



## IRS Notice 2010-32 Extends Treatment of Bundled Fiduciary Fees

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In Notice 2010-32, the IRS extended its previously issued interim guidance on the deductibility of investment advisory fees that are bundled with fees for other fiduciary services ("Bundled Fiduciary Fees") under Internal Revenue Code § 67(a).

Code § 67(a) generally provides that amounts paid for investment advisory fees are deductible, subject to the two-percent floor for miscellaneous itemized deductions. On Jan. 16, 2008, the U.S. Supreme Court held that costs paid to investment advisors by a non-grantor trust or estate are generally subject to Code § 67(a)'s two-percent floor for miscellaneous itemized deductions. *Knight v. Commissioner*, 552 U.S. 181 (2008). This holding raised the question of how non-grantor trusts and estates should treat Bundled Fiduciary Fees when a portion of the fee is fully deductible and another portion is subject to the two-percent floor.

The IRS and the Treasury Department expect to issue final regulations under § 1.67-4 of the Income Tax Regulations consistent with the Supreme Court's holding in *Knight*. The regulations also will address the issue raised when a non-grantor trust or estate pays a Bundled Fiduciary Fee for costs incurred in-house by the fiduciary, some of which are subject to the two-percent floor and some of which are fully deductible. The regulations, however, will not be issued in time to be applicable to the 2009 taxable year. In response to the *Knight* decision, the IRS issued Notice 2008-32, which permitted taxpayers to deduct the full amount of Bundled Fiduciary Fees incurred during the 2008 taxable year.

Notice 2010-32 extends this guidance for the 2009 tax year and provides that taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the two-percent floor under Code § 67 for any taxable year beginning before Jan. 1, 2010. Instead, for each such taxable year, taxpayers may deduct the full amount of the Bundled Fiduciary Fee without regard to the two-percent floor. Payments by the fiduciary to third parties for expenses subject to the two-percent floor must be readily identifiable and treated separately from the otherwise Bundled Fiduciary Fee. As a consequence, Notice 2008-116 is modified and superseded.

Williams Mullen regularly advises individuals, banks, trust companies, and tax advisors on a wide variety of trust, tax, and fiduciary matters. Please feel free to contact any member of the Private

Client and Fiduciary Services Team with any questions regarding this Alert.

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