

## IRS Issues Notice Allowing 2009 Deduction for “Bundled Fiduciary Fees”

Round Three! The IRS has once again issued guidance to extend the deduction for Bundled Fiduciary Fees incurred by nongrantor trusts and estates for the 2009 tax year. IRS Notice 2010-32 was issued on April 1, 2010. The IRS has been issuing guidance on this issue since the 2007 tax year.

The Notice addresses the deductibility of investment advisory and other fees (such as fiduciary income tax return preparation and custody fees) when those fees are integrated within the fee paid to a trustee or executor and are frequently referred to as “Bundled Fiduciary Fees.”

The IRS continues to work on final regulations to outline what portion of a Bundled Fiduciary Fee is fully deductible and what portion is subject to the 2% floor. The final regulations, when issued, will follow the decision of the United States Supreme Court in *Knight v. Commissioner*, 552 U.S. 181 (2008), in which the Court held that investment advisory fees incurred by a nongrantor trust or estate will generally be subject to the 2% floor rule.

Because final regulations will not be issued in time to be applicable to the 2009 tax year, the IRS will, for now, continue to adhere to its guidance last published in IRS Notice 2008-116 and allow a full deduction for Bundled Fiduciary Fees for tax years beginning before January 1, 2010. As a result, IRS Notice 2008-116 is now considered modified and superseded by IRS Notice 2010-32.

Taxpayers should note, however, that payments to third parties for expenses which are subject to the 2% floor are considered readily identifiable and therefore must be treated separately from an otherwise Bundled Fiduciary Fee, even for the 2009 tax year.

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