

Deductibility of Legal Fees

We are often asked about when attorneys' fees are tax deductible?

The following is a brief summary.

Personal Fees

The preparation of wills and trusts is a personal expense and is not tax deductible on an individual's income tax return. However, tax advice in connection with the planning of one's estate is deductible.

Trustee's Fees

A trustee who retains an attorney to represent the trustee can usually pay the attorneys' fees from the estate or the trust. However, if the services are not those in the normal course of administration, such as where the trustee is acting in his or her own self interest, the trustee will be personally responsible for those legal fees, and such fees are not tax deductible.

Beneficiaries' Legal Fees

Attorneys' fees incurred by beneficiaries are ordinarily paid by the beneficiaries and are not tax deductible. However, the "Common Fund Doctrine" provides that a beneficiary who has benefited the estate or trust at his or her own expense can sometimes have attorneys' fees reimbursed. The theory is if all the beneficiaries benefit from the litigation, then all of them, or the estate or trust, should pay for it.

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