

Part 3. Gift, Estate & Generation-Skipping Transfer Taxes

Vol. 3C Estate & Gift Deductions

CHAPTER 3C:1 Estate Tax Deductions for Funeral Expenses, Administration Expenses, Claims and Losses **

LexisNexis Tax Advisor -- Federal Topical § 3C:1.03

§ 3C:1.03 General Requirements for Deduction of Expenses and Claims

Deductible claims and expenses are divided into two categories: (1) "first category" refers to funeral expenses, administration expenses, claims against estate, and unpaid mortgages payable from "property subject to claims;" and (2) "second category" refers to administration expenses incurred with respect to "property not subject to claims." If amount does not meet requirements of either first or second category claims and expenses, claim or expense is not deductible even if allowable by local law.

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[1] Categories of Claims and Expenses and Related Time Limitations

Treasury Regulations divide expenses and claims into two different categories – the "first category" and the "second category."¹ The "first category" refers to funeral expenses, administration expenses, claims against the estate and unpaid mortgages payable from "property subject to claims." The "second category" refers to administration expenses incurred with respect to "property not subject to claims.

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[3] Requirements Applicable to Both Categories of Claims and Expenses

Treasury Regulations set forth requirements applicable to both first category and second category claims.²⁶To be deductible, under Treasury Regulations applicable to estates of decedents dying on or after October 20, 2009, the claim or expense must meet several

requirements... [applicable] to all claims and expenses. The claims and expenses must be bona fide. And, they must in fact be paid [subject to certain exceptions]...

[4] Bona Fide Claims and Expenses

Treasury regulations, applicable to the estates of decedents who die on or after October 20, 2009, only allow deduction for "bona fide" claims and expenses. The post-October 19, 2009 regulations reject deductions "essentially donative in character" unless the claim would satisfy the charitable deduction requirements of [I.R.C. Section 2055](#). To define the term "essentially donative in character" regulations analogize to those deductions that are "a mere cloak for a gift or bequest." Where a family member of decedent, a related entity to decedent or a beneficiary of the decedent's estate or revocable trust files an expense or claim against decedent's estate, the Service will take into account... factors to determine the bona fide character of the claim or expense...

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[5] Amount Allowable

Not only must the amount be bona fide and allowable, but treasury regulations applicable to estates of decedents who died on or after October 20, 2009 also limit the amount of the claim or expense deducted to the total amount actually paid... to ensure that post-death events are taken into account in determining the amount of the deduction. Post-death... events... impact the amount of the deduction up until the expiration of the estate tax statute of limitation, and even after that time in the event of a claim for refund. The regulations allow for a protective refund to be made if it is anticipated that the claim or expense will not be paid prior to the expiration of the limitations period.

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A claim or expense that is or could be reimbursed by insurance or another method may not be deducted by the estate. A claim that could only be partially reimbursed, may be deducted only to the extent not reimbursed.

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An exception to the requirement of actual payment exists for certain ascertainable expenses or claims. An executor may deduct an otherwise deductible claim or expense even if not paid at time of filing the return if "the amount to be paid is ascertainable with reasonable certainty and will be paid."

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The taxpayer must provide sufficient supporting evidence that the claim or expense met the requirements of the first or second category of expenses... the executor should retain detailed bills and records of payment sufficient to support allowance of deductions in the event of an audit.