

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105. Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 2053, 6402; 20.2053-1; 301.6402-2)

Rev. Proc. 2011-48

SECTION 1. PURPOSE

This revenue procedure provides guidance related to the filing and subsequent resolution of a protective claim for refund of estate tax that is based on a deduction for a claim or expense under section 2053 of the Internal Revenue Code (Code) and the corresponding regulations.

SECTION 2. BACKGROUND

Final regulations (TD 9468) under section 2053 of the Code were published in the **Federal Register** on October 20, 2009 (74 FR 53652) to provide guidance in determining the deductible amount of a claim against a decedent's estate under section 2053. The final regulations provide, with certain exceptions, that the amount

deductible for a section 2053 claim or expense is limited to the amount actually paid in settlement or satisfaction of that claim or expense (subject to any applicable limitations in § 20.2053-1). For amounts that are not paid or otherwise deductible at the time of filing the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), § 20.2053-1(d)(5)(i) of the Estate Tax Regulations permits the filing of a protective claim for refund.

Section 20.2053-1(d)(5)(i) provides in part that a protective claim for refund may be filed at any time before the expiration of the period of limitation prescribed in section 6511(a) to preserve the estate's right to claim a refund in the case of a claim or expense that might not be paid or might not otherwise meet the requirements of deductibility under section 2053 and the corresponding regulations until after the expiration of the period of limitation for filing a claim for refund. Such a claim for refund is referred to herein as a "section 2053 protective claim for refund." Section 20.2053-1(d)(5)(i) further provides that a protective claim must identify the 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. When the contingencies delaying actual payment are resolved, § 20.2053-1(d)(5)(i) requires the fiduciary acting on behalf of the estate to notify the Service within a reasonable period that the contingency has been resolved and that the amount deductible under § 20.2053-1 has been established. A deduction will be allowed to the extent the claim or expense that was the subject of the protective claim satisfies the requirements for deductibility under § 2053 and the corresponding regulations, subject to any applicable limitations in § 20.2053-1.

Commentators responding to proposed regulations issued under section 2053 of the Code (published in the **Federal Register** on April 23, 2007 (72 FR 20080))

requested detailed guidance on protective claim for refund procedures.

Section 20.2053-1(d)(5)(i) provides that a protective claim for refund 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)).

SECTION 3. SCOPE

This revenue procedure applies only to section 2053 protective claims for refund. Section 4 of this revenue procedure sets forth procedures for filing a section 2053 protective claim for refund, and Section 5 of this revenue procedure sets forth procedures for notifying the Service that a section 2053 protective claim for refund is ready for consideration. A taxpayer that files a protective claim for refund and provides notification for consideration to the Service in accordance with the procedures set forth in this revenue procedure will satisfy the generally applicable procedural requirements for claiming a refund as well as the procedural requirements specific to section 2053 for claiming a refund. A taxpayer that chooses not to follow or fails to comply with the procedures set forth in this revenue procedure for a section 2053 protective claim for refund is subject to all of the generally applicable provisions governing claims for refund as well as to the specific section 2053 provisions relating to claims for refund, and will not have the benefit of the limited review described in Notice 2009-84 (2009-44 I.R.B. 592) and section 5.01 of this revenue procedure. See §§ 6402, 6511, and 6514; § 20.2053-1(d)(5).

SECTION 4. PROCEDURE – FILING A SECTION 2053 PROTECTIVE CLAIM FOR

REFUND

- .01 Time period for filing a protective claim for refund. A section 2053 protective claim for refund must be filed before the expiration of the period of limitation prescribed in section 6511(a) for the filing of a claim for refund. Section 6511(a) provides, in relevant part, that a claim for refund shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Only if a protective claim for refund was timely filed may the Internal Revenue Service (Service) refund overpaid estate taxes in those situations where the amount deductible under § 20.2053-1 is not established until after the expiration of the period of limitation. See §§ 6511(b) and 6514(a).
- .02 Generally applicable regulatory requirements for a claim for refund. Under § 301.6402-2 of the Procedure and Administration Regulations, a claim for refund must set forth, in a written declaration that is executed under penalties of perjury, each ground upon which a refund is claimed and facts sufficient to apprise the Commissioner of the exact basis of the claim. The method under this revenue procedure for satisfying these requirements with respect to a section 2053 protective claim for refund requires that the protective claim for refund identify and describe in detail the claim or expense for which a deduction may be claimed under section 2053 of the Code and otherwise comply with the procedures in this section.
- .03 Who can file a protective claim for refund. A protective claim for refund must be

accompanied by documentary evidence, including certified copies of the letters testamentary, letters of administration, or other similar evidence, to establish the legal authority of a fiduciary or other person to file and pursue a protective claim for refund on behalf of the estate of a decedent. See § 301.6402-2(e) of the Procedure and Administration Regulations. In the estate tax context, proof of legal authority typically is established at the time of filing the Federal Estate (and Generation-Skipping Transfer) Tax Return (Form 706). Accordingly, if the fiduciary or other person filing the protective claim for refund on behalf of a decedent's estate is the same fiduciary or other person who filed the decedent's Form 706, the protective claim for refund need only include a statement affirming that the fiduciary or other person filing the protective claim for refund also filed the Form 706 and that such fiduciary or other person is still acting in a representative capacity on behalf of the estate. If the fiduciary or other person filing the protective claim for refund on behalf of a decedent's estate is not the same fiduciary or other person who filed the decedent's Form 706, the protective claim for refund must be accompanied by the necessary documentary evidence establishing proof of legal authority. See section 5.04 of this revenue procedure for guidance on the authority of a transferee or other person to represent the estate in pursuing a section 2053 claim for refund.

.04 Manner of filing a section 2053 protective claim for refund.

- (1) Methods of filing. To be properly filed under this revenue procedure, section 2053 protective claims for refund that are filed for decedents dying on or after January 1, 2012, must be filed using any method described in

paragraph (a) or (b). For those section 2053 protective claims for refund filed for decedents dying after October 19, 2009, and before January 1, 2012, the section 2053 protective claims for refund must be filed using the method described in paragraph (b). If a taxpayer has made a filing prior to the issuance of this revenue procedure in an effort to make a protective claim for refund under section 2053, and if the taxpayer has any concern as to whether the prior filing meets the requirements of this revenue procedure, or if the taxpayer wants the benefit of section 4.06 of this revenue procedure, the taxpayer may replace the initial filing with a timely filing in accordance with this section 4.04.

- (a) Schedule PC with Form 706. A section 2053 protective claim for refund may be filed by attaching one or more completed Schedules PC to the estate's Form 706 at the time of filing that return. Schedule PC is expected to be first available as part of the 2012 Form 706. The Form 706 should indicate that one or more Schedules PC are being filed with the return in order to facilitate the proper processing of Schedule(s) PC, in accordance with the instructions for that schedule.
- (b) Form 843. A section 2053 protective claim for refund may be filed by filing a Form 843 where the Form 706 for the decedent's estate was previously filed (currently, at the Cincinnati campus), with the notation "Protective Claim for Refund under Section 2053" entered across the top of page 1 of the form. For filing a section 2053 protective claim for refund, the address for the "Cincinnati campus" is: Department of

Treasury, Internal Revenue Service Center, 300 Madison Avenue,
Stop 823G, Covington, KY 41011, or as otherwise specified in the
instructions to the form.

- (2) Separate protective claim for refund for each section 2053 claim or expense. To be properly filed under this revenue procedure, a separate section 2053 protective claim for refund must be filed as described in section 4.04(1) of this revenue procedure for each claim or expense for which a deduction may be claimed in the future under section 2053 (section 2053 claim or expense). Specifically, a Form 706 may include more than one Schedule PC. In addition, a section 2053 protective claim for refund must not include any claim for refund not based on a deduction under section 2053. Each section 2053 protective claim for refund should indicate whether other protective claims for refund are being filed or were previously filed and the approximate date on which each was filed.

.05 Identification of the claim or expense.

- (1) General rule. In order for a section 2053 protective claim for refund to be properly filed under this revenue procedure, the outstanding claim or expense that forms the basis of a potential deduction under section 2053 must be clearly identified so that the Service has notice of each claim or expense for which a deduction under section 2053 will be claimed. In addition, as provided in § 20.2053-1(d)(5), proper identification of the claim or expense must include an explanation of the reasons and contingencies delaying the actual payment to be made in satisfaction of the claim or

expense. Finally, except as provided in section 4.05(2) of this revenue procedure, claims or expenses related to but separate from a particular section 2053 claim or expense must be separately identified. The use of vague or broad language that does not describe a specific claim or expense that would be deductible under section 2053 does not provide clear identification of a section 2053 claim or expense for purposes of this revenue procedure.

- (2) Related ancillary expenses. A section 2053 claim or expense that has been adequately identified in a protective claim for refund (in accordance with this section) will be deemed to include, without the need for any further identification, certain related and ancillary expenses relating to resolving, defending, or satisfying the identified claim or expense as well as certain expenses relating to pursuing the claim for refund for the identified claim or expense. For instance, attorneys' fees, court costs, appraisal fees, and accounting fees, may be considered as part of the claim for refund to which it relates, without the need for separate identification of those related administration or litigation expenses. Note, however, that although no separate identification for certain related and ancillary expenses is required under the procedures in this revenue procedure, this procedure shall not be construed to concede that the expenses are deductible under section 2053 in all events. A claim or expense that is the subject of a section 2053 claim for refund must meet the substantive requirements of section 2053 and the corresponding regulations in order to be deductible and the amount of the

deduction is subject to any applicable limitations.

- (3) Claims against the estate involving contested matters. To satisfy the requirements of this section, each section 2053 protective claim for refund involving a contested claim against the estate must notify the Service of the contested matter and the potential liability of the estate. Identification of all of the following facts, as applicable, generally will be sufficient to appropriately identify a claim against the estate involving a contested matter: the name or names of the claimant(s), the basis of the claim or other description of the subject matter of the contested matter, the extent or amount of the liability claimed, and a brief statement reporting the status of the contested matter at the time the protective claim for refund is filed with the Service. For a contested matter that is being litigated, attaching a copy of the relevant pleadings and making reference thereto on the section 2053 protective claim for refund generally will be sufficient to identify appropriately the claim.
- (4) Claims or expenses for which deductions under § 20.2053-1(d)(4) or § 20.2053-4(b) or (c) are claimed on Form 706. Subject to applicable limitations, an estate may preserve the estate's right to claim a refund based on the amount of any section 2053 claim or expense that is in addition to the amount claimed as a deduction for that claim or expense under § 20.2053-1(d)(4) or § 20.2053-4(b) or (c) on Form 706, if the additional amount might not be paid or might not meet the requirements of § 20.2053-1(d)(4) until after the expiration of the period of limitation

prescribed in section 6511(a) for the filing of a claim for refund. To be properly filed under this revenue procedure, a protective claim for refund that is based upon the potential deductibility of such an additional amount must satisfy all of the procedural, identification, and other requirements of this revenue procedure, as applicable. In addition, however, the estate must disclose the amount of the deduction already claimed on Form 706 for the subject claim or expense and must reference the regulatory provision under which the deduction was claimed in order to identify properly the section 2053 claim or expense on a protective claim for refund.

.06 Period after filing the section 2053 protective claim for refund.

- (1) Initial processing of section 2053 claim for refund by the Service. Although the Service generally will not engage in a substantive review of a section 2053 protective claim for refund until the amount of the section 2053 claim or expense has been established, when a section 2053 protective claim for refund is received by the Service, the Service may reject the claim if it appears that one or more preliminary procedural requirements for a valid claim for refund have not been satisfied. For example, the Service may reject a claim that (a) is not timely filed by a fiduciary or other person having legal authority to file a claim for refund on behalf of the estate, (b) does not include a properly executed penalty of perjury statement, or (c) does not adequately describe a claim or expense that, if substantiated at a later time, would support a deduction under section 2053. For those section 2053 protective claims for refund that are not initially rejected by the Service, the

Service will acknowledge in written correspondence that the claim has been received. Note, however, that the Service's written acknowledgement that the claim has been received does not constitute a determination that the preliminary procedural requirements for a valid protective claim for refund have been satisfied. Accordingly, upon consideration of the claim once the amount of the section 2053 claim or expense has been established, the Service nevertheless may determine that one or more procedural requirements are not satisfied and the claim for refund then may be denied.

- (2) Contacting the Service when no communication received. Although a timely-filed section 2053 protective claim for refund will be timely filed even if the Service does not acknowledge its receipt and/or process the protective claim, the fiduciary or other person filing the form on behalf of the estate promptly should contact the Service at (866) 699-4083 (or other appropriate number) to inquire into the Service's receipt and processing of that protective claim for refund if the estate does not receive from the Service the written acknowledgement of receipt described in section 4.06(1) of this revenue procedure within 180 days of filing a section 2053 protective claim for refund on a Schedule PC attached to the Form 706, or within 60 days of filing a section 2053 protective claim for refund on a Form 843. A certified mail receipt or other evidence of delivery to the Service is not sufficient to ensure and confirm the Service's receipt and processing of the protective claim for purposes of this revenue procedure. See section 4.06(3) of this revenue procedure regarding the possible consequences of not contacting

the Service within 30 days after the expiration of these periods.

- (3) Opportunity to cure an inadequately identified section 2053 protective claim for refund. A section 2053 protective claim for refund must satisfy the timely-filing requirement set forth in section 4.01 of this revenue procedure. The failure of a section 2053 protective claim for refund to satisfy certain other preliminary procedural requirements for a valid claim for refund, including the penalty of perjury statement requirement set forth in section 4.02 of this revenue procedure, may be cured before the expiration of the period of limitation prescribed in section 6511(a). However, the failure of a section 2053 protective claim for refund to satisfy the identification requirement set forth in section 4.05 of this revenue procedure may be cured, as further described below, after the expiration of the period of limitation prescribed in section 6511(a), as long as the section 2053 protective claim for refund as originally filed was timely and properly executed under the penalty of perjury. To cure the section 2053 protective claim for refund, the fiduciary or other person must adequately identify the section 2053 claim or expense in accordance with section 4.05 of this revenue procedure by submitting a corrected (and signed) protective claim for refund before the expiration of the period of limitation prescribed in section 6511(a) or within 45 days after the date of the Service's notice, if any, to the fiduciary or other person of the defect, whichever occurs later. If the Service fails to provide the written acknowledgement of receipt described in section 4.06(1) of this revenue procedure and the fiduciary or

other person who filed the section 2053 protective claim for refund fails to contact the Service within 30 days after the applicable time period described in section 4.06(2) of this revenue procedure to confirm the Service's receipt and processing of that section 2053 protective claim for refund, the fiduciary or other person will not have the opportunity to cure the inadequate identification of the section 2053 protective claim for refund after the expiration of the period of limitation prescribed in section 6511(a).

- (4) Effect of section 2053 protective claim for refund on examination of Form 706. When a fiduciary or other person having authority to file a Form 706 on behalf of an estate also files a section 2053 protective claim for refund on behalf of the estate, generally the Service will not suspend the substantive review and examination of the Form 706 and will not delay issuing a closing letter on the basis that a protective claim for refund has been filed in that estate. Instead, the Form 706 will be processed and examined by the Service in accordance with the regular processing and examination procedures followed for estate tax returns.

SECTION 5. PROCEDURE – NOTIFICATION FOR CONSIDERATION OF A SECTION 2053 PROTECTIVE CLAIM FOR REFUND

- .01 In general. The Service will refund overpaid estate tax if the Service determines there is an overpayment of tax in connection with a timely-filed section 2053 protective claim for refund, even though the claim or expense that is the subject of the claim for refund does not become deductible under section 2053 until after the expiration of the period of limitation prescribed in section 6511(a) for the filing

of a claim for credit or refund. In accordance with Notice 2009-84 (2009-44 I.R.B. 592), in determining whether there is an overpayment of tax based on a timely-filed section 2053 protective claim for refund that becomes ready for consideration after the expiration of the period of limitation on assessment prescribed in section 6501, generally the Service will limit its review of the Form 706 to the deduction under section 2053 that was the subject of the protective claim. When the section 2053 claim or expense that was the subject of the timely-filed section 2053 protective claim for refund meets the requirements for deductibility under § 20.2053-1, a taxpayer must provide a notification to the Service that the claim for refund is ready for consideration as described in section 5.03 of this revenue procedure, and such notification must be executed under penalty of perjury, within the time period described in section 5.02 of this revenue procedure, by the fiduciary or other person having legal authority to file and pursue the claim for refund. The notification generally should describe the relevant facts that support, and provide evidence to substantiate, a deduction under section 2053 and should claim a refund of the overpayment of tax based on the deduction under section 2053 and the resulting recomputation of the estate tax liability.

.02 Time period for providing notification for consideration of a section 2053 protective claim for refund.

- (1) General rule. Under § 20.2053-1(d)(5)(i), a fiduciary or other person having legal authority to pursue the claim for refund must notify the Service within a reasonable period that the reason or contingency delaying the actual

payment of the section 2053 claim or expense has been resolved and/or that the amount deductible under § 20.2053-1 has been established. For purposes of this revenue procedure, this requirement is satisfied when the fiduciary or other person having legal authority to pursue the claim for refund on behalf of the estate notifies the Service within 90 days after the date the claim or expense is paid or 90 days after the date on which the amount of the claim or expense becomes certain and is no longer subject to any contingency, whichever occurs later. When the notification to the Service by the fiduciary or other person occurs after the expiration of that 90-day period, the fiduciary or other person should provide an explanation sufficient to establish that there is reasonable cause for the delay. The methods by which a fiduciary or other person having legal authority to file and pursue the claim for refund must notify the Service under this revenue procedure are described in section 5.03 of this revenue procedure.

- (2) Multiple or recurring payments. For a section 2053 claim or expense involving multiple payments or a series of recurring payments, the payment of which is necessary to claim a deduction based on that claim or expense (such as a contingent obligation described in § 20.2053-4(d)(6)(ii) of the Estate Tax Regulations), the 90-day period described in section 5.02(1) of this revenue procedure will begin with regard to the entire amount of the claim or expense on the date of the last and final payment. Thus, the fiduciary or other person having legal authority to file and pursue the claim for refund may notify the Service within 90 days after the date the liability for

the claim or expense is fully satisfied, regardless of the amount of time over which the earlier, partial payments were made. Notwithstanding the preceding sentence, however, the fiduciary or other person having legal authority to file and pursue the claim for refund may notify the Service in accordance with section 5.02(1) of this revenue procedure, but not more often than annually (except in the case of a final payment) of all payments made since the last notification for consideration, if any, in partial satisfaction of a liability for a section 2053 claim or expense, and may thereby claim a partial refund attributable to such payment(s).

.03 Manner of notifying the Service for consideration of a section 2053 claim for refund.

- (1) Methods of filing. To meet the notification requirements under this revenue procedure, whether with regard to the entire claim or expense or to partial payments as made, a notification for consideration of a section 2053 protective claim for refund that is to be filed for a decedent dying on or after January 1, 2012, must be filed using any method described in paragraph (a) or (b). For a notification for consideration of a section 2053 protective claim for refund that is to be filed for a decedent dying after October 19, 2009, and before January 1, 2012, a notification for consideration of a section 2053 protective claim for refund must be filed using the method described in paragraph (b). A notification for consideration of a section 2053 protective claim for refund additionally must meet the applicable requirements in section 5.01 and 5.02 of this revenue procedure.

- (a) Supplemental Form 706. A notification for consideration of a section 2053 protective claim for refund may be filed by filing, at the same location where the section 2053 protective claim for refund was previously filed, an updated (and signed) Form 706, including each schedule affected by the allowance of the deduction(s) whose amount has been established and including an updated Schedule PC for each section 2053 claim or expense that has become deductible. The notation “Supplemental Information – Notification for Consideration of Section 2053 Protective Claim(s) for Refund filed on [DATE OF PROTECTIVE CLAIM]” must be entered across the top of page 1 of Form 706. In addition, a copy of the originally-filed section 2053 protective claim(s) for refund (filed as described in section 4.04(1) of this revenue procedure) that identifies the section 2053 claims or expenses that now have become deductible must be attached to the Form 706.
- (b) Form 843. A notification for consideration of a section 2053 protective claim for refund may be filed by filing, at the same location where the section 2053 protective claim for refund was previously filed, one or more updated (and signed) Forms 843 with the notation “Notification for Consideration of Section 2053 Protective Claim for Refund filed on [DATE OF PROTECTIVE CLAIM]” entered across the top of page 1 of the form(s). A copy of the originally-filed section 2053 protective claim(s) for refund (filed as described in section 4.04(1) of this revenue

procedure) that identifies the section 2053 claims or expenses that now have become deductible must be attached to the Form(s) 843.

- (2) Separate notifications for consideration for each section 2053 claim or expense. To be properly filed under this revenue procedure, a separate notification for consideration of a section 2053 protective claim for refund must be filed as described in section 5.03(1) of this revenue procedure for each section 2053 claim or expense for which a section 2053 protective claim for refund was filed. Specifically, an updated Form 706 may include more than one updated Schedule PC. In addition, a notification for consideration of a section 2053 protective claim for refund must not include any claim not based on a deduction under section 2053. Each notification for consideration of a section 2053 protective claim for refund should indicate whether other notifications for consideration are being filed contemporaneously or were previously filed and the approximate date of each such filing.

- .04 Authority of a transferee or other person to represent the estate in pursuit of a claim for refund. If a fiduciary is no longer acting on behalf of the estate at the time that the amount deductible under § 20.2053-1 is established and the section 2053 protective claim for refund is ready for consideration, one or more persons that are transferees of the probate or nonprobate estate may establish under applicable local law that person's legal authority to pursue the claim for refund on behalf of the estate. For purposes of this provision, any transferee or other person having established legal authority to pursue the claim for refund

shall be deemed to have the authority to pursue the claim for refund on behalf of all such transferees or other persons. The transferee or other person must attach to the notification for consideration of a section 2053 protective claim for refund (filed as described in section 5.03 of this revenue procedure) documentary evidence that substantiates that person's assertion of authority to pursue the claim. Depending on applicable local law, the evidence requirement may be satisfied by providing one or more of the following: a certified copy of the final accounting of the estate showing the source of the initial tax payment; relevant testamentary instruments of the decedent such as a will or trust instrument; an affidavit executed under penalties of perjury by the executor or other appropriate party conferring the authority or the right to pursue the refund to one or more transferees or other persons; and such other evidence as may be requested by the Service. The Service will pay the refund of tax to the person or individual who paid the tax, as required by section 6402(a) and subject to regulations under that section.

- .05 Consequences of a section 2053 claim for refund on the marital and charitable deduction. Because of the application of section 20.2053-1(d)(5)(ii), neither the charitable deduction nor the marital deduction is reduced by the amount of any claim or expense that may be the subject of a section 2053 protective claim for refund until the claim or expense has met the requirements for a deduction under section 2053. The computation of the amount to be refunded under section 2053, as required on Form 843 or a supplemental Form 706, should identify any necessary adjustment to the marital and charitable deductions

claimed by the estate, as well as any other arithmetic adjustments that result from the allowance of the deduction.

SECTION 6. EFFECTIVE DATE

This revenue procedure is applicable with respect to protective claims for refund filed on behalf of estates of decedents dying on or after October 20, 2009, the date final regulations (TD 9468) under section 2053 were published in the **Federal Register** (74 FR 53652), but only to the extent that the relevant sections of the Code are applicable to the decedent's estate.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Karlene M. Lesho of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Karlene M. Lesho at (202) 622-3090 (not a toll free call).