LAW AND ANALYSIS

Section 2053(a)(2) and (a)(3) of the Code provide deductions for administration expenses and claims against the estate.

With regard to administration expenses, section 20.2053-3(a) of the Estate Tax Regulations provides that only expenses actually incurred in the administration of the estate are deductible. See also sections 20.2053-3(b) and (c) of the regulations which provide the general rule that executor's commissions and attorney's fees are deductible as administration expenses in such amount ". . . as has *actually been paid*, ..." (Emphasis added.) Thus, the amount of the deduction allowable for administration expenses is based on the amount actually paid by the estate rather than on a date of death valuation of anticipated expenses.

Accordingly, the foreign exchange rate in effect at the time of payment should be used in determining the United States dollar amount of the expense and, therefore, the amount deductible under section 2053(a)(2) of the Code. See Rev. Rul. 75-439, 1975-2 C.B. 359, which holds that in computing the section 2014 credit for foreign death tax the rate of exchange in effect at the time each payment of foreign death tax is made is used to convert the foreign death taxes paid into United States dollars.

If an administration expense has not yet been paid at the time the return is filed, then an estimated United States dollar amount may be deducted provided the expense is ascertainable with reasonable certainty and will be paid. See section 20.2053-1(b)(3) of the regulations.

Generally, a claim against the estate that otherwise satisfies the requirements of section 2053(a)(3) of the Code is valued, for deduction purposes, as of the date of death. However, under appropriate circumstances, postdeath events are taken into consideration in valuing a claim otherwise deductible under section 2053(a)(3). See *Commissioner v. Estate of Shively*, 276 F.2d 372 (2d Cir. 1960), and *Chesterton v. United States*, 551 F.2d 278 (Ct. Cl. cert. denied, 434 U.S. 835 (1977)), both holding that the decedent's former spouse's claim for periodic support payments until death or remarriage was to be valued for purposes of section 2053(a)(3) based on the actual amounts paid, since the former spouse remarried shortly after the decedent's death.

Therefore, if the claim would properly be valued as of the date of death (or alternate valuation date), then the foreign exchange rate on that date must be used in determining the United States dollar value of the claim and, thus, the amount deductible under section 2053(a)(3) of the Code. However, if postdate events must be considered in valuing the claim for section 2053(a)(3) deduction purposes, then the exchange rate in effect on the date of the payment (or dates of payment in situations involving a series of payments) is used in determining the value of the claim.

HOLDING

1. The foreign exchange rate in effect on the date the payment is made is used, for purposes of section 2053(a)(2) of the Code, in determining the United States dollar value of foreign administration expenses.

2. The foreign exchange rate in effect on the date of death (or alternate valuation date), is used for purposes of section 2053(a)(3) of the Code, in determining the United States dollar value of foreign claims against the estate, provided the claim is properly valued on that date for purposes of section 2053(a)(3). The foreign exchange rate on the date of payment is used in determining the United States dollar value of the claim, if postdeath events must be considered in valuing the claim.

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26 CFR 20.2053-3: Deductions for expenses of administering estate.

(Also Sections 6161, 6163, 6166, 6166A; 20.6161-1, 20.6163-1, 20.6166-1, 20.6166A-1.)

Administration expenses; interest on federal estate tax; when deductible. Interest expense charged on the extended payment of federal estate tax is deductible when the interest accrues. No deduction is allowable on the estate tax return for an estimate of interest expense to be incurred in the future.

Rev. Rul. 80-250

ISSUE

When does interest expense charged pursuant to the executor's election to extend payment of the estate tax liability become deductible under section 2053(a)(2) of the Code?

FACTS

The decedent, *D*, died in 1978. The executor of *D*'s estate elected to pay a portion of the estate tax liability in installments in accordance with the provisions of section 6166A of the Code. In preparing the federal estate tax return for *D*'s estate, the executor estimated the total amount of interest expense that would be incurred by the estate in the future with respect to the section 6166A election. The exector claimed a deduction for this estimated amount of future expense as an expense of administration under section 2053(a)(2) of the Code.

LAW AND ANALYSIS

Section 2053(a)(2) of the Code and section 20.2053-3(a) of the Estate Tax Regulations provide an estate tax deduction for administration expenses that are actually and necessarily incurred in the administration of the decedent's estate and are allowable by the laws of the jurisdiction under which the estate is being administered.

Sections 20.2053-1(b)(3) and 20.2053-3(a) of the regulations provide that if the amount of an expense otherwise deductible under section 2053 of the Code is not actually in-

curred (i.e. accrued) at the time of the final audit of the estate tax return, then no deduction will be allowed for the expense at that time, unless the expense is ascertainable with reasonable certainty. No deduction can be taken based on a vague or uncertain estimate.

Interest expense payable incident to the extension of the time for payment of tax under section 6166A is deductible as an expense of administration under section 2053(a)(2) of the Code, if the expense is allowable under the laws of the jurisdiction in which the estate is being administered. *Estate of Bahr v. Commissioner*, 68 T.C. 74 (1977), *acq.* 1978-1 C.B. 1. See also, Rev. Rul. 78-125, 1978-1 C.B. 292.

In situations where the executor elects to extend the time for the payment of the estate tax under section 6166A the executor has the option to accelerate payment, and in certain circumstances must accelerate payment. See section 6166A(h) of the Code. The possibility that payment may be accelerated renders any estimate of future interest charges vague and uncertain, within the meaning of section 20.2053-1(b)(3) of the regulations.

Accordingly, interest expense incurred under section 6166A is deductible when the interest accrues. When the interest becomes deductible and the estate claims the deduction under section 2053(a)(2), the estate tax is recomputed. The recomputation will result in a reduction of the estate tax and previously accrued interest. Installments due will be recomputed accordingly. However, no refund will be made until the entire tax liability has been paid. Interest accrues daily. However, for purposes of administrative convenience taxpayers should claim the deduction at the time of the annual dates prescribed for payment under section 6166A. If the entire tax balance and accrued interest is prepaid at one time, the accrued interest is deductible at that time.

HOLDING

Interest expense charged pursuant to the executor's election to extend payment of the estate tax liability is deductible when the interest accrues. Therefore, no deduction is allowable on *D*'s estate tax return for the estimate of interest expense to be incurred in the future.

The conclusion of this revenue ruling applies as well to interest on estate tax, the payment of which is extended under sections 6161, 6163 or 6166 of the Code.

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26 CFR 20.2053-4: Deduction for claims against the estate; in general.

Whether buyer's points assumed by the seller-decedent prior to death are deductible by the estate. See Rev. Rul. 80-319, page 252.

Section 2055.—Transfers for Public, Charitable, and Religious Uses

26 CFR 20.2055-1: Deduction for transfers for public, charitable, and religious uses; in general.

Whether interest is due on an estate tax deficiency where the estate claimed on its return a charitable deduction for which it did not qualify at the time the return was filed, but which was later allowed when the deduction qualified. See Rev. Rul. 80-291, page 373.

Section 2056.—Bequests, Etc., to Surviving Spouse

26 CFR 20.2056(a)-1: Marital deduction; in general.

Whether in computing in the "second limitation" of the credit for gift tax under section 2012 of the Code, the value of the gift made to a donee other than the spouse is reduced where the inclusion in the gross estate has the effect of increasing the marital deduction. See Rev. Rul. 80-185, page 250.

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26 CFR 20.2056(c)-1: Marital deduction; limitation on aggregate of deductions; in general.

Determination of marital deduction for purpose of computing tax on the reduced gross estate of a decedent dying after 1976. See Rev. Rul. 80-210, page 251.

Subchapter B.—Estates of Nonresidents Not Citizens

Section 2101.—Tax Imposed

26 CFR 20.2101-1: Estates of nonresidents not citizens; tax imposed.

Whether an alien who entered the U.S. illegally and continued to live in the U.S. until death was domiciled in the U.S. at the date of death. See Rev. Rul. 80-209, page 248.

Chapter 12.—Gift Tax
Subchapter A.—Determination of Tax Liability

Section 2503.—Taxable Gifts

26 CFR 25.2503-3(a): Future interests in property.

Present v. future interest; right to share in trust corpus; exclusion. A gift of a right to demand and receive at least a pro rata portion of trust corpus conveyed to several donees is a gift of a present interest to the extent of each donee's pro rata portion, and the annual exclusion under section 2503 of the Code is allowable.

Rev. Rul. 80-261

ISSUE

Is a donor entitled to the annual exclusion, under section 2503(b) of the Internal Revenue Code, for a gift of a portion of trust corpus to a donee if an interest in the corpus was also conveyed by the donor, at the time of the gift, to other persons, under the circumstances described below?

FACTS

In 1976, *G*, the settlor, established a trust and transferred $13,000 to the trustee. Under the provisions of the trust instrument, *A*, *B*, *C*, *D*, and *E* each had the right to receive a total sum of $4,000 of trust corpus by submitting a written demand to the trustee. However, if there was insufficient corpus to satisfy all of the demands, then the corpus was to be distributed on a pro rata basis among those donees demanding corpus. If any donee re-