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*Outline for*  
***Contingent Claims and Expenses -***  
***Final Regulations under IRC § 2053***

The IRS has issued **final regulations** under IRC § 2053. T.D. 9468, 74 Fed. Reg. 53652 (Oct. 20, 2009), identifying **requirements for a valid contingent claim or expense** against the estate. This outline is intended to be a brief capsule view only and should not replace your examination of the final regulations. However, **note the de minimus exception** under 20.2053-4(c), which may make much of the regulations insignificant to many estates.

Reference	Comment
§ 20.2053-4(a)(1)	<p><b>General Rule:</b></p> <p>Requires that liabilities be “bonafide claims that are enforceable against the decedent’s estate (and are not unenforceable when paid) and claims that (1) are actually paid..., or (2) meet requirements... for deducting certain ascertainable amounts.”</p>
§ 20.2053-4(a)(2)	<p><b>Post Mortem Events:</b></p> <p>Requires that events occurring after the date of decedent’s death shall be considered in determining the amount of the deduction. This is a <b>mandate</b> that requires post-mortem facts being taken into consideration; i.e. claims that are “potential and un-matured” at death, but that mature and are paid post-mortem, may be deducted; however, they may not be deducted to the extent that they remain potential, uncertain, un-matured or unpaid. <i>For the latter, a <b>protective claim</b> for refund must be made.</i></p>

§ 20.2053-4(d)(6)	<p><b>Reoccurring Payments:</b>  When dealing with reoccurring payments, the regulation establishes <u>two rules</u> and <u>one exception</u>.  (A) <u>If the payments are not contingent</u> (meaning the claim is enforceable and certain), then the value of the stream of payments is currently deductible.  (B) Otherwise, any deduction is <u>limited to</u> the amount actually paid.  (C) <u>In either case</u>, the estate may purchase a <u>commercial annuity</u> from an unrelated dealer in commercial annuities in an arms lengths transaction to satisfy the recurring obligation and deduct the full amount paid for the annuity (plus any added amounts actually paid on the recurring obligation).  (D) The final regulations deem recurring payments that are <u>contingent</u> on the <u>payee's remarriage or death</u> to be ascertainable with reasonable certainty and measured using actuarial principals and factors otherwise employed in every day valuations. See § 20.2053-1(d)(7) example 8.</p>
§ 20.2053-4(d)(2)	<p><b>Contested Claims:</b>  No estate tax deduction may be taken for a claim against the decedent's estate to the extent that the estate is contesting the decedent's liability. <i>For the latter, a <b>protective claim</b> for refund must be made.</i></p>
§ 20.2053-4(d)(4)	<p><b>Unenforceable Claim:</b>  A deduction may <u>not</u> be taken for a claim that is not enforceable when paid.</p>
§ 20.2053-1(b)(2)	<p><b>Bonafide Claims by Related Party:</b>  The regulations lists <b>factors</b> which speak to the issue of whether a claim by a related entity or person is bonafide. The factors include:  (1) Transaction occurred in the ordinary course of business, was negotiated at arms length and was free of donative intent.  (2) The claim is not related to an expectancy.  (3) The claim is pursuant to an agreement that is substantiated with contemporaneous evidence.  (4) The performance of the related party is pursuant to an agreement that can be substantiated.  (5) The amounts paid on the claim are consistently reported for income and employment tax purposes.  A related party is not a publicly traded entity and at least 30% owned anytime within the past three years prior to the death of the decedent and family members are defined to include lineal descendants of the decedent, parents, grandparents and siblings with a spouse entity rule.</p>

§ 20.2053-4(c)	<p><b>De Minimis Exception:</b></p> <p>This is de minimis exception, which provides that claims against the estate that otherwise satisfy the deductibility requirements and are valued by a qualified appraisal are exempted from these rules to the extent the amount deducted <b>does not exceed \$500,000 in the aggregate.</b></p>
§ 20.2053-4(b)	<p><b>Offsetting Claims:</b></p> <p>This portion of the regulation allows an estate to offset claims included as assets of the estate against claims against the estate, both valued in the same manner and each arising from “the same or substantially - related matter.”</p>
Notice 2009-84, 2009-44 I.R.B. 592	<p><b>Protective Claim:</b></p> <p>This notice pertains to filing a protective claim and the ability of the IRS under <i>Lewis v. Reynolds</i>, 284 U.S. 281, 283 (1932) to deny a claim for refund to the extent that the IRS finds offsetting increases in tax that reduce or eliminate the overpayment. In this notice the IRS provides a “limited administrative exception” to the IRS right of offset under <i>Lewis v. Reynolds</i>. When a protective claim for refund is perfected under the regulations, the IRS will limit its examination to the claim itself (it will not exercise its right under <i>Lewis v. Reynolds</i> to examine other items on the estate tax return that might generate an offset).</p>
Treasury-IRS 2009-10 Priority Guidance Plan; Chief Counsel Advice 200848045	<p><b>Procedural Guidance - Filing a Protective Claim:</b></p> <p>The IRS has indicated that it will publish procedural guidance on filing protective claims for refund.</p>

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