimant will be presumed to resolve a bona fide issue in a genuine contest. Any amount meeting the requirements of this paragraph (b)(3)(iii) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(iv) *Settlements.* A settlement may be relied on to establish the amount of a claim or expense (whether contingent or noncontingent) that is otherwise deductible under section 2053 and these regulations, provided that the settlement resolves a bona fide issue in a genuine contest and is the product of arm's-length negotiations by parties having adverse interests with respect to the claim or expense. A deduction will not be denied for a settlement amount paid by an estate if the estate can establish that the cost of defending or contesting the claim or expense, or the delay associated with litigating the claim or expense, would impose a higher burden on the estate than the payment of the amount paid to settle the claim or expense. Nevertheless, no deduction will be allowed for amounts paid in settlement of an unenforceable claim. For this purpose, to the extent a claim exceeds an applicable limit under local law, the claim is deemed to be unenforceable. However, as long as the enforceability of the claim is at issue in a bona fide dispute, the claim will not be deemed to be unenforceable for this purpose. Any amount meeting the requirements of this paragraph (b)(3)(iv) is deductible to the extent it actually has been paid or will be paid, subject to any applicable limitations in this section.

(v) *Additional rules.* Notwithstanding paragraph (b)(3)(i) through (iv) of this

section, additional rules may apply to the deductibility of certain claims and expenses. See § 20.2053–2 for additional rules regarding the deductibility of funeral expenses. See § 20.2053–3 for additional rules regarding the deductibility of administration expenses. See § 20.2053–4 for additional rules regarding the deductibility of claims against the estate. See § 20.2053–7 for additional rules regarding the deductibility of unpaid mortgages.

(4) *Examples.* Unless otherwise provided, assume that the amount of any claim or expense is paid out of property subject to claims and is paid within the time prescribed for filing the “United States Estate (and Generation-Skipping Transfer) Tax Return,” Form 706. The following examples illustrate the application of this paragraph (b):

*Example 1. Consent decree at variance with the law of the State.* Decedent's (D's) estate is probated in State. D's probate estate is valued at \$100x. State law provides that the executor's commission shall not exceed 3 percent of the probate estate. A consent decree is entered allowing the executor's commission in the amount of \$5x. The estate pays the executor's commission in the amount of \$5x. For purposes of section 2053, the executor may deduct only \$3x of the \$5x expense paid for the executor's commission because the amount approved by the consent decree in excess of \$3x is in excess of the applicable limit for executor's commissions under local law. Therefore, for purposes of section 2053, the consent decree may not be relied upon to establish the amount of the expense for the executor's commission.

*Example 2. Decedent's (D's) estate is probated in State.* State law grants authority to an executor to administer an estate without court approval, so long as notice of and a right to object to a proposed action is provided to interested persons. The executor of D's estate (E) proposes to sell property of the estate in order to pay the debts of D. E gives requisite notice to all interested parties and no interested person objects. E sells the real estate and pays a real estate commission of \$20x to a professional real estate agent. The amount of the real estate commission paid does not exceed the applicable limit under State law. Provided that the sale of the property was necessary to pay D's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution, the executor may deduct the \$20x expense for the real estate commission under section 2053 even though no court decree was entered approving the expense.

*Example 3. Claim by family member.* For a period of three years prior to D's death, D's niece (N) provides accounting and bookkeeping services on D's behalf. N is a CPA and provides similar accounting and bookkeeping services to unrelated clients. At the end of each month, N presents an itemized bill to D for services rendered. The fees charged by N conform to the prevailing market rate for the services rendered and are comparable to the fees N charges other

clients for similar services. The amount due is timely paid each month by D and is properly reported for Federal income and employment tax purposes by N. In the six months prior to D's death, D's poor health prevents D from making payments to N for the amount due. After D's death, N asserts a claim against the estate for \$25x, an amount representing the amount due for the six-month period prior to D's death. D's estate pays \$25x to N in satisfaction of the claim before the return is timely filed and N properly reports the \$25x received by E for income tax purposes. Barring any other relevant facts or circumstances, E may rely on the following factors to establish that the claim is bona fide: (1) N's claim for services rendered arose in the ordinary course of business, as N is a CPA performing similar services for other clients; (2) the fees charged were deemed to be negotiated at arm's length, as the fees were consistent with the fees N charged for similar services to unrelated clients; (3) the billing records and the records of D's timely payments to N constitute contemporaneous evidence of an agreement between D and N for N's bookkeeping services; and (4) the amount of the payments to N is properly reported by N for Federal income and employment tax purposes. E may deduct the amount paid to N in satisfaction of the claim.

\* \* \* \* \*

(d) *Amount deductible*—(1) *General rule*. To take into account properly events occurring after the date of a decedent's death in determining the amount deductible under section 2053 and these regulations, the deduction for any claim or expense described in paragraph (a) of this section is limited to the total amount actually paid in settlement or satisfaction of that item (subject to any applicable limitations in this section). However, see paragraph (d)(4) of this section for the rules for deducting certain ascertainable amounts; see § 20.2053-4(b) and (c) for the rules regarding the deductibility of certain claims against the estate; and see § 20.2053-7 for the rules regarding the deductibility of unpaid mortgages and other indebtedness.

(2) *Application of post-death events*. In determining whether and to what extent a deduction under section 2053 is allowable, events occurring after the date of a decedent's death will be taken into consideration—

(i) Until the expiration of the applicable period of limitations on assessment prescribed in section 6501 (including without limitation at all times during which the running of the period of limitations is suspended); and

(ii) During subsequent periods, in determining the amount (if any) of an overpayment of estate tax due in connection with a claim for refund filed within the time prescribed in section 6511(a).

(3) *Reimbursements*. A deduction is not allowed to the extent that a claim or expense described in paragraph (a) of this section is or could be compensated for by insurance or otherwise could be reimbursed. If the executor is able to establish that only a partial reimbursement could be collected, then only that portion of the potential reimbursement that reasonably could have been expected to be collected will reduce the estate's deductible portion of the total claim or expense. An executor may certify that the executor neither knows nor reasonably should have known of any available reimbursement for a claim or expense described in section 2053(a) or (b) on the estate's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), in accordance with the instructions for that form. A potential reimbursement will not reduce the deductible amount of a claim or expense to the extent that the executor, on Form 706 and in accordance with the instructions for that form, provides a reasonable explanation for his or her reasonable determination that the burden of necessary collection efforts in pursuit of a right of reimbursement would outweigh the anticipated benefit from those efforts. Nevertheless, even if a reasonable explanation is provided, subsequent events (including without limitation an actual reimbursement) occurring within the period described in § 20.2053-1(d)(2) will be considered in determining the amount (if any) of a reduction under this paragraph (d)(3) in the deductible amount of a claim or expense.

(4) *Exception for certain ascertainable amounts*—(i) *General rule*. A deduction will be allowed for a claim or expense that satisfies all applicable requirements even though it is not yet paid, provided that the amount to be paid is ascertainable with reasonable certainty and will be paid. For example, executors' commissions and attorneys' fees that are not yet paid, and that meet the requirements for deductibility under § 20.2053-3(b) and (c), respectively, are deemed to be ascertainable with reasonable certainty and may be deducted if such expenses will be paid. However, no deduction may be taken upon the basis of a vague or uncertain estimate. To the extent a claim or expense is contested or contingent, such a claim or expense cannot be ascertained with reasonable certainty.

(ii) *Effect of post-death events*. A deduction under this paragraph (d)(4) will be allowed to the extent the Commissioner is reasonably satisfied that the amount to be paid is ascertainable with reasonable certainty

and will be paid. In making this determination, the Commissioner will take into account events occurring after the date of a decedent's death. To the extent the amount for which a deduction was claimed does not satisfy the requirements of this paragraph (d)(4), and is not otherwise deductible, the deduction will be disallowed by the Commissioner. If a deduction is claimed on Form 706 for an amount that is not yet paid and the deduction is disallowed in whole or in part (or if no deduction is claimed on Form 706), then if the claim or expense subsequently satisfies the requirements of this paragraph (d)(4) or is paid, relief may be sought by filing a claim for refund. To preserve the estate's right to claim a refund for amounts becoming deductible after the expiration of the period of limitation for the filing of a claim for refund, a protective claim for refund may be filed in accordance with paragraph (d)(5) of this section.

(5) *Protective claim for refund*—(i) *In general*. A protective claim for refund under this section may be filed at any time before the expiration of the period of limitation prescribed in section 6511(a) for the filing of a claim for refund to preserve the estate's right to claim a refund by reason of claims or expenses that are not paid or do not otherwise meet the requirements of deductibility under section 2053 and these regulations until after the expiration of the period of limitation for filing a claim for refund. Such a protective claim shall be made in accordance with guidance that may be provided from time to time by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)). Although the protective claim need not state a particular dollar amount or demand an immediate refund, a protective claim must identify each outstanding claim or expense that would have been deductible under section 2053(a) or (b) if such item already had been paid and must describe the reasons and contingencies delaying the actual payment of the claim or expense. Action on protective claims will proceed after the executor has notified the Commissioner within a reasonable period that the contingency has been resolved and that the amount deductible under § 20.2053-1 has been established.

(ii) *Effect on marital and charitable deduction*. To the extent that a protective claim for refund is filed with respect to a claim or expense that would have been deductible under section 2053(a) or (b) if such item already had been paid and that is payable out of a share that meets the requirements for a

charitable deduction under section 2055 or a marital deduction under section 2056 or section 2056A, or from a combination thereof, neither the charitable deduction nor the marital deduction shall be reduced by the amount of such claim or expense until the amount is actually paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts or the requirements of § 20.2053-4(b) or (c) for deducting certain claims against the estate.

(6) [Reserved].

(7) *Examples.* Assume that the amounts described in section 2053(a) are payable out of property subject to claims and are allowable by the law of the jurisdiction governing the administration of the estate, whether the applicable jurisdiction is within or outside of the United States. Assume that the claims against the estate are not deductible under § 20.2053-4(b) or (c). Also assume, unless otherwise provided, that none of the limitations on the amount of the deduction described in this section apply to the deduction claimed under section 2053. The following examples illustrate the application of this paragraph (d):

*Example 1. Amount of expense ascertainable.* Decedent's (D's) estate was probated in State. State law provides that the personal representative shall receive compensation equal to 2.5 percent of the value of the probate estate. The executor (E) may claim a deduction for estimated fees equal to 2.5 percent of D's probate estate on the Form 706 filed for D's estate under the rule for deducting certain ascertainable amounts set forth in paragraph (d)(4) of this section, provided that the estimated amount will be paid. However, the Commissioner will disallow the deduction upon examination of the estate's Form 706 to the extent that the amount for which a deduction was claimed no longer satisfies the requirements of paragraph (d)(4) of this section. If this occurs, E may file a protective claim for refund in accordance with paragraph (d)(5) of this section in order to 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 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.

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

■ **Par. 4.** Section 20.2053-3 is amended by:

- 1. Revising paragraph (b)(1) and the second sentence of paragraph (b)(2).
  - 2. Revising paragraph (c)(1) and the second sentence of paragraph (c)(2).
  - 3. Revising the second sentence of paragraph (d)(1) and the first sentence of paragraph (d)(2).
  - 4. Adding paragraphs (d)(3) and (e).
- The revisions and additions read as follows:

**§ 20.2053-3 Deductions for expenses of administering estate.**

\* \* \* \* \*

(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) \* \* \* 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.

\* \* \* \* \*

(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 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.

\* \* \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* 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. \* \* \*

(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. \* \* \*

(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.

■ **Par. 5.** Section 20.2053-4 is revised to read as follows:

**§ 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 against the estate and, during the period described in § 20.2053-1(d)(2), the claim is paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts, the claimed deduction is subject to adjustment to reflect, and may not exceed, the amount paid on the claim or the amount meeting the requirements of § 20.2053-1(d)(4). If, under this paragraph (b), a deduction is claimed on Form 706 for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim remains unpaid (and does not meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts), the claimed deduction is subject to adjustment to reflect, and may not exceed, the current valuation of the claim. A valuation of the claim will be considered current if it reflects events occurring after the decedent's death. With regard to any amount in excess of the amount deductible under this paragraph (b), an estate may preserve the estate's right to claim a refund for claims that are paid or that meet the requirements of § 20.2053-1(d)(4) after the expiration of the period of limitation for filing a claim for refund by filing a protective claim for refund in accordance with the rules in § 20.2053-1(d)(5).

(c) *Exception for claims totaling not more than \$500,000*—(1) *General rule.* An executor may deduct on Form 706 the current value of one or more claims against the estate even though payment has not been made on the claim or claims to the extent that—

(i) Each such claim against the estate otherwise satisfies the applicable requirements for deductibility 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 total amount deducted by the estate under this paragraph (c) does not exceed \$500,000;

(vi) The full value of each claim, rather than just a portion of that amount, must be deductible under this paragraph (c) and, for this purpose, the full value of each such claim is deemed to be the unpaid amount of that claim that is not deductible after the application of §§ 20.2053-1 and 20.2053-4(b); and

(vii) The value of each claim deducted under this paragraph (c) is subject to adjustment for post-death events.

(2) *Effect of post-death events.* If, under this paragraph (c), a deduction is claimed for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim is paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts, the amount of the allowable deduction for that claim is subject to adjustment to reflect, and may not exceed, the amount paid on the claim or the amount meeting the requirements of § 20.2053-1(d)(4). If, under this paragraph (c), a deduction is claimed for a claim against the estate and, during the period described in § 20.2053-1(d)(2), the claim remains unpaid (and does not meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts), the amount of the allowable deduction for that claim is subject to adjustment to reflect, and may not exceed, the current value of the claim. The value of the claim will be considered current if it reflects events occurring after the decedent's death. To claim a deduction for amounts in excess of the amount deductible under this paragraph (c), the estate may preserve the estate's right to claim a refund for claims that are not paid or that do not meet the requirements of § 20.2053-1(d)(4) until after the expiration of the period of limitation for the filing of a claim for refund by filing a protective claim for refund in accordance with the rules in § 20.2053-1(d)(5).

(3) *Examples.* The following examples illustrate the application of this paragraph (c). Assume that the value of each claim is determined from a "qualified appraisal" performed by a "qualified appraiser" and reflects events occurring after the death of the decedent (D). Also assume that each claim represents a personal obligation of D that existed at D's death, that each claim is enforceable against the decedent's

estate (and is not unenforceable when paid), and that each claim otherwise satisfies the requirements for deductibility of § 20.2053-1.

*Example 1.* There are three claims against the estate of the decedent (D) that are not paid and are not deductible under § 20.2053-1(d)(4) or paragraph (b) of this section: \$25,000 of Claimant A, \$35,000 of Claimant B, and \$1,000,000 of Claimant C. The executor of D's estate (E) may not claim a deduction under this paragraph with respect to any portion of the claim of Claimant C because the value of that claim exceeds \$500,000. E may claim a deduction under this paragraph for the total amount of the claims filed by Claimant A and Claimant B (\$60,000) because the aggregate value of the full amount of those claims does not exceed \$500,000.

*Example 2.* There are three claims against the estate of the decedent (D) that are not paid and are not deductible under § 20.2053-1(d)(4) or paragraph (b) of this section; specifically, a separate \$200,000 claim of each of three claimants, A, B and C. The executor of D's estate (E) may claim a deduction under this paragraph for any two of these three claims because the aggregate value of the full amount of any two of the claims does not exceed \$500,000. E may not deduct any part of the value of the remaining claim under this paragraph because the aggregate value of the full amount of all three claims would exceed \$500,000.

*Example 3.* As a result of an automobile accident involving the decedent (D) and A, D's gross estate includes a claim against A that is valued at \$750,000. In the same matter, A files a counterclaim against D's estate that is valued at \$1,000,000. A's claim against D's estate is not paid and is not deductible under § 20.2053-1(d)(4). All other section 2053 claims and expenses of D's estate have been paid and are deductible. The executor of D's estate (E) deducts \$750,000 of A's claim against the estate under § 20.2053-4(b). E may claim a deduction under this paragraph (c) for the total value of A's claim not deducted under § 20.2053-4(b), or \$250,000. If, instead, the value of A's claim against D's estate is \$1,500,000, so that the amount not deductible under § 20.2053-4(b) exceeds \$500,000, no deduction is available under this paragraph (c).

(d) *Special rules—(1) Potential and unmatured claims.* Except as provided in § 20.2053-1(d)(4) and in paragraphs (b) and (c) of this section, no estate tax deduction may be taken for a claim against the decedent's estate while it remains a potential or unmatured claim. Claims that later mature may be deducted (to the extent permitted by § 20.2053-1) in connection with a timely claim for refund. To preserve the estate's right to claim a refund for claims that mature and become deductible after the expiration of the period of limitation for filing a claim for refund, a protective claim for refund may be filed in accordance with § 20.2053-1(d)(5). See § 20.2053-1(b)(3)

for rules relating to the treatment of court decrees and settlements.

(2) *Contested claims.* Except as provided in paragraphs (b) and (c) of this section, no estate tax deduction may be taken for a claim against the decedent's estate to the extent the estate is contesting the decedent's liability. Contested claims that later mature may be deducted (to the extent permitted by § 20.2053-1) in connection with a claim for refund filed within the time prescribed in section 6511(a). To preserve the estate's right to claim a refund for claims that mature and become deductible after the expiration of the period of limitation for filing a claim for refund, a protective claim for refund may be filed in accordance with § 20.2053-1(d)(5). See § 20.2053-1(b)(3) for rules relating to the treatment of court decrees and settlements.

(3) *Claims against multiple parties.* If the decedent or the decedent's estate is one of two or more parties against whom the claim is being asserted, the estate may deduct only the portion of the total claim due from and paid by the estate, reduced by the total of any reimbursement received from another party, insurance, or otherwise. The estate's deductible portion also will be reduced by the contribution or other amount the estate could have collected from another party or an insurer but which the estate declines or fails to attempt to collect. See further § 20.2053-1(d)(2).

(4) *Unenforceable claims.* Claims that are unenforceable prior to or at the decedent's death are not deductible, even if they are actually paid. Claims that become unenforceable during the administration of the estate are not deductible to the extent that they are paid (or will be paid) after they become unenforceable. However, see § 20.2053-1(b)(3)(iv) regarding a claim whose enforceability is at issue.

(5) *Claims founded upon a promise.* Except with regard to pledges or subscriptions (see § 20.2053-5), section 2053(c)(1)(A) provides that the deduction for a claim founded upon a promise or agreement is limited to the extent that the promise or agreement was bona fide and in exchange for adequate and full consideration in money or money's worth; that is, the promise or agreement must have been bargained for at arm's length and the price must have been an adequate and full equivalent reducible to a money value.

(6) *Recurring payments—(i) Noncontingent obligations.* If a decedent is obligated to make recurring payments on an enforceable and certain claim that satisfies the requirements for

deductibility under this section and the payments are not subject to a contingency, the amount of the claim will be deemed ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4). If the recurring payments will be paid, a deduction will be allowed under the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4) (subject to any applicable limitations in § 20.2053-1). Recurring payments for purposes of this section exclude those payments made in connection with a mortgage or indebtedness described in and governed by § 20.2053-7. If a decedent's obligation to make a recurring payment is contingent on the death or remarriage of the claimant and otherwise satisfies the requirements of this paragraph (d)(6)(i), the amount of the claim (measured according to actuarial principles, using factors set forth in the transfer tax regulations or otherwise provided by the IRS) will be deemed ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4).

(ii) *Contingent obligations.* If a decedent has a recurring obligation to pay an enforceable and certain claim but the decedent's obligation is subject to a contingency or is not otherwise described in paragraph (d)(6)(i) of this section, the amount of the claim is not ascertainable with reasonable certainty for purposes of the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4). Accordingly, the amount deductible is limited to amounts actually paid by the estate in satisfaction of the claim in accordance with § 20.2053-1(d)(1) (subject to any applicable limitations in § 20.2053-1).

(iii) *Purchase of commercial annuity to satisfy recurring obligation to pay.* If a decedent has a recurring obligation (whether or not contingent) to pay an enforceable and certain claim and the estate purchases a commercial annuity from an unrelated dealer in commercial annuities in an arm's-length transaction to satisfy the obligation, the amount deductible by the estate (subject to any applicable limitations in § 20.2053-1) is the sum of—

(A) The amount paid for the commercial annuity, to the extent that the amount paid is not refunded, or expected to be refunded, to the estate;

(B) Any amount actually paid to the claimant by the estate prior to the purchase of the commercial annuity; and

(C) Any amount actually paid to the claimant by the estate in excess of the

annuity amount as is necessary to satisfy the recurring obligation.

(7) *Examples.* The following examples illustrate the application of paragraph (d) of this section. Except as is otherwise provided in the examples, assume—

(i) A claim satisfies the applicable requirements set forth in § 20.2053-1 and paragraph (a) of this section, is payable from property subject to claims, and the amount of the claim is not subject to any other applicable limitations in § 20.2053-1;

(ii) A claim is not deductible under paragraphs (b) or (c) of this section as an exception to the general rule contained in paragraph (a) of this section; and

(iii) The claimant (C) is not a family member, related entity or beneficiary of the estate of decedent (D) and is not the executor (E).

*Example 1. Contested claim, single defendant, no decision.* D is sued by C for \$100x in a tort proceeding and responds asserting affirmative defenses available to D under applicable local law. D dies and E is substituted as defendant in the suit. D's Form 706 is due before a judgment is reached in the case. D's gross estate exceeds \$100x. E may not take a deduction on Form 706 for the claim against the estate. However, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. E may file a protective claim for refund before the expiration of the period of limitation prescribed in section 6511(a) in order to preserve the estate's right to claim a refund, if the amount of the claim will not be paid or cannot be ascertained with reasonable certainty by the expiration of this limitation period. If payment is subsequently made pursuant to a court decision or a settlement, the payment, as well as expenses incurred incident to the claim and not previously deducted, may be deducted and relief may be sought in connection with a timely-filed claim for refund.

*Example 2. Contested claim, single defendant, final court decree and payment.* The facts are the same as in *Example 1* except that, before the Form 706 is timely filed, the court enters a decision in favor of C, no timely appeal is filed, and payment is made. E may claim a deduction on Form 706 for the amount paid in satisfaction of the claim against the estate pursuant to the final decision of the local court, including any interest accrued prior to D's death. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim and in processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 3. Contested claim, single defendant, settlement and payment.* The facts are the same as in *Example 1* except that a settlement is reached between E and C for \$80x and payment is made before Form 706 is timely filed. E may claim a deduction on Form 706 for the amount paid to C (\$80x) in satisfaction of the claim against the estate. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 4. Contested claim, multiple defendants.* The facts are the same as in *Example 1* except that the suit filed by C lists D and an unrelated third-party (K) as defendants. If the claim against the estate is not resolved prior to the time the Form 706 is filed, E may not take a deduction for the claim on Form 706. If payment is subsequently made of D's share of the claim pursuant to a court decision holding D liable for 40 percent of the amount due and K liable for 60 percent of the amount due, then E may claim a deduction for the amount paid in satisfaction of the claim against the estate representing D's share of the liability as assigned by the court decree (\$40x), plus any interest on that share accrued prior to D's death. If the court decision finds D and K jointly and severally liable for the entire \$100x and D's estate pays the entire \$100x but could have reasonably collected \$50x from K in reimbursement, E may claim a deduction of \$50x together with the interest on \$50x accrued prior to D's death. In both instances, E also may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred and not previously deducted in defending the estate against the claim and processing payment of the amount due from D if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 5. Contested claim, multiple defendants, settlement and payment.* The facts are the same as in *Example 1* except that the suit filed by C lists D and an unrelated third-party (K) as defendants. D's estate settles with C for \$10x and payment is made before Form 706 is timely filed. E may take a deduction on Form 706 for the amount paid to C (\$10x) in satisfaction of the claim against the estate. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 6. Mixed claims.* During life, D contracts with C to perform specific work on D's home for \$75x. Under the contract, additional work must be approved in advance by D. C performs additional work and sues D for \$100x for work completed including the \$75x agreed to in the contract.

D dies and D's Form 706 is due before a judgment is reached in the case. E accepts liability of \$75x but contests liability of \$25x. E may take a deduction of \$75x on Form 706 if the amount has been paid or meets the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. In addition, E may claim a deduction under § 20.2053-3(c) or § 20.2053-3(d)(3) for expenses incurred in defending the estate against the claim if the expenses have been paid or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts. E may file a protective claim for refund before the expiration of the period of limitation prescribed in section 6511(a) in order to preserve the estate's right to claim a refund for any amount in excess of \$75x that is subsequently paid to resolve the claim against the estate. To the extent that any unpaid expenses incurred in defending the estate against the claim are not deducted as an ascertainable amount pursuant to § 20.2053-1(d)(4), they may be included in the protective claim for refund.

*Example 7. Claim having issue of enforceability.* D is sued by C for \$100x in a tort proceeding in which there is an issue as to whether the claim is barred by the applicable period of limitations. After D's death but prior to the decision of the court, a settlement meeting the requirements of § 20.2053-1(b)(3)(iv) is reached between E and C in the amount of \$50x. E pays C this amount before the Form 706 is timely filed. E may take a deduction on Form 706 for the amount paid to C (\$50x) in satisfaction of the claim. If, subsequent to E's payment to C, facts develop to indicate that the claim was, in fact, unenforceable, the deduction will not be denied provided the enforceability of the claim was at issue in a bona dispute at the time of the payment. See § 20.2053-1(b)(3)(iv). A deduction may be available under § 20.2053-3(d)(3) for expenses incurred in defending the estate, reaching a settlement, and processing payment of the claim if the expenses have been paid in accordance with § 20.2053-1(d)(1) or if the expenses meet the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

*Example 8. Noncontingent and recurring obligation to pay, binding on estate.* D's property settlement agreement incident to D's divorce, signed three years prior to D's death, obligates D or D's estate to pay to S, D's former spouse, \$20x per year until S's death or remarriage. Prior to D's death, D made payments in accordance with the agreement and, after D's death, E continues to make the payments in accordance with the agreement. D's obligation to pay S under the property settlement agreement is deemed to be a claim against the estate that is ascertainable with reasonable certainty for purposes of § 20.2053-1(d)(4). To the extent the obligation to make the recurring payment is a claim that will be paid, E may deduct the amount of the claim (measured according to actuarial principles, using factors set forth in the transfer tax regulations or otherwise provided by the IRS) under the rule for deducting certain ascertainable amounts set forth in § 20.2053-1(d)(4).

*Example 9. Recurring obligation to pay, estate purchases a commercial annuity in satisfaction.* D's settlement agreement with T, the claimant in a suit against D, signed three years prior to D's death, obligates D or D's estate to pay to T \$20x per year for 10 years, provided that T does not reveal the details of the claim or of the settlement during that period. D dies in Year 1. In Year 2, D's estate purchases a commercial annuity from an unrelated issuer of commercial annuities, XYZ, to fund the obligation to T. E may deduct the entire amount paid to XYZ to obtain the annuity, even though the obligation to T was contingent.

(e) *Interest on claim*—(1) Subject to any applicable limitations in § 20.2053-1, the interest on a deductible claim is itself deductible as a claim under section 2053 to the extent of the amount of interest accrued at the decedent's death (even if the executor elects the alternate valuation method under section 2032), but only to the extent of the amount of interest actually paid or meeting the requirements of § 20.2053-1(d)(4) for deducting certain ascertainable amounts.

(2) Post-death accrued interest may be deductible in appropriate circumstances either as an estate tax administration expense under section 2053 or as an income tax deduction.

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

■ **Par. 6.** Section 20.2053-5 is amended by:

- 1. Redesignating paragraphs (a) and (b) as (a)(1) and (a)(2).
- 2. Redesignating the introductory text as paragraph (a).
- 3. Revising newly redesignated paragraph (a).
- 4. Adding a new paragraph (b).

The revision and addition read as follows:

**§ 20.2035-5 Deductions for charitable, etc., pledges or subscriptions.**

(a) A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible (subject to any applicable limitations in § 20.2053-1) only to the extent that—

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

■ **Par. 7.** Section 20.2053-6 is amended by:

- 1. Revising paragraphs (a) and (c).
- 2. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 20.2053-6 Deduction for taxes.**

(a) *In general*—(1) Taxes are deductible in computing a decedent's gross estate—

(i) Only as claims against the estate (except to the extent that excise taxes may be allowable as administration expenses);

(ii) Only to the extent not disallowed by section 2053(c)(1)(B) and this section; and

(iii) Subject to any applicable limitations in § 20.2053-1.

(2) See §§ 20.2053-9 and 20.2053-10 with respect to the deduction allowed for certain state and foreign death taxes.

(c) *Death taxes*—(1) For the estates of decedents dying on or before December 31, 2004, no estate, succession, legacy or inheritance tax payable by reason of the decedent's death is deductible, except as provided in §§ 20.2053-9 and 20.2053-10 with respect to certain state and foreign death taxes on transfers for charitable, etc., uses. However, see sections 2011 and 2014 and the corresponding regulations with respect to credits for death taxes.

(2) For the estates of decedents dying after December 31, 2004, see section 2058 to determine the deductibility of state death taxes.

(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 application 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.

■ **Par. 8.** Section 20.2053-9 is amended by:

- 1. Adding a sentence at the end of paragraph (a).
- 2. Revising the first and last sentences of paragraph (c).
- 3. Adding paragraph (f).

The revisions and addition read as follows:

**§ 20.2053-9 Deduction for certain State death taxes.**

(a) \* \* \* However, see section 2058 to determine the deductibility of state death taxes by estates to which section 2058 is applicable.

(c) \* \* \* The election to take a deduction for a state death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the Commissioner. \* \* \* The election may be revoked by the executor by the filing of a written notification to that effect with the Commissioner at any time before the expiration of such period.

(f) *Effective/applicability date*—(1) The last sentence of paragraph (a) of this section applies to the estates of decedents dying on or after October 20, 2009, to which section 2058 is applicable.

(2) The other provisions of this section apply to the estates of decedents dying on or after October 20, 2009, to which section 2058 is not applicable.

■ **Par. 9.** Section 20.2053-10 is amended by removing the language “district director” and adding the language “Commissioner” in its place in paragraph (c) and by adding a new paragraph (e) to read as follows:

**§ 20.2053-10 Deduction for certain foreign death taxes.**

\* \* \* \* \*

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

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 14, 2009.

**Michael F. Mundaca,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E9-25138 Filed 10-16-09; 11:15 am]

**BILLING CODE 4830-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-2190; MB Docket No. 09-160; RM-11558]

#### Television Broadcasting Services; Traverse City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Barrington Traverse City License LLC, the permittee of station WPBN-TV, channel 7, Traverse City, Michigan, requesting the substitution of channel 47 for its allotted channel 7 at Traverse City.

**DATES:** This rule is effective October 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** David J. Brown, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 09-160, adopted October 7, 2009, and released October 8, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document

will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding channel 47 and removing channel 7 at Traverse City.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-25234 Filed 10-19-09; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[Docket No. FWS-R9-MB-2009-0003; 91200-1231-9BPP]

RIN 1018-AW46

#### Migratory Bird Hunting; Approval of Tungsten-Iron-Fluoropolymer Shot Alloys as Nontoxic for Hunting Waterfowl and Coots; Availability of Final Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; availability of final environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, approve tungsten-iron-fluoropolymer shot alloys for hunting waterfowl and coots. Having completed our review of the application materials, we have concluded that these alloys are very unlikely to adversely affect fish, wildlife, or their habitats. We therefore add this shot type to the list of those approved for hunting waterfowl and coots.

**DATES:** This rule is effective on October 20, 2009.

**ADDRESSES:** You can view the final environmental assessment for this action on <http://www.regulations.gov>, or you can obtain a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** George T. Allen, Division of Migratory Bird Management, 703-358-1825.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot