

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2009.

## Rev. Rul. 2009-35

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009-35 TABLE 1

Applicable Federal Rates (AFR) for November 2009

|                   | <i>Period for Compounding</i> |                   |                  |                |
|-------------------|-------------------------------|-------------------|------------------|----------------|
|                   | <i>Annual</i>                 | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| <i>Short-term</i> |                               |                   |                  |                |
| AFR               | .71%                          | .71%              | .71%             | .71%           |
| 110% AFR          | .78%                          | .78%              | .78%             | .78%           |
| 120% AFR          | .85%                          | .85%              | .85%             | .85%           |
| 130% AFR          | .92%                          | .92%              | .92%             | .92%           |
| <i>Mid-term</i>   |                               |                   |                  |                |
| AFR               | 2.59%                         | 2.57%             | 2.56%            | 2.56%          |
| 110% AFR          | 2.85%                         | 2.83%             | 2.82%            | 2.81%          |
| 120% AFR          | 3.10%                         | 3.08%             | 3.07%            | 3.06%          |
| 130% AFR          | 3.37%                         | 3.34%             | 3.33%            | 3.32%          |
| 150% AFR          | 3.90%                         | 3.86%             | 3.84%            | 3.83%          |
| 175% AFR          | 4.55%                         | 4.50%             | 4.47%            | 4.46%          |
| <i>Long-term</i>  |                               |                   |                  |                |
| AFR               | 4.01%                         | 3.97%             | 3.95%            | 3.94%          |
| 110% AFR          | 4.42%                         | 4.37%             | 4.35%            | 4.33%          |
| 120% AFR          | 4.82%                         | 4.76%             | 4.73%            | 4.71%          |
| 130% AFR          | 5.23%                         | 5.16%             | 5.13%            | 5.11%          |

REV. RUL. 2009-35 TABLE 2

Adjusted AFR for November 2009

|                         | <i>Period for Compounding</i> |                   |                  |                |
|-------------------------|-------------------------------|-------------------|------------------|----------------|
|                         | <i>Annual</i>                 | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| Short-term adjusted AFR | .80%                          | .80%              | .80%             | .80%           |
| Mid-term adjusted AFR   | 1.89%                         | 1.88%             | 1.88%            | 1.87%          |
| Long-term adjusted AFR  | 3.92%                         | 3.88%             | 3.86%            | 3.85%          |

REV. RUL. 2009-35 TABLE 3

Rates Under Section 382 for November 2009

|  |       |
|--|-------|
| Adjusted federal long-term rate for the current month  | 3.92% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 4.33% |

REV. RUL. 2009-35 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for November 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

|  |       |
|--|-------|
| Appropriate percentage for the 70% present value low-income housing credit | 7.76% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.33% |

REV. RUL. 2009-35 TABLE 5

Rate Under Section 7520 for November 2009

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

3.2%

## Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2009. See Rev. Rul. 2009-35, page 568.

## Section 2053.—Expenses, Indebtedness, and Taxes

26 CFR 20.2053-1: *Deductions for expenses, indebtedness, and taxes; in general.*

This notice provides a limited administrative exception to the ability of the Internal Revenue Service to examine a Form 706 (*United States Estate (and Generation-Skipping Transfer) Tax Return*) in connection with certain protective claims for refund that are based on a deduction under section 2053 of the Internal Revenue Code and are filed within the time prescribed in section 6511(a) of the Code. See Notice 2009-84, page 592.

T.D. 9468

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 20

### Guidance Under Section 2053 Regarding Post-Death Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amount deductible from a decedent's gross estate for claims against the estate under section 2053(a)(3) of the Internal Revenue Code (Code). In addition, the regulations update the provisions relating to the deduction for certain state death taxes to

reflect the statutory amendments made in 2001 to sections 2053(d) and 2058. The regulations primarily will affect estates of decedents against which there are claims outstanding at the time of the decedent's death.

**DATES: Effective Date:** The regulations are effective on October 20, 2009.

**Applicability Dates:** For dates of applicability, see §§20.2051-1(c), 20.2053-1(f), 20.2053-3(e), 20.2053-4(f), 20.2053-6(h), 20.2053-9(f), and 20.2053-10(e).

**FOR FURTHER INFORMATION CONTACT:** Karlene M. Lesho, (202) 622-3090 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 2001 of the Code imposes a tax on the transfer of the taxable estate, determined as provided in section 2051, of every decedent, citizen, or resident of the United States. Section 2031(a) generally provides that the value of the decedent's gross estate shall include the value at the time of decedent's death of all property, real or personal, tangible or intangible, wherever situated. Section 2051 provides that the value of the taxable estate is determined by deducting from the value of the gross estate the deductions provided for in sections 2051 through 2058. Pursuant to section 2053(a), "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."

The amount an estate may deduct for claims against the estate has been a highly litigious issue. See the Background in the notice of proposed rule-making published in the **Federal Register** on April 23, 2007 (REG-143316-03, 2007-1 C.B. 1292 [72 FR 20080]). Unlike section 2031, section 2053(a) does not contain a specific directive to value a deductible claim at its value at the time of the decedent's death. Section 2053 specifically contemplates expenses such as funeral and administration expenses, which are only determinable after the decedent's death.

The lack of consistency in the case law has resulted in different estate tax treatment of estates that are similarly situated, depending only upon the jurisdiction in which the executor resides. The Treasury Department and the IRS believe that similarly-situated estates should be treated consistently by having section 2053(a)(3) construed and applied in the same way in all jurisdictions.

Accordingly, in an effort to further the goal of effective and fair administration of the tax laws, the Treasury Department and the IRS published proposed regulations in the **Federal Register** on April 23, 2007. In formulating the proposed rule, the Treasury Department and the IRS carefully considered: the statutory framework and legislative history of section 2053 and its predecessors; the existing regulatory provisions under section 2053, particularly those that are generally applicable to all amounts deductible under section 2053; the numerous judicial decisions involving an issue under section 2053(a)(3) and the analysis and conclusion in each; and, the practical consequences of various possible alternatives for determining the amount deductible under section 2053(a)(3).

The proposed regulations proposed amendments to the regulations under section 2053 to clarify that events occurring after a decedent's death are to be considered when determining the amount deductible under all provisions of section 2053 and that deductions under section