***Estate of Charles Fred Theis, Deceased, Laura Watson and Guy W. Theis, Co-Personal Representatives, Petitioners v. Commissioner of Internal Revenue, Respondent; Estate of Mary L. Theis, Deceased, Laura Watson and Guy W. Theis, Co-Executors, Petitioners v. Commissioner of Internal Revenue, Respondent, 81 T. C. 741 (1983)***

Mortgage balances are not deductible from an estate's gross value when the decedent is not personally liable for the mortgage and no claim is made against the estate.

**Summary**

The Theis estates sought to deduct mortgage balances from their gross estates, arguing these were valid claims or indebtedness. The Tax Court ruled that neither estate could deduct these amounts under IRC sections 2053(a)(3) or 2053(a)(4) because the decedents were not personally liable for the mortgages. Charles Theis had signed one mortgage as an accommodation party, but no claims were made against the estates. The court emphasized that only enforceable claims against an estate qualify for deductions, and the full value of the mortgaged property must be included in the estate without deduction for the mortgage if the estate is not liable.

**Facts**

Charles and Mary Theis gifted remainder interests in two parcels of land to their children while retaining life estates. Both parcels were subsequently mortgaged by the children. Charles and Mary joined in the mortgage for one parcel, and Charles signed the note as an accommodation party for the other. At their deaths, the estates included the full value of the parcels in their gross estates but attempted to deduct the mortgage balances. No claims were ever made against the estates for these mortgages, and the children continued to make payments.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in the estates' federal estate taxes. The estates filed petitions with the Tax Court, which consolidated the cases. The court ruled against the estates, disallowing the mortgage deductions and affirming the inclusion of the full value of the properties in the gross estates.

**Issue(s)**

1. Whether the balances due on the mortgages are deductible as claims against the estates under IRC section 2053(a)(3)?
2. Whether the balances due on the mortgages are deductible as unpaid mortgages under IRC section 2053(a)(4)?
3. Whether the regulation at section 20. 2053-7 of the Estate Tax Regulations allows for a deduction or exclusion of the mortgage amounts?

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## Holding

1. No, because the mortgages did not represent personal liabilities of the decedents and no claims were made against the estates.
2. No, because the decedents were not primarily liable for the mortgages, and allowing such a deduction would go beyond the intent of the statute.
3. No, because the regulation applies to situations where the decedent is liable for the mortgage, which was not the case here.

## Court's Reasoning

The court determined that for a mortgage to be deductible under section 2053(a)(3), it must represent a personal liability of the decedent, which was not the case here. The court cited Florida law, which requires a signature on the promissory note for liability, and noted that Charles Theis signed as an accommodation party without receiving any consideration. The court rejected the estates' argument that the mortgages were deductible under section 2053(a)(4), stating that this section applies to situations where the decedent is primarily liable for the mortgage, not where they are secondarily liable or an accommodation party. The court also held that section 20. 2053-7 of the Estate Tax Regulations did not apply because it pertains to situations where the decedent's estate is liable for the mortgage, which was not the case here. The court was concerned about potential abuse if such deductions were allowed without the decedent bearing the burden of the mortgage payments.

## Practical Implications

This decision clarifies that mortgage deductions are not allowed in estate tax calculations when the decedent is not personally liable for the mortgage and no claim is made against the estate. Attorneys and executors must ensure that any claimed deductions are enforceable against the estate and that the decedent was primarily liable for the mortgage. This ruling may affect estate planning strategies involving mortgages on gifted properties, as it underscores the importance of the decedent's liability status in determining estate tax deductions. Subsequent cases have cited this decision in similar contexts, reinforcing the principle that only enforceable claims against an estate qualify for deductions.

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