

Family office news: Bad news for trusts from the US Supreme Court?

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Two recent decisions by the United States Supreme Court will mean increased taxes for trusts that use professional investment advisers.

As with many itemized expenses, the US Internal Revenue Code allows individuals' expenses incurred in the production of income to be deducted only when they exceed two percent of the person's adjusted gross income. The Code also applies that two-percent threshold to trusts – except when the expenses are incurred in connection with the administration of the trust and the expenses would not have been incurred if the property were not held in trust. Trustees have argued over the years that their fiduciary duty compels them to seek expert help with investments, and corporate trustees have maintained that a “bundled” fee – a single fee comprising investment advisory services, accounting and other fiduciary services – is fully deductible. The Internal Revenue Service has maintained that many individuals also use professional advisers; therefore advice to trustees is not a class of expense unique to a trust and should be subject to the two-percent “floor”.

Now in the Rudkin case, decided early this year, the Supreme Court has sided with the IRS. The result is that investment management fees paid by trusts will be subject to the two-percent “floor”.