

## BUNDLED FIDUCIARY FEES REMAIN DEDUCTIBLE (FOR NOW)

MONDAY, MAY 02, 2011

In 2008, the U.S. Supreme Court held that costs paid to an investment advisor by a nongrantor trust or estate generally are subject to the Code §67(a) 2% floor for miscellaneous itemized deductions. Michael J. Knight, Trustee of William L. Rudkin Testamentary Trust v. Commissioner, 552 U.S. 181 (2008). What happens when the estate or trust pays a bundled fiduciary fee – that is one that does not provide a breakout on the total fee paid between investment advisory fees subject to the 2% limit and other fees that are not subject to the 2% floor? How is the taxpayer supposed to know how much is subject to the 2% floor?

After the Knight case, the IRS has issued Notices on an annual basis that relieved taxpayers of having to determine the portion of a bundled fiduciary fee that is subject to the 2% floor.

The IRS has now issued a Notice that indefinitely extends this relief, until the date that final regulations on the subject are published. Prior to that date, taxpayers may deduct the full fee without regard to the 2% floor. The Notice warns that payments by the fiduciary to third party for investment expenses are deemed to be readily identifiable and must be treated separately from the otherwise bundled fee.

*Notice 2011-37, 2011-20 IRB (4/13/11)*

Authored by Charles Rubin, Esq. Mr. Rubin is a Florida Bar Board Certified tax attorney with the firm of Gutter Chaves Josepher Rubin Forman Fleisher P.A. ([www.floridatdex.com](http://www.floridatdex.com)) His practice focuses on protecting & enhancing individual, family & business wealth through: Planning to Minimize Taxes (U.S. & International) • Estate Planning, Charitable, Marital & Succession Planning • Business Structuring & Transactions • Trusts & Estates (Administration-Disputes-Drafting) • Creditor Protection. He can be reached at 561-998-7847 or at [crubin@floridatdex.com](mailto:crubin@floridatdex.com). This article was previously published at <http://www.rubinontax.blogspot.com>.