

IRS Allows Full Deduction for Bundled Fiduciary Fees Until Final Regulations Issued

April 2011

David C. Morganelli, Esq.
Kimberly I. McCarthy, Esq.

For the fourth consecutive year, the Internal Revenue Service (IRS) has extended interim guidance permitting the full deductibility of bundled fiduciary fees incurred by a nongrantor trust or estate. The IRS issued Notice 2011-37 on April 13, 2011 and stated that it will continue to allow a full deduction, without regard to the 2% floor for miscellaneous deductions, to nongrantor trusts or estates that pay a bundled fiduciary fee for costs incurred in-house by the fiduciary until final regulations on this issue are published.

The IRS will detail in its regulations (consistent with the US Supreme Court's holding in *Michael J. Knight, Trustee of William L. Rudkin Testamentary Trust v. Commissioner*, 552 U.S. 181 (2008)) what portion of costs paid to an investment advisor by a nongrantor trust for bundled fiduciary fees will be fully deductible or subject to the 2% floor for miscellaneous deductions. Payments paid directly by a fiduciary to third parties for expenses subject to the 2% floor are deemed readily identifiable and must be treated separately from an otherwise bundled fiduciary fee.

The IRS has not indicated when it expects to release the regulations. The regulations are not expected to apply to tax years that occur prior to the first publication of the proposed regulations.

Read a prior e-Alert on this topic.

IRS Issues Notice Allowing 2009 Deduction for "Bundled Fiduciary Fees"