

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

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LIFELINES BLAST

Greetings!

Welcome to the Fiduciary Services Group's Lifelines Blast! (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1012 or e-mail us at awillinger@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD
Partner-in-Charge of Fiduciary Services

Supreme Court Holds that Trust Investment Advice Fees are Subject to 2% of AGI Floor

Recently the Supreme Court unanimously gave the tax arena a new bright line rule regarding Code Sec. 67(e)(1). *Knight v. Commissioner*. Pursuant to Code Sec. 641(b), the taxable income of an estate or trust shall be computed in the same manner as in the case of an individual. Pursuant to Code Sec. 67(e)(1), miscellaneous itemized deductions are subject to a 2% floor.

The Court has provided an exception to the 2% floor for costs that would not commonly or customarily be incurred by individuals and therefore unique to an estate or trust. For example, a trust may have an unusual investment objective, or may require a specialized balancing of the interests of various parties; the Court has said that

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the increased cost of expert advice beyond what would normally be required for the ordinary taxpayer would not be subject to the 2% floor.

Proposed Reg. Sec. 1.67-4 gives a non-exclusive list of products or services that are unique to an estate or trust, including those rendered in connection with: fiduciary accountings; judicial or quasi-judicial filings required as part of the administration of the estate or trust; fiduciary income tax and estate tax returns; the division or distribution of income or corpus to or among beneficiaries; trust or will contest or construction; fiduciary bond premiums; and communications with beneficiaries regarding estate or trust matters.

A non-exclusive list of products or services that are not unique to an estate or trust, and therefore are subject to the 2% floor, includes those rendered in connection with: custody or management of property; advice on investing for total return; gift tax returns; the defense of claims by creditors of the decedent or grantor; and the purchase, sale, maintenance, repair, insurance or management of non-trade or business property.

Maximizing the Benefits of Gifts

As we have discussed before, the gift tax remains in place even during the one year repeal of the estate tax in 2010. The lifetime gift tax exemption is currently \$1 million. In addition to that there is an annual exclusion of \$12,000 per year per recipient, adjusted for inflation.

Nevertheless, a family member may maximize tax free transfers while allowing the recipient the greatest benefit when and where needed. The tax law specifies that the direct payment of medical expenses to medical providers or education expenses to qualified institutions are not treated as taxable gifts.

Example 1: Assume that taxpayer, aged 70, wishes to make a gift of \$80,000 to her child, age 45. The child in turn has two children who are both attending private colleges. The taxpayer may directly pay the tuition for each of her grandchildren, completely exempt from gift tax, which in turn, frees up \$80,000 of the child's assets for other purposes.

Example 2: Taxpayer's adult child is self-employed and does not have health insurance. The health insurance premiums to cover the child and the child's family amount to \$3,000 per month. Taxpayer may directly pay the insurance company, benefiting the child by \$36,000 per year without using up the \$12,000 annual exclusion and without using up any part of the \$1 million lifetime gift exemption.

FIDUCIARY SERVICES GROUP

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RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

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