The I.R.C. § 2053(a)(3) Controversy: Should Events After Death Affect the Value of Estate Tax Deductions for Claims Against the Estate?

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Cover Page Footnote
J.D. Candidate, 2003, Fordham University School of Law. I would like to thank Professor Donald Sharpe for his invaluable assistance with this Note. I would also like to thank my mother Vaso, my father Chris, and my brother George for their constant love and support.
THE I.R.C. § 2053(a)(3) CONTROVERSY: SHOULD EVENTS AFTER DEATH AFFECT THE VALUE OF ESTATE TAX DEDUCTIONS FOR CLAIMS AGAINST THE ESTATE?

Anna Meresidis*

INTRODUCTION

Jill Smith dies leaving an estate worth $2,000,000. Prior to her death, Ms. Smith owed $400,000 to a third party. She died without having paid any portion of the debt. Under local law, therefore, Ms. Smith’s estate owes $400,000 to the third party. For federal estate tax purposes, Ms. Smith’s estate deducts the $400,000 as a claim against the estate under 26 U.S.C. § 2053(a)(3).1 A few months after Ms. Smith’s death, her estate settles the debt to the third party for $200,000, i.e., half of the amount she owed on the date of her death (and thus only half of what was claimed as a deduction for estate tax purposes).

Under current case law in some United States jurisdictions, events that occurred after Ms. Smith’s death, i.e., the settlement of the debt for less than what was owed at the time of her death, are irrelevant and the decedent’s taxable estate would be reduced by the $400,000 she owed at the time of her death, even though there was an additional $200,000 transfer to her beneficiaries.2 These jurisdictions follow the date-of-death valuation rule, where the deduction for claims against the estate are based only on the value of those claims at the date of the decedent’s death.3 In other jurisdictions, events occurring subsequent to the decedent’s death (the settlement) are relevant and may be used to calculate the estate tax. In these jurisdictions, the deduction for the claim against the estate existing at

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1. All statutes referred to in this Note are statutes from the 2001 Internal Revenue Code, 26 U.S.C.
2. See infra Part I.C for a discussion of possible tax consequences of this act to the decedent’s beneficiaries.
3. See infra note 23.
the date of death would be limited to the $200,000 actually paid by the estate.4

Recent cases have reinvigorated the issue of when to value claims against the estate. Two circuits have decided this issue as a case of first impression in the last year,5 deciding that claims against the estate should be valued at the date of the decedent's death.6 Although earlier cases stated that post-death events should be considered in valuing claims against the estate,7 these more recent cases challenge the wisdom of the earlier rulings.8

This Note discusses the controversy between valuing deductions for estate tax purposes as of the date of the decedent's death and valuing deductions based on events that occur after the decedent has died.9 The Note describes the different types of claims a creditor can have against the estate,10 events that may change the value of the claim,11 and the debate on whether the change in the value of the claim after the decedent's death should likewise change the amount of the deduction.12 This Note argues that claims against the estate should be valued for federal estate tax purposes at the date of the decedent's death based on facts known up to, but not after, that date.13

Part I provides an overview of § 2053(a)(3) and other relevant provisions. Part I.A gives a brief history and background of deductions for claims against the estate.14 Part I.B describes the five different types of claims against a decedent's estate that a creditor may have and the question of how to value those claims.15 Part I.C discusses possible tax consequences of a claim being settled or compromised for less than the amount claimed as a deduction.16 Part

4. See infra note 23.
5. Estate of McMorris v. Comm'r, 243 F.3d 1254, 1258 (10th Cir. 2001); Estate of O'Neal v. United States, 258 F.3d 1265, 1266 (11th Cir. 2001); see also infra notes 136-41, 193-96 and accompanying text.
6. Estate of McMorris, 243 F.3d at 1261; Estate of O'Neal, 258 F.3d at 1266.
8. Estate of McMorris, 243 F.3d at 1261; Estate of O'Neal, 258 F.3d at 1272; Estate of Smith v. Comm'r, 198 F.3d 515, 523-24 (5th Cir. 1999); Propstra v. United States, 680 F.2d 1248, 1254 (9th Cir. 1982).
9. See infra Part II.
10. See infra Part I.B.
12. See infra Part II.
13. See infra Part III.
14. See infra notes 36-50 and accompanying text.
15. See infra notes 51-78 and accompanying text.
16. See infra notes 79-89 and accompanying text.
I.D discusses how the assets of an estate, irrespective of claims against
it, are valued.17

Part II describes the debate between those courts that adhere to the
date-of-death valuation rule and those that hold post-death events
should be taken into consideration in valuing a claim against the
estate. Part II is divided into sections discussing the debate for each
of the different types of claims described in Part I.B.

Part III proposes that date-of-death valuation should always be
used, and explains why that is the most convenient rule for the estate
and the rule most consistent with the method the United States Treasury Regulations use to treat estates.


When a person dies leaving property,18 the transfer of that property
is subject to a federal estate tax.19 The tax imposed on the taxable

17. See infra notes 90-108 and accompanying text.
18. For purposes of this Note, property includes any item that would be included
in the gross estate of the decedent. See I.R.C. § 2031(a) (2001). According to
Treasury Regulation § 20.2033-1(a), “[t]he gross estate of a decedent [includes]... the
value of all property, whether real or personal, tangible or intangible, and
wherever situated, beneficially owned by the decedent at the time of his death.”
19. Section 2001(a) of the Internal Revenue Code provides that “[a] tax is hereby
imposed on the transfer of the taxable estate of every decedent who is a citizen or
resident of the United States.” I.R.C. § 2001(a) (2001). Certain estates are exempt
from paying estate taxes, depending on their value. Current regulations increase the
amount of the estate that is exempt from estate tax for each year as per the chart
below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Estate Tax Exemption</th>
<th>Top Tax Rate</th>
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<tbody>
<tr>
<td>2001</td>
<td>$675,000</td>
<td>55%</td>
</tr>
<tr>
<td>2002</td>
<td>$1,000,000</td>
<td>50%</td>
</tr>
<tr>
<td>2003</td>
<td>$1,000,000</td>
<td>49%</td>
</tr>
<tr>
<td>2004</td>
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<td>2005</td>
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<tr>
<td>2006</td>
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<td>46%</td>
</tr>
<tr>
<td>2007</td>
<td>$2,000,000</td>
<td>45%</td>
</tr>
<tr>
<td>2008</td>
<td>$2,000,000</td>
<td>45%</td>
</tr>
<tr>
<td>2009</td>
<td>$3,500,000</td>
<td>45%</td>
</tr>
<tr>
<td>2010</td>
<td>Repealed [no estate tax]</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>$1,000,000</td>
<td>55%</td>
</tr>
</tbody>
</table>

Carlyn S. McCaffrey, *Death Tax Relief—The Road Not Taken*, Personal Planning
Bulletin (Weil, Gotshal & Manges LLP, New York, NY), June 2001, at 1. For
example, if a decedent dies in 2006 leaving an estate worth $1,800,000, the estate
will not have to pay any estate taxes. If, however, the estate is worth $2,500,000 at
the time of the decedent’s death in 2006, the estate will have to pay up to a forty-six
percent estate tax. There is

a one-year repeal, in the year 2010, of the estate tax .... And then, in 2011,
the ... provisions of the new law, including the repeal, will disappear. The
estate ... taxes are to be restored, and all of the rate reductions and
exemption increases that take place between 2002 and 2010 will be gone,
leaving us with the same system we have today.

Id. Thus, if a decedent dies in 2010 leaving an estate worth $2,500,000, the estate will
estate, i.e., the gross estate of the decedent, is reduced by certain enumerated deductions. There are a number of deductions that an estate may take. This Note discusses deductions for claims against the estate as per § 2053(a)(3). District courts, tax courts, and circuit courts disagree on whether claims should be valued at the date of the decedent's death or at some point thereafter, and the Supreme Court has not directly ruled on when to value a claim against the estate.

While the regulations provide that claims are deductible only to the extent that they represent "personal obligations of the decedent existing at the time of his death," the value of the deductible claims against the estate may change after the person dies, but § 2053(a)(3) does not offer guidance of whether the value for claims against the estate should be determined at the date of death or at some later time. Changes in the amount owed by the estate can be the result of any of the following: (1) "[r]elinquishment or extinguishment of the claim," (2) "[p]ayment by one other than the estate," (3) reduction not have to pay any estate tax. If, however, the decedent dies in 2011 leaving an estate of $2,500,000, the estate will have to pay up to a fifty-five percent estate tax.

I.R.C. § 2051.


22. I.R.C. § 2053(a) provides that:

For purposes of the tax imposed by section 2001, 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,
(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.

I.R.C. § 2053(a); see also I.R.C. § 2001; supra note 19.

23. See infra Part II. The Fifth, Ninth, Tenth, and Eleventh Circuits have held that claims against the estate are to be valued at the date of death. See, e.g., Estate of McMorris v. Comm'r, 243 F.3d 1254 (10th Cir. 2001); Estate of O'Neal v. United States, 258 F.3d 1265 (11th Cir. 2001); Estate of Smith v. Comm'r, 198 F.3d 515 (5th Cir. 1999); Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982). The Second and Eighth Circuits have held that events after the decedent's death are relevant in calculating the estate tax deductions. See, e.g., Estate of Sachs v. Comm'r, 856 F.2d 1158 (8th Cir. 1988); Comm'r v. Estate of Shively, 276 F.2d 372 (2d Cir. 1960); Jacobs v. Comm'r, 34 F.2d 233 (8th Cir. 1929).

24. See infra notes 109-17 and accompanying text.

25. Treas. Reg. § 20.2053-4 (1958); see also infra text accompanying note 42.

26. Courts have recognized that the statute is silent in determining the date for valuing claims against an estate. See, e.g., Estate of McMorris, 243 F.3d at 1259; Estate of Smith, 198 F.3d at 521; Propstra, 680 F.2d at 1254.

27. Comment, Estate Tax-Deductions-Post-Death Events Relevant to Deductibility of Claims Against the Estate Pursuant to Section 2053(a) of the Internal Revenue Code.—Estate of Hagmann, 60 T.C. No. 51 (1973), aff'd, 492 F.2d 796 (5th Cir. 1974), 2 Fla. St. U. L. Rev. 625, 633 n.26(A) (1974) [hereinafter Hagmann Comment]; see David J. Lewis, Comment, Effect of Events Subsequent to the Decedent's Death on the
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in the amount owed (for example, a settlement of a claim), 29 (4) "failure to file the claim with the probate court," 30 or (5) changes in legislative acts. 31

This part provides a brief overview and understanding of claims against the estate. Section A of this section discusses the history and background of § 2053(a)(3), which explains what is required to take a deduction for a valid claim against the estate. 32 Section B then discusses the different types of claims a creditor can have against the estate, and provides a brief discussion of the controversy on when to value each of those types of claims. 33 Section C indicates the possibility that the estate or its beneficiaries may be subject to gift tax or personal income tax as a result of the estate compromising a claim after the decedent's death. 34 Section D discusses the date-of-death valuation rule that is applicable for assets of the estate. 35

A. History and Background of Estate Tax Deductions for Claims Against the Estate

26 U.S.C. § 2053(a)(3) originated in Section 203 of the Revenue Act of 1916, which provided that deductions be taken for claims against the estate for purposes of determining the value of the taxable estate. 36 Section 202 of the same Act stated that "the value of the gross estate of the decedent shall be determined by including the value at the time of his death ... of all property." 37 "These same principles also apply to the present ... [§] 2053(a)(3)." 38

A predecessor to § 2053 was § 812, which provided that "[f]or the purpose of the tax the value of the net estate shall be determined... by deducting from the value of the gross estate... claims against the

28. Hagmann Comment, supra note 27, at 633 n.26(B); see Lewis, supra note 27, at 776 & n.54.
29. Hagmann Comment, supra note 27, at 633 n.26(C); see Lewis, supra note 27, at 776, & nn.51, 55.
30. Hagmann Comment, supra note 27, at 633 n.26(D); see Lewis, supra note 27, at 776 & n.56.
31. Lewis, supra note 27, at 776 & n.53.
32. See infra notes 36-50 and accompanying text.
33. See infra notes 51-78 and accompanying text.
34. See infra notes 79-89 and accompanying text.
35. See infra notes 90-108 and accompanying text.
37. Id. (quoting I.R.C. § 202 (1916)).
Section 812 provided that claims may be deducted “as are allowed by the laws of the jurisdiction ... under which the estate is being administered.”\(^{39}\) In 1954, Congress changed the statute to the current § 2053.\(^{40}\)

Section 2053 requires that claims are deductible only if they “represent personal obligations of the decedent existing at the time of his death” and any interest that has accrued up to the time of death.\(^{42}\) The claim must be enforceable against the decedent's estate to be deductible.\(^{43}\) If the claim is based on a promise or agreement, the claim is limited to the amount that was actually contracted for, and the contract must have been in consideration for “money or money's worth.”\(^{44}\)

Sometimes, the claim against the estate is definite in amount and its value is easy to ascertain.\(^{45}\) In these cases, the allowable deduction is clear.\(^{46}\) In other instances, the claim against the estate may be certain in terms of the liability, but the value of the claim may be uncertain.\(^{47}\) In these cases, the Treasury Regulations state that the claim may be deducted, even though the amount of the claim is unknown, provided that the amount will be ascertained and the claim will be paid.\(^{48}\)

An estate must file the estate tax within nine months after the decedent's death,\(^{49}\) but may get up to a six month extension.\(^{50}\)

**B. Types of Claims against the Estate**

Claims against the estate may be those definite in amount and liability at the time of death,\(^{51}\) those valued based on actuarial tables

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39. Comm'r v. Estate of Shively, 276 F.2d 372, 374 n.1 (2d Cir. 1960) (quoting I.R.C. § 812(b)(3) (1939)). Significantly, the title of § 812 is “'Net estate,”’ and the statute speaks of determining the “'net estate.”’ Id. (quoting I.R.C. § 812). This is arguably different from § 2053, which makes no mention of a net estate, and only discusses the “taxable estate.” I.R.C. § 2053 (a) (2001); see infra notes 303-05 and accompanying text.

40. Estate of Shively, 276 F.2d at 374 n.1 (quoting I.R.C. § 812(b)). This is different from § 2053(a), which states that claims may be deducted “as are allowable by the laws of the jurisdiction ... under which the estate is being administered.” I.R.C. § 2053(a) (emphasis added); see infra text accompanying notes 156, 222.

41. Propstra v. United States, 680 F.2d 1248, 1254 (9th Cir. 1982); see supra notes 39-40 and accompanying text.


43. Id; see infra note 236 and accompanying text.


45. See infra Part I.B.1.


47. See infra Part II.C.

48. Treas. Reg. § 20.2053-1(b)(3) (as amended in 1972). If the amount of the claim cannot be ascertained by the time the estate files its final return, the estate may claim a refund with the Tax Court when the amount is finally determined. Id.; see infra text accompanying note 332.


50. Id. 6081(a).

51. See infra Part I.B.1.
such as those based on life expectancy), claims that are disputed or whose amount is difficult to ascertain, claims that are enforceable at death but later become unenforceable, or contingent claims.

1. Definite Claims with Exact Figures

Certain claims are definite in liability and have an exact amount at the time of death. Examples of such claims include liens of an exact amount, a liability to a creditor, or an amount owed under a contract. The amount owed can be one payable in a lump sum or in installments. The amount can also be reduced through agreement, raising the question of whether the claim should be valued at the amount it was worth at death, regardless of any post-death events, or whether it should be valued to reflect the amount of any post-death compromise.

2. Claims Based on Actuarial Tables

Some claims are definite in liability, yet the amount cannot be determined without the use of actuarial tables. In these claims the estate attempts to take a deduction based on tables that determine how long a beneficiary will live. The debate regarding these claims, for estate tax purposes, is whether such tables should be used to calculate the value as of the date of the death of the decedent, or whether actual facts that change the value of the claims after the death should be considered.

52. See infra Part I.B.2.
53. See infra Part I.B.3.
55. See infra Part I.B.5.
56. See supra text accompanying notes 45-46.
57. See, e.g., Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982).
58. See, e.g., Estate of O'Neal v. United States, 258 F.3d 1265 (11th Cir. 2001).
59. See, e.g., Jacobs v. Comm'r, 34 F.2d 233 (8th Cir. 1929).
60. Lewis, supra note 27, at 776; see Estate of Nesselrodt v. Comm'r, 51 T.C.M. (CCH) 1406, 1410 (1986) (holding that the estate was allowed to pay a lump sum for a claim that was to be paid in installments, but the estate may only deduct the present value of the claim); see also infra notes 249-54 and accompanying text.
61. See infra Part II.A.
62. The Treasury Regulations provide actuarial tables to determine "remainder factors" that exist at the time of the decedent's death. Treas. Reg. § 20.2031-7 (as amended in 2000); see Ithaca Trust Co. v. United States, 279 U.S. 151 (1929); Comm'r v. Estate of Shively, 276 F.2d 372 (2d Cir. 1960); Estate of Lester v. Comm'r, 57 T.C. 503 (1972); infra Part II.B.
63. See, e.g., Estate of Lester, 57 T.C. at 505-06. The use of actuarial tables was also at issue in Estate of Shively, 276 F.2d at 373-74; see also infra notes 158-81 and accompanying text.
64. See infra Part II.B.
3. Claims Where the Amount Owed is Difficult to Prove and Disputed Claims

There are cases, such as a tort claim, "when the events creating legal liability occur before death, and the amount of the claim cannot be determined until settlement or legal adjudication even though the existence of the claim itself is fixed as of the date of death." Similarly, there are instances where a claim may be fixed in value, but the estate disputes either the amount owed or its liability altogether. Here, the question is whether the claims should be valued based on facts known up to the date of death, or whether they should be valued based on the amount that is later proved or agreed on.

4. Enforceable Claims That Later Become Unenforceable

A claim must be allowed by the jurisdiction in which the decedent resided for the claim to be enforceable. There are claims enforceable at death that the estate will not pay because of subsequent events. When a person dies, the claimant must file a claim against the estate with the probate court of the decedent's home state to collect on the claim. A claimant, however, may neglect to file (or may voluntarily decide not to file) a claim within the specified period for filing the claim against the estate, thereby rendering the claim unenforceable. A claim may similarly become unenforceable due to a change in the law. Here, the claim is valid and enforceable at the time of death, but the estate does not pay, and has no intention of paying, the claim because it becomes invalid due to a change in the law.

65. Palmquist, supra note 36, at 707-08 (footnote omitted); see Robert Clive Jones, Comment, Estate and Income Tax: Claims Against the Estate and Events Subsequent to Date of Death, 22 UCLA L. Rev. 654, 671 (1975); Lewis, supra note 27, at 774.
66. See, e.g., Gowetz v. Comm'r, 320 F.2d 874 (1st Cir. 1963); Estate of Metcalf v. Comm'r, 7 T.C. 153 (1946); infra notes 200-18 and accompanying text.
67. See infra Part II.C.
68. Section 2053(a) provides that claims may be deducted "as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered." I.R.C. § 2053(a) (2001); supra note 22; see Treas. Reg. § 20.2053-4 (1958); supra text accompanying note 43; infra note 236.
69. See, e.g., Estate of Nesselrodt v. Comm'r, 51 T.C.M. (CCH) 1406 (1986); Jacobs v. Comm'r, 34 B.T.A. 594 (1936); see also infra notes 242-56 and accompanying text.
71. See, e.g., Russell, 260 F. Supp at 497-99; Winer, 153 F. Supp. at 942. "In most states a general creditor is required to file his claim within a specific period or the claim is barred notwithstanding that the general statute of limitations otherwise applicable to his claim has not run." Hagmann Comment, supra note 27, at 633 n.27.
72. See, e.g., Jacobs, 34 B.T.A. at 596; see also infra notes 242-45 and
The debate regarding this type of claim is whether the estate should be able to take the deduction for the claim because the claim was enforceable at death, or whether it should be barred from taking the deduction because some later event has rendered the claim unenforceable.\textsuperscript{73}

5. Contingent Claims

A contingent claim is a claim where the decedent becomes liable when someone else who is the primary debtor does not pay the debt.\textsuperscript{74} There is a legal obligation that has value existing at the time of death, but the estate may never have to pay the debt.\textsuperscript{75} At the date of the decedent's death, it can appear likely that the estate will have to pay a certain amount to a creditor, much as it is likely that the estate will have to pay a certain amount on a claim that is disputed or difficult to ascertain until later.\textsuperscript{76} Similarly, it is possible for a court to find that at the date of the decedent's death, the value of the contingent claim, like a disputed claim or a claim whose value is difficult to ascertain in value, cannot yet be determined.\textsuperscript{77} The debate in this type of claim is whether a contingent claim can be deducted, and, if so, how such a claim is to be valued.\textsuperscript{78}

C. The Possibility of an Estate Being Subject to a Gift Tax or a Discharge of Indebtedness Tax if It Compromises a Claim

When an estate pays less or none of a claim that it owed, the estate is in effect worth more than it would have been if it had to pay the full debt.\textsuperscript{79} The extinguishment of all or part of the claim, therefore, is a realization of income for the estate and/or for the estate's beneficiaries.\textsuperscript{80} In estate taxation, however, there is no specific accompanying text.

\textsuperscript{73.} See infra Part II.D.
\textsuperscript{74.} Palmquist, \textit{supra} note 36, at 717. An example of a contingent claim is "where the decedent was secondarily liable as an accommodation endorser or as a guarantor of another's obligation and that obligation is not extinguished by his death." \textit{Id.}
\textsuperscript{75.} \textit{Id.} at 717-18. The contingent claim may be for a certain and definite amount (for example, the decedent was a co-signer on a loan). For a discussion of claims that are certain in liability and definite in amount, see \textit{supra} Part I.B.1.
\textsuperscript{76.} Theoretically, courts can value a contingent claim at the date of death much the same way courts have valued disputed claims at the date of death. \textit{See infra} Parts II.C., II.E., III.B.
\textsuperscript{77.} See \textit{supra} Part I.B.3; \textit{infra} Parts II.C, II-E, III.B.
\textsuperscript{78.} See \textit{infra} Part II.E.
\textsuperscript{79.} See \textit{supra} text accompanying notes 1-4.
\textsuperscript{80.} Estate of Bankhead v. Comm'r, 60 T.C. 535, 539-40 (1973); Jones, \textit{supra} note 65, at 655. An "increase in net worth caused by a reduction of indebtedness has long been regarded as a source of income under section 61 and the Supreme Court's decision in United States v. Kirby Lumber Co. [284 U.S. 1 (1931)]." \textit{Id.} at 657-58; see also Palmquist, \textit{supra} note 36, at 718. In \textit{Estate of Bankhead}, 60 T.C. 535 (1973), the Tax Court held that the estate "was enlarged" by virtue of the cancellation of debt.
provision for taxing a discharge of indebtedness. The individual beneficiaries, however, may have to pay personal income tax on the greater estate that they receive.

Aside from additional tax on a discharge of indebtedness, the beneficiaries may alternatively have to pay gift taxes. "If the necessary donative intent is present [or if the creditor intentionally waives his claim], the creditor’s action may be interpreted as a gift to the beneficiaries." The beneficiaries, then, might still have to pay tax on the extinguishments of the claim in this manner.

The forgiveness of all or part of the debt might be considered a gift either to the estate or to its beneficiaries.

If the forgiveness of a debt was compensation for decedent’s prior services, it is clearly income. But if the cancellation of debt was granted to the estate as a “gift”—i.e., made with donative intent—

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81. This is not the case in income tax. For personal income tax purposes, when an individual's debt is extinguished, the individual realizes additional income that is taxable on his income tax return. I.R.C. § 61(a)(12) (2001); see also id. § 108(a) (delineating exceptions to the general rule in § 61(a)(12)).

82. See Estate of Bankhead, 60 T.C. at 540 (holding sole beneficiary of the estate realized additional income for the purpose of income tax through the extinguishment of the estate's debt). This may lead to higher tax rates for each of the beneficiaries in the year that the claim is extinguished or compromised because each of the beneficiaries will be paying taxes on all of their personal income, including the extra portion of the estate that they received due to the estate's discharge of indebtedness. For income tax rates, see I.R.C § 1.

83. Even though there is no discharge of indebtedness tax in estate tax, the estate will pay additional tax when a claim is compromised in a jurisdiction that takes into consideration post-death events in valuing a claim against the estate. See supra text accompanying notes 2-4.

84. See Palmquist, supra note 36, at 718-19. Section 102 of the Internal Revenue Code states that “[g]ross income does not include the value of property acquired by gift.” I.R.C. § 102. The first $10,000 of the “gift” in this case is not taxable, but if the extinguishment of the claim is for more than $10,000 (adjusted for inflation), the additional amount is taxable as personal income to the beneficiaries. I.R.C. § 2503(b).


86. The estate will not have to pay a gift tax because the gift essentially is “given” after the date of the decedent’s death, and therefore, cannot be included as part of the estate’s property, which is determined at the date of death. See I.R.C. § 2033; Treas. Reg. § 20.2031-1(b) (as amended in 1965); infra text accompanying notes 90-91.
there will be no taxable income upon cancellation since the Code excludes gifts from the determination of gross income. In agreeing to a debt compromise, an estate creditor may have mixed motives. Depending on the creditor's relation to the deceased or estate beneficiaries, the executor may have grounds for claiming that the forgiveness was intended as a gift. 87

Creditors, however, rarely intend a gift to the estate when compromising a claim. Like all creditors, they are compromising by looking for the "best price available" and "intend no gift." 88 Donative intent can still be proven, however, if the creditor is a relative or a beneficiary of the estate. 89

D. Valuation of Assets

"The value of every item of property includible in a decedent's gross estate . . . is its fair market value at the time of the decedent's death." 90 The value of assets is determined as of the date of death, and post-death events that alter the value of the assets in the estate are not considered when taxing the estate. Similarly, only the assets owned by the estate at the time of death are subject to estate tax. 91

There are instances, however, when the value of the assets is difficult to determine at the date of the decedent's death. 92 The estate, despite the difficulties, must attempt to value the assets for purposes of estate tax. 93

In Estate of Curry v. Commissioner, 94 an attorney was working on various cases on a contingent fee basis. 95 The attorney died before the cases were resolved and, thus, before any result that would determine whether the attorney would get paid. 96 The question in Estate of Curry was whether a contingent asset can be included as an asset for estate tax purposes, and, if so, how the contingent asset should be valued. 97 The Tax Court held that the contingent asset was property for estate tax purposes and must be included in the decedent's gross

87. Jones, supra note 65, at 658 (footnotes omitted).
88. Id. at 659.
89. Id.
90. Treas. Reg. § 20.2031-1(b); see I.R.C. §§ 2031(a), 2033; supra notes 18-19 and accompanying text. Claims where the decedent is a creditor are also included in the decedent's assets for determining the estate tax. Such claims are valued at the date of the decedent's death. Estate of Curry v. Comm'r, 74 T.C. 540, 546 (1980); see infra notes 94-102 and accompanying text.
91. See supra note 18.
93. Id. at 212. "Section 2033 brings into the gross estate a wide range of unliquidated, speculative, contingent, and defeasible claims and interests, even though the value of the asset is not readily ascertainable." Id.
94. 74 T.C. 540 (1980).
95. Id. at 541-42.
96. Id.
97. Id. at 540, 545.
estate under § 2033. The court held that the contingent asset still had a value, which should be determined at the date of death. The court ruled that the total value of all the contingent cases was $165,000. It determined this value by examining the type of cases the decedent had, the likelihood of recovery based on similar cases, the likely amount to be recovered based on amounts recovered in other similar cases, and the stage in which the case was at the time of the decedent's death (i.e., the earlier in the litigation stage the case is, the more difficult it is to determine its value, and therefore the case is worth less based on the other factors). The court considered all of these factors as they existed at the time of the decedent's death.

The Fifth Circuit also ruled that a contingent asset should be valued at the date of death. In *Estate of Smith v. Commissioner*, the Commissioner of the Internal Revenue Service ("the Commissioner") argued that a "contingent right... is an asset of the [e]state." The Commissioner did not argue that because it was unsure whether the estate will ever acquire the contingent asset, that the contingent asset should not be counted as an asset for estate tax purposes. Instead, the Commissioner argued that the "contingent nature" of the asset should affect the value of the asset.

Other courts have similarly found that uncertainties concerning the value of property should be considered in valuing the property, and that the valuation of the assets should occur at the date of death. Although there is a debate on when to value claims against the estate,

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98. Id. at 545-47; see Treas. Reg. § 20.2033-1 (as amended in 1963); see also supra note 18.

99. *Estate of Curry*, 74 T.C. at 547-51. The court stated: The fact that the legal fees... were contingent upon future recovery... is a critical consideration in trying to determine what the contract right was worth as of the date of death. However, the contingent nature of the contract right must bear on the factual question of valuation. It cannot, as a matter of law, preclude the inclusion of the interest in the decedent's gross estate or command that the value be fixed at zero. Although uncertainty as to the value of a contract right may postpone the inclusion of the income until it is actually realized for *income* tax purposes, for *estate* tax purposes, the value of an asset must be determined in order to close the estate.

100. *Estate of Curry*, 74 T.C. at 551.

101. *Id.* at 550-51.

102. *Id.* at 551. The court "recognize[d] that, while there were ultimately substantial awards in some instances, in estimating the *date-of-death value* of these claims, we must be satisfied with some imprecision." *Id.* The court, then, did not consider post-death events that changed the value of the estate's assets.

103. *Estate of Smith v. Comm'r*, 198 F.3d 515, 528 (5th Cir. 1999).

104. *Id.* at 527.

105. *Id.*

106. *Id.* A claim or asset in controversy would probably have a smaller value than a similar claim that is not in controversy. See *Gowetz v. Comm'r*, 320 F.2d 874, 876 (1st Cir. 1963); *supra* text accompanying note 101; *infra* note 207.

107. See Bittker et al., *supra* note 92, at 214 (citing First Victoria Nat'l. Bank v. United States, 620 F.2d 1096 (5th Cir. 1980)).
there does not seem to be a debate on when to value the assets of an estate. As *Estate of Curry* points out, post-death events may not be considered in valuing the assets of the estate for estate tax purposes. The difference in treatment for claims and assets seems to be a contradictory policy, since both are a part of the estate that is transferred at death.

II. WHEN TO VALUE CLAIMS AGAINST AN ESTATE FOR ESTATE TAX PURPOSES

Although circuits disagree on when to value the claims against an estate, the Supreme Court has not directly addressed this issue. Circuit courts on both sides point to the most relevant Supreme Court holding, *Ithaca Trust Co. v. United States.* In *Ithaca Trust,* the decedent died leaving his wife a life estate, with the remainder to be dispersed upon her death to enumerated charities. The decedent’s wife died shortly after the decedent, living for less than her life expectancy as determined by actuarial tables. The question for the Court was whether the value of the estate remaining to the charities should be determined by the events as they occurred, i.e., the fact that the wife died six months after the decedent, or “by mortality tables showing the probabilities [of the wife’s life expectancy] as they stood on the day when the testator died.” The Court held that even though the life span of the wife was a known factor, her life estate must be valued using mortality tables as of the date of the decedent’s death. Therefore, the value of the estate passing to charities was measured by the length of time that the wife was expected to have an interest in the property at the date of the husband’s death, rather than the length of time that she actually had an interest in the property, which was ascertainable only after the decedent died.

The *Ithaca Trust* decision would seem to have ended the dispute, as all circuits that value the estate tax deduction for claims against the estate at the date of the decedent’s death cite to *Ithaca Trust* as precedent. However, circuits that hold post-death events are

108. *Id.* at 221-22.
110. 279 U.S. 151 (1929).
111. *Id.* at 154.
112. *Id.* at 154-55. Life expectancy is based on the Treasury Regulation’s life expectancy charts. *See* Treas. Reg. § 20.2031-7 (as amended in 2000); *supra* note 62.
113. *Ithaca Trust,* 279 U.S. at 155.
114. *Id.*
115. *Id.*
116. *See* Estate of McMorris v. Comm’r, 243 F.3d 1254, 1261 (10th Cir. 2001) (holding “that the date-of-death valuation rule announced in *Ithaca Trust* applies to a deduction for a claim against the estate under Section 2053 (a)(3)’’); Estate of O’Neal v. United States, 258 F.3d 1265, 1272 (11th Cir. 2001) (following the analysis in *Ithaca Trust* to apply the date-of-death rule); Estate of Smith v. Comm’r, 198 F.3d 515, 524 (5th Cir. 1999) (interpreting *Ithaca Trust* to mean that the value of the property
relevant in valuing deductions for claims against the estate limit the holding of Ithaca Trust to valuation of charitable remainder interests.\textsuperscript{117} The Supreme Court has not addressed the issue since Ithaca Trust, and has never addressed the issue of when to specifically value claims against the estate for purposes of § 2053(a)(3) deductions.

This part discusses the debate among circuits on when to value the different claims against the estate and the reasoning that different courts use to find either that a date-of-death valuation is appropriate or that a consideration of post-death events is appropriate. Section A discusses the controversy on how to value claims with exact figures.\textsuperscript{118} Section B discusses the debate on whether to consider post-death events when the value of the claim is based on actuarial tables.\textsuperscript{119} Section C discusses the debate on when to value claims that are disputed or whose value is difficult to prove.\textsuperscript{120} Section D discusses whether claims that are enforceable at the date of the decedent's death, but later become unenforceable, should be deducted.\textsuperscript{121} Section E discusses whether post-death events should be considered when the claim is contingent on a subsequent event.\textsuperscript{122}

A. The Debate Surrounding Claims with Exact Figures

1. Claims with Definite Liability and Exact Figures Should Be Valued at the Date of Death

Unlike disputed claims or claims whose value is difficult to ascertain,\textsuperscript{123} where there is a regulation raising uncertainty as to whether post-death events should be considered in valuing a claim against the estate,\textsuperscript{124} no such regulation exists to govern the valuation of certain and enforceable claims against the estate. The closest regulation that can be used to argue for valuation of claims at the date of death is § 20.2053-4, which provides that “[t]he amounts that may
be deducted as claims against a decedent's estate are such only [that] represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death."\textsuperscript{125} One can argue, then, that according to the Treasury Regulations, the values of claims must be determined at the date of death because those were the values that were "existing at the time of [the decedent's] death."\textsuperscript{126} "[I]f a claim is certain in amount and enforceable at decedent's death, then consideration of subsequent events is more difficult to justify under a literal reading of the Code and regulations."\textsuperscript{127}

In \textit{Propstra v. United States},\textsuperscript{128} the decedent died leaving a one-half interest in several pieces of real estate, two of which had liens in the total amount of $404,846.11.\textsuperscript{129} The executrix deducted the decedent's portion of the debt ($202,423.05) when she computed the value of the estate for the purposes of estate tax.\textsuperscript{130} Twenty-two months after filing the estate tax return, the estate settled the claim and paid $134,826.23 to fully satisfy the lien claims against the estate.\textsuperscript{131} One year later, the Commissioner issued the estate a letter of deficiency for unpaid taxes claiming that "the estate was entitled to deduct only the amount actually paid in discharge of the . . . lien claim."\textsuperscript{132}

In \textit{Propstra}, the Ninth Circuit held that lien claims, which are certain and enforceable, are to be valued at the date of death.\textsuperscript{133} For claims in which "sums [are] certain and are legally enforceable as of the date of death, post-death events are not relevant in computing the permissible deduction."\textsuperscript{134} The court found that "estate tax is a tax on the privilege of transferring [sic] property upon one's death, [so] the property to be valued for estate tax purposes is that which the decedent actually transfers at his death."\textsuperscript{135}

\begin{footnotes}
\item[125] Treas. Reg. § 20.2053-4 (1958) (emphasis added); see supra text accompanying note 42.
\item[127] Jones, supra note 65, at 672.
\item[128] 680 F.2d 1248 (9th Cir. 1982).
\item[129] \textit{Id.} at 1250.
\item[130] \textit{Id.}
\item[131] \textit{Id.}
\item[132] \textit{Id.} The Commissioner, therefore, was arguing that the value of the claim at the time of the decedent's death is not relevant for purposes of a § 2053(a)(3) deduction. What is relevant, the Commissioner argued, is the amount actually settled for and paid to the creditor, even though the settlement occurred after the decedent died.
\item[133] \textit{Id.} at 1254.
\item[134] \textit{Id.} The court found that only claims that are certain and enforceable at the time of death should be valued at the date of death. Claims that are disputed or contingent, the court argued, must take into account post-death events when valuing claims against the estate. \textit{Id.} at 1253; see also infra note 267.
\item[135] \textit{Propstra}, 680 F.2d at 1250. The court found that valuing the claim at the time of death is consistent with the holding in \textit{Ithaca Trust v. United States}, 279 U.S. 151 (1929), and that the holding in \textit{Jacobs v. Commissioner}, 34 F.2d 233 (8th Cir. 1929),
\end{footnotes}
In a case of first impression for the Tenth Circuit, the court in \textit{Estate of McMorris v. Commissioner}\textsuperscript{136} found that “events which occur after the decedent’s death may not be considered in valuing that deduction.”\textsuperscript{137} In \textit{Estate of McMorris}, the decedent owed income taxes, and the estate settled the claim after her death for less than what the Commissioner said she originally owed.\textsuperscript{138} The Commissioner said that the estate can only deduct the amount actually paid (the settled amount) because the deduction is limited to the amount of taxes ultimately owed.\textsuperscript{139} The estate argued that settlement is irrelevant because the value of the deduction should be determined as of the date of the decedent’s death.\textsuperscript{140} The court agreed, reasoning that a date-of-death valuation provides a “bright line rule” and gets rid of uncertainty and delay in administering the estate.\textsuperscript{141}

2. Post-Death Events Are Relevant in Determining the Value of Claims Against the Estate That Are Definite in Liability and Have Exact Figures

When later events alter the amount of a claim that was certain in amount and liability at the date of death, “the amount of the deduction becomes subject to controversy.”\textsuperscript{142} In \textit{Jacobs v. Commissioner},\textsuperscript{143} the decedent, in an antenuptial contract, provided that if his wife outlived him, she would get a $75,000 lump sum payment out of his estate in lieu of any other marital rights.\textsuperscript{144} His will stated that his wife could elect to forego the $75,000 owed to her in the contract and instead be paid $250,000 out of his estate in installment payments over the span of her life.\textsuperscript{145} After the decedent’s death, the wife accepted the terms of the will rather than the $75,000, but the executors deducted the $75,000 as a claim against the estate when filing the estate tax return.\textsuperscript{146} The Eighth Circuit disallowed the deduction for that amount finding that “[t]ax laws deal with

\textsuperscript{136} 243 F.3d 1254 (10th Cir. 2001).
\textsuperscript{137} \textit{Id.} at 1261.
\textsuperscript{138} \textit{Id.} at 1258.
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.}
\textsuperscript{141} \textit{Id.} at 1261-62.
\textsuperscript{142} \textit{Lewis}, supra note 27, at 776.
\textsuperscript{143} 34 F.2d 233 (8th Cir. 1929). \textit{Jacobs} has sometimes been regarded as a contingent claim case. \textit{See Propstra v. United States}, 680 F.2d 1248, 1256 (9th Cir. 1982); \textit{Palmquist}, supra note 36, at 714. For a description of contingent claims, see supra Part I.B.5. Significantly, \textit{Jacobs} was decided only three-and-a-half months after the Supreme Court’s ruling in \textit{Ithaca Trust Co. v. United States}, 279 U.S. 151 (1929).
\textsuperscript{144} \textit{Id.}, 34 F.2d at 233.
\textsuperscript{145} \textit{Id.}
\textsuperscript{146} \textit{Id.}
actualities” and that “[t]he claims which Congress intended to be deducted were actual claims, not theoretical ones.” The court reasoned that there was no claim for which a deduction can be taken in this case because the wife never claimed any of the $75,000 from the estate, and the estate never paid any of it. The court stated that Congress intended the words “claim against the estate” to incorporate only claims that were presented, allowed, and paid (or would be paid) by the estate.

The court in Jacobs held that the intended purpose of the statute must have been to consider post-death events that change the value of the claims because the same statute allowing deductions for claims against the estate also allows deductions for funeral and administration expenses, both of which do not arise until after the decedent has died. The Eighth Circuit, therefore, concluded that events that change the value of claims against the estate after the decedent has died should be considered when claiming the deduction.

Several courts and members of the legal community have subscribed to the Jacobs “actuality” approach. They argue that estate tax had traditionally been thought of as a tax on the transfer of the property at the death of the decedent, but that a better approach may be to consider it a tax on the interest that the beneficiaries receive. This suggests that post-death events should be considered. Others have argued that Ithaca Trust should not be extended to claims against the estate and have preferred the holding

147. Id. at 235.
148. Id.
149. Id.
150. Id. at 236; see I.R.C. § 2053(a) (2001); supra note 22. The court also pointed out that the Supreme Court never said that only the date-of-death valuation can be used. Jacobs, 34 F.2d at 236.
151. See Hagmann Comment, supra note 27, at 631-33, 633 nn.26-27, 637; Lewis, supra note 27, at 782-84.
152. Hagmann Comment, supra note 27, at 637.
153. Id. It can be argued that Jacobs correctly interpreted legislative intent of § 2053(a): “Congress has enacted several provisions that shift the emphasis on the valuation of deductions to focus more precisely on the economic benefits flowing to the decedent’s successors.” Id. Evidence of this shift can be seen in the following facts:

(1) After Ithaca, Congress limited the amount of the charitable deduction to the amount actually received by the charity;
(2) In a predecessor section to § 2053(c)(2), Congress in 1942 reacted to circuit courts that allowed deductions for claims against the estate even though the estate did not have assets to pay the creditors. Congress denied the deduction unless the claims were in fact paid or the estate, based on its assets, could pay;
(3) The marital deduction provisions provide that deductions shall take into account any taxes or encumbrance imposed on the property, which show that Congress intended to shift the focus of the deductions to the benefit actually received by the beneficiary. This necessarily means that post-death events are to be taken into account.
Id. at 637-638, 638 n.44; see I.R.C. § 2056.
in Jacobs.\textsuperscript{154} The argument is that extending Ithaca Trust to claims against the estate "would frustrate congressional policy."\textsuperscript{155} In addition, § 2053(a) states that claims must be "allowable" in the jurisdiction where the estate is being administered, so it must be that Congress intended that only claims the probate court allows can be deducted; the court's decision of which claims to allow happens after death.\textsuperscript{156} Also, the deduction for claims against the estate is grouped with the deductions for funeral and administration expenses, which means "Congress must have intended the amounts of deductions for all three items to be determined during the administration of the estate."\textsuperscript{157}

**B. The Debate Surrounding Claims Against the Estate Where the Value of the Claim is Ascertainable at the Date of Death Using Actuarial Tables**

1. Claims Against the Estate That Can Be Calculated Based on Actuarial Tables Should Be Calculated Solely Based on Those Tables at the Date of Death

In *Estate of Lester v. Commissioner,*\textsuperscript{158} the decedent, in his divorce decree, agreed to pay his wife $130,000 in monthly installments of $1000.\textsuperscript{159} The decree also provided that if the husband died before his wife, the estate would continue to make the payments at $1000 per month until the balance was paid or until his wife died, whichever occurred first.\textsuperscript{160} The husband had made nineteen payments at the time of his death, leaving the estate with 111 payments to make on the remaining balance assuming the wife did not die before that full balance was paid.\textsuperscript{161} The estate made twenty-four payments totaling $24,000, leaving a balance of $87,000.\textsuperscript{162} A Wisconsin court then ordered the estate to purchase for the wife "a Single Premium Immediate Annuity Certain, Non-participating" which would pay the monthly payments until the entire the balance was paid.\textsuperscript{163} Over two years after the decedent died, the estate purchased the annuity for

\begin{footnotes}
\item 154. Lewis, supra note 27, at 782-84.
\item 155. Id. at 782; see supra note 153.
\item 156. Lewis, supra note 27, at 782-83; see also I.R.C. § 2053(a); Treas. Reg. § 20.2053-4 (1958).
\item 157. Lewis, supra note 27, at 783; Note, Federal Estate Tax: Effect of Subsequent Events on the Valuation of Claims Against the Estate, 1961 Duke L.J. 474, 478 [hereinafter Federal Estate Tax]; see I.R.C. § 2053(a); supra note 150 and accompanying text.
\item 158. 57 T.C. 503 (1972).
\item 159. Id. at 504.
\item 160. Id.
\item 161. Id. at 504-05.
\item 162. Id. at 505.
\item 163. Id.
\end{footnotes}
$78,700. The Commissioner claimed that the amount outstanding, for the purposes of taking a § 2053(a)(3) deduction, after the decedent died should be the present value at the date of death, i.e., that the $1000 should be reduced to its value at the date of death. The estate argued, in the alternative, that it should be allowed to deduct: (1) the face value of the claim outstanding at the date of death of $111,000, (2) the amount actually paid to the claimant plus the cost to the estate of the annuity purchased, or (3) the present worth of the annuity plus the interest, which was $96,021.49. The Tax Court held that Ithaca Trust applies when, like here, “on the date of death the estate’s obligation is one which will be satisfied in the future.” The value of the claim, then, is determined by the actuarial tables, which take into consideration the wife’s life expectancy, and not what actually happened subsequent to the decedent’s death.

The argument for using date-of-death valuations for claims based on actuarial tables is that the estate is settled “as of the date of the testator’s death,” and therefore, the estate must be taxed when the decedent dies. The court in Ithaca Trust reasoned that although it is “[t]empting . . . to correct uncertain probabilities by . . . now certain fact[s] . . . [nevertheless] the value of the . . . [claim] must be estimated by the mortality tables.”

2. Post-Death Events Should Be Considered Even When Actuarial Tables Can Be Used To Determine the Value of Claims Against the Estate

The Second Circuit has ruled that if an event after the decedent’s death changes the value of the claim against the estate, that value should similarly be reflected in the amount allowed for deduction. In

164. Id. The estate incurred costs in purchasing the annuity. Before the estate purchased the annuity, it was paying the decedent’s wife $1000 a month that was owed to her under the divorce decree. Id.
165. Id. at 506.
166. Id. The Commissioner claimed a notice of deficiency and computed the claim at the date of death using actuarial tables for estate and gift tax to be $92,456.16. Id. Interestingly, the Commissioner here argued for a date-of-death valuation of the claim, and asked the court to disregard post-death events that changed the value of the claim. Usually, the Commissioner argues that post-death events should be considered in valuing claims against the estate.
167. Id. at 506.
168. Id. at 507.
169. Id.
171. Id.; see also supra text accompanying note 114.
Commissioner v. Estate of Shively,\textsuperscript{172} the decedent and his wife entered into a separation agreement providing that after their son turned twenty-one, the decedent would pay his wife forty dollars per week until her death or until she remarries (whichever comes first), and that should decedent die, the estate shall continue to make the payments under the contract.\textsuperscript{173} The decedent died in July 1952, and the estate made payments to the wife until June 1953, when the wife remarried.\textsuperscript{174} In July 1953, the estate filed the estate tax return and claimed a deduction of $27,058.30 based on the wife's actuarial tables computed at the time of the decedent's death.\textsuperscript{175} The Commissioner argued that the deduction should be limited to $2,079.96, which was the amount actually paid to Mrs. Shively "during the period the estate was in probate and prior to her remarriage."\textsuperscript{176}

The Second Circuit found that the deduction could be no greater than the amount actually paid by the estate, and allowed to be paid by the laws of the state where the estate tax return is filed, "irrespective of whether this amount is established through events occurring before or after the decedent's death."\textsuperscript{177} Because Mrs. Shively did not file a claim with the probate court for the amount which the estate is claiming a deduction (if she had it would have been denied due to her remarriage), the estate cannot deduct it as a valid claim, despite the fact that it was valid at the time of the decedent's death.\textsuperscript{178} The Second Circuit disagreed with other courts that value claims only at the date of death, and found that the purpose for these deductions is to determine what property actually passes to the beneficiary after all the claims have been paid and that

this purpose would not be served if a deduction were permitted for claims against an estate which, though having vitality as of date of death, could never be enforced as of the date the estate tax return is filed . . . . To permit an estate such a deduction . . . would be to

\textsuperscript{172} 276 F.2d 372 (2d Cir. 1960).
\textsuperscript{173} Id. at 373.
\textsuperscript{174} Id.
\textsuperscript{175} Id. at 373-74.
\textsuperscript{176} Id. at 374. "[T]he Commissioner concede[d] that at the time of [Mr.] Shively's death the present value of Mrs. Shively's . . . claim against the estate could be actuarially determined with reasonable accuracy." Id.
\textsuperscript{177} Id. at 377. The court found that the estate may only deduct the claims against the estate "as are allowed by the laws of the jurisdiction . . . under which the estate is being administered." Id. at 374 (quoting I.R.C. § 812(b) (1939), a predecessor to I.R.C. § 2053(a) (2001)). The court's holding suggests that for purposes of valuing a claim against the estate, events that happen up until the estate files its tax return may be taken into consideration. Federal Estate Tax, supra note 157, at 479. This approach, however, would allow the estate to manipulate the amount of the deduction by planning to file the estate tax return at a time when the deduction is greatest and then settling the claim right after the return is filed. Id.
\textsuperscript{178} Estate of Shively, 276 F.2d at 374.
prefer fiction to reality and would defeat the clear purpose of [the statute].

Actuarial tables, therefore, should not be used when the claim can be determined by facts, even if the facts did not exist at the time of the decedent's death. "If valuation is accomplished on the basis of mathematical probabilities at the date of death, subsequent events will often make this valuation appear absurd." Taking into account post-death events even when valuation is feasible through actuarial tables is congruent with the Jacobs "actuality" approach.

C. The Debate Surrounding Disputed Claims or Claims Where the Value is Difficult to Ascertain at the Date of Death

1. The Value of the Claim Should Be Determined by Facts Existent at the Date of Death

Treasury Regulation § 20.2053-1(b)(3) provides that "[a]n item may be entered on the [estate tax] return for deduction though its exact amount is not then known, provided it is ascertainable with reasonable certainty, and will be paid." Based on this regulation, it can be argued that even disputed claims, and claims with an amount difficult to ascertain, can be valued at the date of death based on facts available up to, but not after, that date. Further, it can be argued that since assets that are disputed must be valued based on facts known up to the date of death, and post-death events that affect the valuation of the asset should not be considered, the same should apply for claims against the estate.

In Estate of Smith v. Commissioner, the estate settled a claim fifteen months after the decedent's death for less than the claimed deduction. The Commissioner said that because the claim was disputed as of the date of decedent's death, the estate can only deduct what it actually paid in the settlement. The court found that a claim against the estate "must be valued as of the date of the death of the decedent and thus must [be] appraised on information known or actual."
available up to (but not after) that date." The value of the claim must be appraised "based on the facts as they existed as of death." The court found that in \textit{Ithaca Trust}, the Supreme Court was trying to impose the tax "on the act of transferring property . . . [which happens at] the instant of death." The Fifth Circuit also found that "the Eighth Circuit's narrow reading of \textit{Ithaca Trust}, a reading that limits its application to charitable bequests, is unwarranted." In a case of first impression for the Eleventh Circuit, the court in \textit{Estate of O'Neal v. United States}, found that valuation of claims against the estate occurs at the date of death and that events which occur after death that alter the valuation must be disregarded. In \textit{Estate of O'Neal}, the estate settled with the IRS, after the decedent had died, the value of a gift given to the decedent prior to his death, which changed the amount of taxes that the decedent owed at the time of his death. The court found that post-death settlement should not be taken into account in valuing the estate.

2. The Value of a Disputed or a Difficult to Value Claim Against the Estate Should be Determined by Post-Death Events

Treasury Regulation § 20.2053-1(b)(3) states that "[n]o deduction may be taken upon the basis of a vague or uncertain estimate." The regulation goes on to provide a period after death in which the estate can determine the amount of the liability. This would suggest that post-death events and facts that are discovered after death can be taken into account in valuing disputed or unascertainable claims.

\begin{itemize}
\item[188.] \textit{Id.} at 517.
\item[189.] \textit{Id.} at 521.
\item[190.] \textit{Ithaca Trust Co. v. United States}, 279 U.S. 151 (1929).
\item[191.] \textit{Estate of Smith}, 198 F.3d at 524.
\item[192.] \textit{Id.} The court found that exceptions to the date-of-death valuation are "§§ 2053(a)(1) (funeral expenses), 2053(a)(2) (estate administration expenses), and 2054 (casualty losses)." \textit{Id.} at 524 n.36. \textit{Contra Jacobs v. Comm'r}, 34 F.2d 233, 236 (8th Cir. 1929) (arguing that because deductions for claims against the estate, funeral expenses, and administration expenses are all in the same section, congressional intent was that all three must consider post-death events when valuing the deductions); see supra text accompanying notes 150, 157.
\item[193.] 258 F.3d 1265, 1266 (11th Cir. 2001).
\item[194.] \textit{Id.}
\item[195.] \textit{Id.} at 1268.
\item[196.] \textit{Id.} at 1275. The court also found that limiting \textit{Ithaca Trust} to only cases of charitable bequests is not a correct reading of \textit{Ithaca Trust}. \textit{Id.} at 1273 n.25.
\item[197.] Treas. Reg. § 20.2053-1(b)(3) (as amended in 1972); see supra text accompanying notes 45-47; \textit{supra} note 48 and accompanying text; see also Part I.B.3.
\item[198.] Treas. Reg. § 20.2053-1(b)(3).
\item[199.] Palmquist, \textit{supra} note 36, at 707-08. Regarding claims where the amount is difficult to determine, "the amount of the deduction will be the amount finally determined after a settlement or judgment is reached." \textit{Id.} at 708; see Jones, \textit{supra} note 65, at 671 (arguing that disputed claims "must" be valued by post-death events, and that "[i]f the estate compromises a disputed claim for less than the amount originally due on the obligation, then only the lesser sum is deductible"); Lewis, \textit{supra}
In *Gowetz v. Commissioner*, the decedent entered into a separation agreement with his wife to pay her $500 a month for life or until she remarried. Upon the decedent's death, the estate deducted the wife's claim, and discounted to the value at the time of the decedent's death based on actuarial tables, but it also denied all liability owed to the wife and defended a separate suit brought by her in state court. During the state court suit, the wife remarried, thus terminating any future rights under the separation agreement and reducing the amount the estate would have to pay her. The estate lost the state case and had to pay the wife any money owed to her under the agreement up to the point of her remarriage. The Commissioner reduced the deduction to the amount that the estate actually paid. The First Circuit held that events after death can be considered for purposes of deductions for claims against the estate. The court found that the estate's position is "in conflict with the statutory scheme, which has frequently been construed to encompass after events rather than to require valuation as of the date of death."

In *Estate of Metcalf v. Commissioner*, the decedent owned real estate in Shelby County, Tennessee, where he owed taxes and penalties in the amount of $17,204.54 at the date of death. Approximately one year after his death, the estate settled the taxes on the real estate for $7,678.18. The decedent also owned real estate in Dyer County, Tennessee, where at the time of death he owed

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200. 320 F.2d 874 (1st Cir. 1963).
201. Id. at 875.
202. Id. The court in that separate suit had not decided whether the estate was liable to the wife, and the estate believed that it could be successful in defending the suit brought by the decedent's wife. Id.
203. Id.
204. Id.
205. Id. The lower court found for the Commissioner by finding a difference between those claims that can be determined by actuarial tables and those that are "disputed," "contingent," or "potential." Id. at 876. The lower court found that these latter claims are not as measurable as those that are fixed in liability and those whose amount is left to be determined by actuarial tables. Id.
206. Id. The court declined to evaluate how far into the future events should be considered to value claims against the estate. Id.
207. Id. The court stated that "[e]ven a disputed claim may have a value," but the estate cannot base the value only on actuarial tables without taking into account the fact that the claim is disputed because "a disputed claim is of less value than one which is uncontested." Id.
209. Estate of Metcalf, 7 T.C. at 156.
210. Id.
The estate did not pay any of the Dyer County taxes, and, at the time of *Estate of Metcalf*, there was a suit pending in this matter. The estate claimed a deduction of $17,204.54 for the claims against the estate in Shelby County despite having actually paid a lesser amount, and deducted the full amount claimed by the government as taxes in the Dyer County real estate, despite not having paid any of it as of the time of *Estate of Metcalf*. The court held that post-death events that affect the value of the claim should be taken into account when valuing the claim against the estate for estate tax purposes. It reasoned that the estate's deduction for a claim that they did not fully pay, and would never fully pay, is "untenable." The court found that deductions can only be taken for claims that may be enforced against the estate, and since "the unpaid balance of [the Shelby County tax] no longer represented an enforceable claim against the decedent's estate" as a result of the settlement, the estate cannot claim it as a deduction. The court applied the same reasoning to the Dyer County debt. However, since the court did not know how the suit regarding that debt would end up (whether the claim would be paid in full, or whether it would be settled for a lesser amount), and it did not know whether the estate was denying all or part of the liability in that suit, the court denied the entire deduction.

D. The Debate Surrounding Whether an Enforceable Claim at the Date of Death Can Be Deducted if Subsequent Events Make the Claim Unenforceable

1. An Enforceable Claim at the Date of Death Is Deductible Despite It Subsequently Becoming Unenforceable

The Treasury Regulations state that "only claims enforceable against the decedent's estate may be deducted." Legislative history, statutory interpretation, and the better reasoned cases support a conclusion that the permissibility and the amount of the deduction for claims against the estate should be deemed fixed.

211. *Id.* at 157.
212. *Id.*
213. *Id.* at 160-61.
214. *Id.* at 161-62.
215. *Id.* at 160.
216. *Id.*
217. *Id.* at 161.
218. *Id.* at 161-62. The court was not sure what amount, if any, the estate should be able to deduct for the taxes owed in Dyer County. Because of the speculation that the court would have to engage in, the court denied the entire deduction. *Id.* at 162; see also, Lewis, supra note 27, at 774 ("If liability has not been determined by the time of the final audit of the return, no deduction will be allowed.").
absolutely at the date of death." Further, estate tax is meant to be a tax "on the transmission of property by the decedent, not on the receipt of property by a beneficiary . . . [S]ince the amount of the net estate is fixed at death, events subsequent to the date of death are irrelevant to the calculation." Thus, if a claim is enforceable at the time of the decedent's death, and can only become unenforceable after the decedent's death, the estate should be allowed to deduct the claim as a valid claim against the estate.

In *Russell v. United States*, the decedent died owing money held in trust to her children. Her children filed a claim in the probate court seeking the money held for them in trust after the statute of limitations for filing a claim against the estate had run. The probate court ordered the estate to pay the claim even though the statute of limitations had run, and the estate claimed the amount as a § 2053(a)(3) deduction. The court in *Russell* found that the probate court's order to pay the claim was void since the statute of limitations had run out, and the claims against the estate were not enforceable at the time that they were filed in probate court. The court also found, however, that whether the claim became unenforceable after the decedent's death is irrelevant to whether a claim is deductible under § 2053 because claims may be deducted if they are enforceable at the time of the decedent's death "under the laws of the jurisdiction where the estate is being administered." That the claims were subsequently lost by lapse of time is irrelevant." The court reasoned that earlier cases which held that post-death events should be taken into consideration have been overridden by more recent statutes. "[T]he earlier statute used the words 'claims as are allowed by the jurisdiction.' This language was changed in the 1954 revision to 'claims as are allowable,'" which allows deductions for claims that are enforceable at death but later become unenforceable.

In *Winer v. United States*, the estate sought to recover $2,617.81, which it had paid in estate tax under protest, by claiming that a debt owed to the decedent's daughter should have been deducted as a

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221. Palmquist, supra note 36, at 710.
223. Id. at 497.
224. Id. at 498.
225. Id. at 498-99.
226. Id.
227. Id. at 499 (quoting Comm'r v. Strauss, 77 F.2d 401 (7th Cir. 1935)).
228. Id.
229. Id.
230. Id.; see supra notes 40-41 and accompanying text.
claim against the estate. The decedent's daughter, however, did not file a claim for the debt with the probate court within the required statute of limitations period after the decedent had died. The Commissioner argued that since the claim was never filed, it cannot be deducted as a claim against the estate. The court held that post-death events do not matter. The court pointed out that although Treasury Regulations say that only claims "enforceable" may be deducted, "[i]t is worth noting that the aforesaid regulation . . . does not say 'Only claims enforced against the decedent's estate' are subject to deduction." Because the creditor had an enforceable claim at the time of the decedent's death, the estate should be able to deduct the claim.

2. A Claim Enforceable at the Date of Death That Subsequently Becomes Unenforceable Cannot Be Deducted

Revenue Ruling 60-247 provides:

A deduction, for Federal estate tax purposes, will not be allowed for claims against the estate which have not been paid or will not be paid because the creditor waives payment, fails to file his claim within the time limit and under the conditions prescribed by applicable local law, or otherwise fails to enforce payment.

While the legal force of this Revenue Ruling has been questioned, the Internal Revenue Service considers post-death events to determine both the value and permissibility of a deduction for the claim.

Some tax court decisions have found that post-death events can be considered in valuing a claim against the estate. In Jacobs v. Commissioner, the decedent's estate filed a tax return deducting back taxes that it owed to Stark County, Ohio. However, the

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232. Id. at 942.
233. Id.; see supra notes 70-71 and accompanying text.
235. Id. at 943.
236. Id. The court found that "[d]eductibility is not conditioned on a claim's allowance by a local court, but rather upon its enforceability under local law." Id. (citing Smyth v. Erickson, 221 F.2d 1 (9th Cir. 1955)); see also supra text accompanying notes 42-43.
239. In Russell v. United States the court ruled that Revenue Ruling 60-247 is invalid. 260 F. Supp. 493, 499-500 (N.D. Ill. 1966). It held that the ruling "is not controlling because of applicable case law. A revenue ruling which runs counter to the provisions of a statute is a legal nullity." Id. at 500; see also Palmquist, supra note 36, at 713 (discussing the Russell decision).
240. Palmquist, supra note 36, at 709.
241. But see supra notes 158-69 and accompanying text.
242. 34 B.T.A. 594 (1936).
243. Id. at 595-96.
county issued a certificate of immunity from back taxes after the decedent's death as an incentive to get taxpayers to declare the property they owned.\textsuperscript{244} The estate notified the county that they would make use of the certificate of immunity and would not be paying the estate tax.\textsuperscript{245} The Tax Court held that the deduction claimed at the date of death was invalid, stating that “[t]he purpose of the revenue act in allowing deductions is to see that the tax is imposed on the net estate, which is really what of value passes from the dead to the living.”\textsuperscript{246} The court argued that Congress, when it created a deduction for claims against the estate, meant for it to cover only claims that were valid and actually paid or will be paid.\textsuperscript{247}

The Tax Court in \textit{Estate of Nesselrodt v. Commissioner}\textsuperscript{248} also addressed the issue of unenforced claims. In \textit{Estate of Nesselrodt}, the decedent and his wife divorced, and the decedent, according to the divorce agreement, was required to pay his wife $80,547.01.\textsuperscript{249} At the date of his death, he owed $54,000, which was to be paid in nine annual installments of $6000 each, but the estate paid the claim in full and deducted it from the estate tax return.\textsuperscript{250} There was another deduction for a debt due to a company, but the company never filed a claim to be paid by the estate, and the estate never paid the claim.\textsuperscript{251} The Commissioner issued a notice of deficiency claiming that the estate owed more taxes because the balance due to the wife should have been $38,146.80, the present value of the nine remaining installments.\textsuperscript{252} The Commissioner also disallowed the entire deduction for the balance due to the company because it had not been paid.\textsuperscript{253} The Tax Court held that the estate was allowed to pay a lump sum for the claim owed to the wife, but the amount of the deduction allowed under § 2053 is limited to the present value of the claim, which was smaller in amount.\textsuperscript{254} The court also disallowed the deduction for the claim the company had against the estate because

\textsuperscript{244} Id. at 596.
\textsuperscript{245} Id.
\textsuperscript{246} Id. at 597.
\textsuperscript{247} Id. Using similar reasoning to the Eighth Circuit's decision in \textit{Jacobs v. Commissioner}, 34 F.2d 233, 235 (8th Cir. 1929), the court reasoned that "tax laws are interested in practical results and deal with substance." Jacobs, 34 B.T.A. at 597. Since the estate will never pay the claim, it cannot be deducted. Id.; see supra text accompanying note 147.
\textsuperscript{248} 51 T.C.M. (CCH) 1406 (1986).
\textsuperscript{249} Id. at 1407.
\textsuperscript{250} Id.
\textsuperscript{251} Id.
\textsuperscript{252} Id. at 1408; see supra text accompanying note 60.
\textsuperscript{253} \textit{Estate of Nesselrodt}, 51 T.C.M. (CCH) at 1408.
\textsuperscript{254} Id. at 1410. The probate court allowed the estate to pay the greater lump sum to the wife (without having valued the claim at its present value), but the Tax Court held that the probate court's ruling does not mean that the greater sum is deductible under § 2053. Id. at 1409-10.
the creditor never filed the claim in probate court. The court reasoned that because the creditor never filed the claim with probate court, the claim was no longer legally enforceable against the estate under state law, and thus, there was no allowable deduction under §

E. The Debate Surrounding If and How to Deduct Contingent Claims Against the Estate

1. Contingent Claims Should Be Claimed As a Deduction Based on Facts Existing at the Time of Death

The debate regarding contingent claims is whether only facts known up to the date of death should be considered in determining whether the estate will be liable in the future, and therefore, entitled to a deduction for those claims, or whether any event that occurs in the future, however unforeseeable, should be included in the analysis.

For a contingent claim, the estate has a legal obligation existing at the time of death, but it may never actually have to pay the debt. Deductions under a date-of-death valuation analysis, it can be argued, should be based on the amount of the claim determined at the date of death and the likelihood at the date of death that the estate will have to pay that claim. If it appears at the date of the decedent’s death that the party primarily liable for the debt will pay it, then the estate should not be permitted to deduct the contingent claim as a claim against the estate.

This argument can be based on how contingent claims, where the decedent is the creditor, are valued for purposes of determining the assets of the estate. Any claim that a decedent owns as a creditor is considered a part of the decedent’s assets for purposes of determining the value of the taxable estate. All of the assets of the estate are valued as of the date of the decedent’s death, and events that later...

255. Id. at 1410. “Where no claim for a debt due from the decedent is filed in the probate proceeding prior to the date upon which the claim becomes barred under State law, then generally no deduction for the claim is allowable to the estate.” Id.
256. Id.
257. This is analogous to Estate of Smith v. Commissioner, 198 F.3d 515, 520 (5th Cir. 1999), where the estate disputed the claim and it was possible at the date of death that the estate would not have to pay the claim. See also supra notes 185-92 and accompanying text.
258. Palmquist, supra note 36, at 708; see supra Part I.B.5.
259. This theoretical argument has not been made by any court. Except for the Ninth Circuit, circuits that have subscribed to the date-of-death valuation method for other types of claims against the estate have not addressed whether the same method would apply to contingent claims against the estate. See supra Part I.B; infra note 267.
261. See Estate of Curry v. Comm’r, 74 T.C. 540 (1980); see also supra notes 94-102 and accompanying text.
change the value of those assets are irrelevant. Even when the value of an asset is contingent upon a future event, only factors known up to, but not after, the date of the decedent's death may be considered for purposes of valuing that asset. Therefore, when a decedent is a creditor on a contingent claim, as was the case in *Estate of Curry v. Commissioner*, that claim must be valued at the date of the decedent’s death. By analogy, then, if the decedent is the debtor on a contingent claim, that claim also must be valued at the date of the decedent’s death.

2. Only If Subsequent Events Make the Estate Pay for the Contingent Claim Should the Claim Be Deducted

Treasury Regulations provide:

If the amount of a liability was not ascertainable at the time of final audit of the return . . . and, as a consequence, it was not allowed as a deduction in the audit, and subsequently the amount of the liability is ascertained, relief may be sought by a petition to the Tax Court or a claim for refund as provided by sections 6213(a) and 6511, respectively.

This suggests that post-death events must necessarily be taken into account when determining whether to deduct for a contingent claim against the estate because it is not clearly ascertainable at the date of death whether the estate will ever have to pay the claim.

In a contingent claim case, the Ninth Circuit ruled that post-death events should be taken into account when valuing claims against the estate. In *Du Val’s Estate v. Commissioner*, the decedent guaranteed a loan made to a company, and, at the time of the decedent’s death, the unpaid balance was $175,000. The company was fully solvent and able to pay the loan at the time of the decedent’s death and continued to be financially strong when the Tax Court heard the

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262. See *supra* Part I.D.
263. See *supra* Part I.D.
264. 74 T.C. 540 (1980).
265. See *infra* notes 341-43 and accompanying text.
266. Treas. Reg § 20.2053-1(b)(3) (as amended in 1972); see *supra* text accompanying notes 42-43; see *supra* Part I.B.5.
267. Significantly, the Ninth Circuit in *Propstra v. United States* ruled that claims that are certain and enforceable at the date of the decedent’s death should be valued at the date of death. 680 F.2d 1248, 1254 (9th Cir. 1982). *Propstra* distinguished contingent claims stating that “[t]he law is clear that post-death events are relevant when computing the deduction to be taken for disputed or contingent claims.” Id. at 1253. This suggests that contingent claims should be treated differently than other types of claims, where contingent claims must be valued by taking into account post-death events. The law, however, is not as “clear” as *Propstra* suggests. See *supra* Part II.C.1. For an explanation of the different types of claims against the estate, see *supra* Part I.B.
268. 152 F.2d 103 (9th Cir. 1945).
269. *Id.* at 103-04.
In addition, there was a co-guarantor for the loan, who was also liable if the decedent could not pay the loan, further insulating the estate from the prospect of incurring any real liability in the future and from the risk of having to pay the claim. The court denied any deduction for the estate, concluding that allowing this deduction for a claim against the estate would "lead to absurd ends."

As this part of this Note shows, there is controversy over when to value claims against the estate for estate tax purposes. It is possible to value claims either at the date of the decedent's death or at some later point. Absent a clear statute, regulation, or Supreme Court ruling on this matter, the date of valuation will remain unclear.

III. RESOLUTION: CLAIMS SHOULD BE VALUED AT THE DATE OF THE DECEDEENT'S DEATH

This part argues that a claim should always be valued at the date of death based on what the Internal Revenue Code, Treasury Regulations, and case law has stated. Section A points out that the reasoning of Jacobs v. Commissioner, the seminal case that argues for post-death valuation of claims, is fundamentally suspect and should not be followed. Section B discusses why all types of claims against the estate should be valued at the date of the decedent's death. As the strongest arguments for considering post-death events arguably arise in the context of disputed or difficult to determine claims and contingent claims, Sections B.1 and B.2 will give special consideration to those situations.

A. Deconstructing Jacobs v. Commissioner

Jacobs v. Commissioner is the leading case supporting the position that post-death events should be considered when valuing a claim against the estate. Cases that subscribe to the date-of-death valuation method have pointed to Jacobs as the preeminent case arguing for a post-death analysis of claims against the estate.

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270. Id. at 104.
271. Id.
272. Id.
273. See infra notes 276-91 and accompanying text.
274. See infra notes 292-343 and accompanying text.
275. See infra notes 316-43 and accompanying text.
276. 34 F.2d 233 (8th Cir. 1929).
277. See, e.g., Estate of O'Neal v. United States, 258 F.3d 1265, 1272 (11th Cir. 2001) (stating that circuits either follow the date-of-death approach of Ithaca Trust Co. v. United States, 279 U.S. 151 (1929), or the post-death valuation of Jacobs v. Commissioner, 34 F.2d 233 (8th Cir. 1929)); Propstra v. United States, 680 F.2d 1248, 1256 n.12 (9th Cir. 1982) ("Jacobs has spawned a line of authority supporting the proposition that post-death events must be taken into account when computing the value of certain and enforceable claims against the estate.").
Jacobs, however, was decided in 1929, and recent cases have not subscribed to the Jacobs "actuality" approach. The interpretation of more recent cases and the Treasury Regulations show that Jacobs was wrongly decided and that post-death events should not be considered.

In Jacobs, the decedent owed his wife a lump sum payment of $75,000 per a contractual agreement. In his will, however, the decedent left his wife installment payments of $250,000 if she did not pursue the $75,000 claim against the estate. At the time of his death, then, the decedent owed a debt of $75,000. His wife, however, decided to accept the terms of the will and did not take the $75,000 owed to her. The Eighth Circuit found that post-death events should be taken into account and preferred an "actuality" approach rather than the approach taken by Ithaca Trust Co. v. United States and the other circuits in favor of valuing claims against the estate at the date of the decedent's death. The Eighth Circuit stated that there is neither a claimant nor a claim in this case, so the estate cannot make any deduction for the $75,000.

Although the Eighth Circuit properly recognized that the estate would be getting a windfall by claiming a deduction on $75,000 that it had no intention of paying out as a liability, the court misinterpreted the antenuptial agreement. The wife in Jacobs had a valid claim of $75,000 and was a valid claimant at the time of the decedent's death. The decedent put the provision of paying $250,000 in installments to his wife precisely because she had that valid claim. In other words, if the decedent's wife did not have a valid lump sum claim of $75,000 against the decedent, he would not have put a provision in his will giving her the option to receive the $250,000 in installments. Thus, the wife's claim was ascertainable and certain at the decedent's death. The Eighth Circuit failed to distinguish the date-of-death value from post-death events caused by the wife (creditor). That the wife declined the claim after the decedent died does not change the fact that at the date of death the wife had a valid claim against the estate that she could recover. According to the Treasury Regulations, such a claim may be deducted because it represents "personal obligations of

278. Jacobs, 34 F.2d at 233.
279. See supra text accompanying notes 5-8; supra note 147-57 and accompanying text. The Eighth Circuit, however, has left Jacobs intact, finding that post-death events should be considered in valuing claims against the estate. Estate of Sachs v. Comm'r, 856 F.2d 1158, 1163 (8th Cir. 1988).
280. Jacobs, 34 F.2d at 233; see also supra text accompanying note 144.
281. Jacobs, 34 F.2d at 233; see also supra text accompanying note 145.
282. Jacobs, 34 F.2d at 233; see also supra text accompanying note 146.
283. Jacobs, 34 F.2d at 235; see supra text accompanying notes 147-52.
284. 279 U.S. 151 (1929).
285. See supra text accompanying notes 147-50.
286. Jacobs, 34 F.2d at 236.
287. Id. at 236-37 (McDermott, J., dissenting).
the decedent existing at the time of his death. Therefore, at the time of the decedent's death, the decedent had a personal obligation to his wife in the amount of $75,000 that should have been deducted as a claim against the estate. The value of the claim as of the date of death should stand.

Although Jacobs is the leading case for arguing that post-death events should be taken into consideration, it is a weak case on its facts. In Jacobs, the will created a situation where the estate did not know at the time of the decedent's death whether or not the estate would ever have to pay the $75,000 claim. Although the wife did have a valid claim against the estate at the time of the decedent's death, it is also possible at the time of the decedent's death that the claim would not be paid. If Jacobs has any force, it is as a contingent claim, but as this Note will argue, even contingent claims should be valued at the date of death.

B. Post-Death Events Should Not Be Considered in Determining the Value of Claims Against the Estate

An estate is settled as of the date of death. The estate's assets are valued as of the date of the decedent's death, and subsequent events that affect the value of those assets are not considered for estate tax purposes. Valuation of claims, therefore, which affect the value of the estate just as much as assets, should also be settled as of the date of death, regardless of the type of claim (e.g., an enforceable claim at death should be deductible as a claim against the estate regardless of whether subsequent events make the claim unenforceable). It would be anomalous to value the assets of an estate at one time but the claims against the estate at another time. Since the valuation of both assets and claims is critical to see what property transfers at death for estate tax purposes, it does not make sense to have different valuation dates for each. It would leave the estate confused as to how to manage and disperse the estate.

Even if one disregarded the comparison between assets and claims, the date-of-death valuation of claims is still most consistent with the intent of the estate tax laws. Section 2001 of the Internal Revenue

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289. This is analogous to an enforceable claim at death that later becomes unenforceable due to the creditor's action or lack of action. See supra Parts I.B.4, II.D.
290. See supra note 143.
291. See infra Part III.B.2.
293. See supra Part I.D.
294. See I.R.C. § 2033 (2001); supra note 93.
295. See supra note 180 and accompanying text.
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Code states that a tax is "imposed on the transfer of the taxable estate."\footnote{I.R.C. §2001(a).} This transfer occurs at the date of the decedent's death. "[T]he estate tax is a tax on the privilege of transferring [sic] property upon one's death, [so] the property to be valued for estate tax purposes is that which the decedent actually transfers at his death . . . ."\footnote{I.R.C. §2001(a); see also supra text accompanying note 296.} Since the tax is imposed on the transfer of the estate, which occurs at death, the valuation of the estate, including its claims, should be valued at the date of death.

Of course, there have been arguments that the purpose of estate tax is to tax the interest that the beneficiaries receive (which occurs after the date of the decedent's death),\footnote{I.R.C. §2001(a); see also supra note 296.} rather than a tax on the transfer of the estate (which happens at the date of death). Such a tax would allow post-death events to be considered when valuing claims against the estate. This view, however, appears suspect based on the plain language of § 2001, which clearly states that estate tax is a tax on the "transfer" of the estate.\footnote{Propstra, 680 F.2d at 1250 (emphasis added); see also supra note 135 and accompanying text; infra text accompanying notes 337-39.} Although the Internal Revenue Code does make reference to a tax being imposed on the transfer of an estate, it does not make any mention of a tax being imposed on the estate that the beneficiaries receive.

Further, those circuits that have recently examined when to value a claim against the estate as a case of first impression have subscribed to this rule of transfer and found that claims against the estate should be valued at the date of death, making it questionable that the estate tax is intended to be a tax on the property that the beneficiaries receive.\footnote{Hagmann Comment, supra note 27, at 637; see also supra notes 151-53 and accompanying text.} This may be because of the change in the law that occurred in 1954.\footnote{Estate of McMorris v. Comm'r, 243 F.3d 1254, 1258 (10th Cir. 2001); Estate of O'Neal v. United States, 258 F.3d 1265, 1266 (11th Cir. 2001); see also supra text accompanying note 152; supra notes 136-41, 193-96 and accompanying text.} The predecessor to § 2053(a) stated that the "net estate shall be determined . . . by deducting from the value of the gross estate . . . claims against the estate."\footnote{Comm'r v. Estate of Shively, 276 F.2d 372, 374 (2d Cir. 1960) (quoting I.R.C. § 812 (1939)); see also supra note 39 and accompanying text.} It can be argued that § 812, the predecessor of § 2053(a), was meant to tax the property that the beneficiaries receive because the statute spoke of the "net estate," which is in effect what passes to the beneficiaries. Section 2053, on the other hand, does not refer to the "net estate."\footnote{See supra text accompanying note 41.} This change in language may account for the more recent cases finding that the intent of § 2053(a)(3) was to value claims against the estate at the date of death, which is when the transfer of the estate happens, rather than at
some later date. The Fifth Circuit's interpretation of estate tax being a tax "on the act of transferring property... [which happens at] the instant of death," is more similar in language and reasoning to the Internal Revenue Code and should be followed.

Changing the value of a claim against the estate also seems contrary to regulations. The interest on claims against the estate can only be valued for a deduction in the amount accrued up to the date of death but not beyond. Any subsequent interest, which could increase the value of the claim after the date of death, may not be deducted. If interest can only be considered up to the date of death, why should other post-death events that change the value of claims against the estate be taken into consideration? It seems that to allow a post-death settlement, but not to allow post-death interest, to affect the value of an estate would be contradictory policy.

Further, the Internal Revenue Code and Treasury Regulations state that deductions may be taken for a claim representing personal obligations of the decedent "existing at the time of death." The regulations do not say that should the amount of the personal obligation change, or should the personal obligation become invalid at some later event (as in the case of enforceable claims that later become unenforceable), the deduction should similarly change. The statutes and regulations only speak of deductions being taken for claims that are valid at the date of death.

There have been arguments, however, that because § 2053(a) includes deductions for funeral and administration expenses, which must be valued after the date of death, Congress intended the valuation of claims against the estate to also take into consideration post-death events. Such an argument, however, is disputable. The Eighth Circuit stated that deductions for claims against the estate were included in the same statutory section as deductions for funeral expenses and administration expenses, both of which are valued after

304. Commissioner v. Estate of Shively, which was decided in 1960, for example, held that post-death events should be taken into consideration when valuing claims against the estate. 276 F.2d at 375. This case, however, relied heavily on § 812, the predecessor to § 2053(a). Given the change in the language of the statute, the case may have been decided differently today.

305. Estate of Smith v. Comm'r, 198 F.3d 515, 524 (5th Cir. 1999); see also supra text accompanying note 191.


307. Treas. Reg. § 20.2053-4 (emphasis added); see I.R.C. § 2053(c)(2) (2001); see supra text accompanying note 42. This obligation must be enforceable at the time of death, not actually enforced at some later time, to be deductible. Treas. Reg. § 20.2053-4; Winer v. United States, 153 F. Supp. 941, 943 (S.D.N.Y. 1957); see also supra text accompanying notes 43, 236. The fact that the debt is extinguished in part or in its entirety after the decedent has died is of no consequence to the enforceability of the claim that existed at the date of the decedent's death. The deduction, then, should be for the amount that the claim is worth at the date of death.

308. Jacobs v. Comm'r, 34 F.2d 233, 236 (8th Cir. 1929); Federal Estate Tax, supra note 157, at 478; see also supra notes 150-57 and accompanying text.
the date of death. This means, the Eighth Circuit reasoned, that claims against the estate must have also been intended by Congress to be valued by post-death events. The Eighth Circuit’s analysis, however, is a bit of a stretch. Funeral and administrative expenses necessarily have to be valued after the date of death because that is when those expenses arise. It is impossible to value those deductions until the decedent has died. In the case of claims against the estate, however, a claim needs to be valid “at the time of [the decedent’s] death” to be deductible. It is perfectly reasonable to require post-death analysis for funeral and administration expenses and not for claims against the estate. Furthermore, in most cases, a claim against the estate has value and can be valued as of the date of death, unlike funeral and administrative expenses. A claim against the estate, then, is different in form from funeral and administrative expenses, which makes the Eighth Circuit’s analysis of Congressional intent questionable.

Finally, it is worth noting that the Internal Revenue Service has not been consistent in its position that post-death events should be taken into account when valuing claims against the estate. When it can generate more revenue (i.e., when the value of a deductible claim is worth more at death than at a later point), the Internal Revenue Service has argued that the claim should be valued based on events up to, but not after, the date of the decedent’s death. Putting in place a date-of-death valuation of claims against the estate would make the rule uniform and consistent, and would not allow the Commissioner to apply the post-death valuation in some instances but not others. This would lead to predictability and certainty for estate administration.

309. Jacobs, 34 F.2d at 236; see I.R.C. § 2053(a).
310. Jacobs, 34 F.2d at 236; see supra text accompanying note 150.
311. Treas. Reg. § 20.2053-4. Courts have also found that the date-of-death valuation is the rule and that the exceptions to that rule are when to value funeral expenses and when to value administrative expenses (and not that all three should take into consideration post-death events by virtue of the three deductions having been grouped into one statute). Estate of Smith v. Comm'r, 198 F.3d 515, 524 n.36 (5th Cir. 1999); supra note 192.
312. Ithaca Trust Co. v. United States, 279 U.S. 151, 155 (1929); supra text accompanying note 170; see supra text accompanying notes 128-29, 136-38, 143-44, 158-61, 200-02, 208-09, 231-32, 242-43, 248-50; supra note 176; supra Part I.B.1-2, 4. But see Jones, supra note 65, at 671. “There are some types of claims whose effect upon the ‘taxable estate’ must be determined by subsequent events.” Id.
313. One court held that it is “insignificant that Congress placed funeral and estate administration expenses, which are calculated after death, with claims against the estate in section 2053(a), because that section also contains a deduction for unpaid mortgages, which may be calculated without reference to post-death events.” Estate of McMorris v. Comm'r, 243 F.3d 1254, 1261 (10th Cir. 2001).
314. See, e.g., Estate of Lester v. Comm'r, 57 T.C. 503, 507 (1972); see also supra note 166.
315. See, e.g., Estate of Lester, 57 T.C. at 507 (1972); Palmquist, supra note 36, at 711.
1. Claims That Are Disputed or Difficult to Ascertain

Like certain claims whose amounts are definite at the date of death,\textsuperscript{316} disputed claims have value at the date of death.\textsuperscript{317} The precise value may be subject to debate because it is a disputed claim, but it nonetheless has some value as of the date of death.\textsuperscript{318} In \textit{Estate of Smith v. Commissioner},\textsuperscript{319} an estate settled a disputed claim fifteen months after the decedent’s death.\textsuperscript{320} The Commissioner argued that because the claim was disputed at the date of death, the claim’s value should not have been determined at the date of death; instead, a deduction should only be taken for the amount that the estate actually paid.\textsuperscript{321} The Fifth Circuit ruled that even disputed claims must be valued at the date of death.\textsuperscript{322} The Fifth Circuit’s approach—that disputed claims are to be valued based on facts known up to, but not after, the date of death—is most consistent with the regulations,\textsuperscript{323} and should be adopted.

Section 20.2053-1(b)(3) denies deductions for “vague or uncertain” estimates but allows deductions for claims valued with “reasonable certainty.”\textsuperscript{324} This would allow disputed claims to be valued at the date of death provided that sufficient facts support the certainty of that value. Even claims whose value is difficult to ascertain at the date of death nevertheless have some value that is deductible up front. An exact figure is not required by the regulations, which state that “[a]n item may be entered on the return for a deduction though its exact amount is not then known.”\textsuperscript{325} Therefore, these types of claims can be valued at the date of death provided that the valuation is based on circumstances that foster “reasonable certainty.” For example, an executor of an estate can research the value of claims in the estate’s jurisdiction existing at the time of the decedent’s death that are similar to the disputed or difficult to ascertain claims and deduct that amount.

Further, an analogy can legitimately be made between an estate’s assets and claims. Even when an estate has assets whose values are either difficult to ascertain, disputed, or contingent, those assets are nevertheless valued at the date of death.\textsuperscript{326} Post-death events that change the value or allow a determination of value with greater

\textsuperscript{316} See supra Part I.B.1.
\textsuperscript{317} See supra note 207.
\textsuperscript{318} Gowetz v. Comm’r, 320 F.2d 874, 876 (1st Cir. 1963); supra note 207.
\textsuperscript{319} 198 F.3d 515 (5th Cir. 1999).
\textsuperscript{320} \textit{Id.} at 519-20; see also supra text accompanying note 186.
\textsuperscript{321} Estate of Smith, 198 F.3d at 520; see also supra text accompanying note 187.
\textsuperscript{322} Estate of Smith, 198 F.3d at 517; see also supra text accompanying note 188.
\textsuperscript{323} Estate of Smith, 198 F.3d at 517; supra text accompanying note 188; see Treas. Reg. § 20.2053-1(b)(3) (as amended in 1972).
\textsuperscript{324} Treas. Reg. § 20.2053-1(b)(3).
\textsuperscript{325} \textit{Id.}
\textsuperscript{326} See supra Part I.D.
certainty are not considered. Similarly, if a decedent is a creditor at the time of his death, the amount of the debt owed to him is valued at the date of death, and anything that compromises the value of that liability after the decedent’s death is not considered. It should follow, then, that where the decedent is the debtor on a claim, that claim should also be valued at the date of the decedent’s death. This would provide both finality and consistency to the way an estate is settled.

Since the regulations do not bar disputed claims, or claims difficult to ascertain, from being deductible, such claims should be permitted as deductions and valued with “reasonable certainty” at the date of death in the same manner as assets are valued.

2. Contingent Claims

Contingent claims differ from other types of claims because in these types of claims an estate is liable for a debt based on the action or inaction of another. Usually, this action occurs after the decedent has died. There are instances, however, where it appears likely at the date of the decedent’s death that the estate will have to pay that debt on behalf of the primary obligator, and the value of that debt can be ascertained at the date of the decedent’s death based on facts known up to that point. In such instances, the claim should be deductible as a claim against the estate in the same way that a disputed claim would be.

The regulations do not require absolutes, but only “reasonable certainty.” A contingent claim, therefore, should be deducted, when, at the time of death, it appears with “reasonable certainty” that the estate will have to pay the claim.

327. “The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.” I.R.C. § 2033 (2001) (emphasis added). Treasury Regulations also state that “[t]he value of every item of property includible in the decedent’s gross estate . . . is its fair market value at the time of the decedent’s death.” Treas. Reg. § 20.2031-1(b) (as amended in 1965) (emphasis added); see also supra note 90 and accompanying text.

328. See supra note 90. Consider the hypothetical: Jimmy Jones dies leaving an estate worth $3,000,000, but is also a creditor on a disputed claim against a third party in the amount of $200,000. At the time of his death, the $200,000 is included in the decedent’s gross estate for Federal estate tax purposes. One year after the estate pays its taxes, the estate settles the claim owed by the third party for $100,000. Under the Internal Revenue Code and the Treasury Regulations, the settlement is of no consequence. The settlement was a post-death event, and the estate cannot file an amended return to pay the reduced taxes on the actual value of the estate.

329. Jones, supra note 65, at 671-73; see supra note 312 and accompanying text.

330. See supra notes 74-76 and accompanying text.

331. See supra Part III.B.1.


333. If, however, the value cannot be determined with “reasonable certainty” at the date of death, the estate can try to ascertain the value up to the time of final audit and deduct it then. If, even at the time of the final audit the estate cannot
A contingent claim is analogous to a disputed claim in that at the date of death a liability exists, but there is a possibility that the estate will not pay it.\textsuperscript{334} Similarly, a contingent claim can be analogous to a claim whose value is difficult to ascertain.\textsuperscript{335} For disputed claims and claims whose value is difficult to ascertain, there is controversy on whether to value the claims based on facts known up to the date of death, or whether the deduction should be limited to the amount that is actually proved or agreed on by the estate after the decedent has died.\textsuperscript{336} Courts have ruled that disputed claims and claims whose value is difficult to ascertain should be valued at the date of death, and the deduction taken should reflect that value.\textsuperscript{337} There is no reason why the same rule cannot apply to contingent claims. If disputed claims, which may never have to be paid by the estate, can be deducted based on their value at the time of the decedent’s death, contingent claims, which similarly may not be paid, should be deducted in the same manner. In both cases, the value of the claim may be determined with “reasonable certainty,” and the estate may arguably prove that the claim will be paid\textsuperscript{338} based on facts that exist up to the date of the decedent’s death.\textsuperscript{339}

Contingent claims should be treated in the same way as disputed claims because they involve many of the same issues (whether the claim will be paid, for example). Further, such a rule coincides with the policy of settling the estate at the date of death, as courts have stated that the estate tax is a tax “on the act of transferring property . . . [which happens at] the instant of death.”\textsuperscript{340}

A contingent claim could likewise be treated like a contingent asset, where the value of the asset is always determined at the date of death, discounted for any uncertainties that are present at the point of death.\textsuperscript{341} If a contingent asset must be valued at the date of the decedent’s death, a contingent claim should be valued at that same date.\textsuperscript{342} The nature of a contingent asset is often one where the

ascertain the liability or value of the claim, it may petition the Tax Court or claim a refund within the required statute of limitations period upon later ascertaining the value of the liability. \textit{Id.}; see I.R.C. §§ 6213(a), 6511 (2001).

\textsuperscript{334} See \textit{supra} text accompanying note 66.

\textsuperscript{335} See \textit{supra} text accompanying note 65.

\textsuperscript{336} See \textit{supra} text accompanying note 67; \textit{supra} Part II.C.

\textsuperscript{337} Estate of O’Neal v. United States, 258 F.3d 1265 (11th Cir. 2001); Estate of Smith v. Comm’r, 198 F.3d 515 (5th Cir. 1999); see also \textit{supra} Part II.C.1.

\textsuperscript{338} Treas. Reg. § 20.2053-1(b)(3) (as amended in 1972); see \textit{supra} text accompanying note 182.

\textsuperscript{339} See \textit{Estate of Smith}, 198 F.3d at 517; see also \textit{supra} text accompanying note 188. The courts have never tested this argument formally, but it should be considered, given the history and recent trends of the date-of-death valuation arguments that have prevailed for other claims. See \textit{supra} notes 297-305 and accompanying text.

\textsuperscript{340} \textit{Estate of Smith}, 198 F.3d at 524; see also \textit{supra} text accompanying note 323.

\textsuperscript{341} See \textit{supra} Part I.D.

\textsuperscript{342} In an arguably contradictory policy, the Commissioner has argued that a
decedent is a creditor on a claim. If such contingent claims on which the decedent is a creditor are valued at the date of death, there is no reason why the same should not be true for a contingent claim on which the decedent is a debtor. There can be no sound policy reason for treating the same type of claims differently solely based on whether the decedent was a creditor or a debtor; the underlying facts that would be relevant as to whether liability would arise in both cases are still the same.

CONCLUSION

Up to now there has been confusion on when to value a claim against the estate. Courts have remained divided between valuing a claim at the date of the decedent's death and considering post-death events that change the value of the claim. Although there is no clear rule on when to value a claim against an estate, the Internal Revenue Code, Treasury Regulations, and adequate case law seem to favor valuation at the date of death. Such a valuation would resolve the current confusion on when to value a claim by providing a "bright line rule." At the same time, the date-of-death valuation requires the entire estate, assets and claims alike, to be settled at the date of the decedent's death. There will rarely be an instance where a claim cannot be valued at the date of death, and, even in such instances, the regulations provide us with some guidance. Allowing for post-death events to be taken into consideration when valuing claims against the estate can lead to a lot of uncertainty about when the estate will finally be settled. Even if there is a "statute-of-limitations" period during which claims may be valued up to a certain point after death, there will still arise the danger of the estate purposefully settling a claim just beyond that period to avoid higher estate tax duties. A contingent asset has value at the date of death that can be added to the gross estate for purposes of calculating the estate tax, but when an estate attempts to deduct a contingent claim, the Commissioner has argued that the contingent nature of these claims should preclude a § 2053 deduction. See Estate of Smith, 198 F.3d at 527 (discussing the Commissioner's argument that contingent assets should be included in the decedent's gross estate); Gowetz v. Comm'r, 320 F.2d 874, 876 (1st Cir. 1963) (discussing the Commissioner's argument that contingent claims are different and should not be deducted from the decedent's gross estate); see also supra notes 103-06 and accompanying text; supra note 205.

343. See supra text accompanying notes 261-65; supra Part I.D.
344. Estate of McMorris v. Comm'r, 243 F.3d 1254, 1261 (10th Cir. 2001); see supra text accompanying note 141.
345. Treas. Reg. § 20.2053-1(b)(3) (as amended in 1972); see also supra note 333 and accompanying text.
346. See supra note 180; supra text accompanying note 295. Consider what would happen in a situation like Ithaca Trust Co. v. United States, 279 U.S. 151 (1929), where the actuarial tables predicting the life expectancy of the relevant party were wrong, but instead of six months, it took forty years to find out. See supra text accompanying notes 110-15.
person’s life is finalized at death. A person’s estate should likewise be finalized on that date.