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July 9, 2008

The Honorable Eric Solomon  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: Report Responding to Notice 2008-32, Request for  
Comments Regarding Treatment of Executors' and Trustees'  
Commissions Under Section 67(e)

Dear Sirs:

We write with comments on the proposed regulations issued under section 67(e). The proposed regulations provide guidance on the costs incurred by estates and non-grantor trusts that are subject to the "two percent floor" for miscellaneous itemized deductions under Section 67(a).

We offer two possible approaches towards the treatment of executors' and trustees' commissions. Under one approach, which we refer to as the "simple approach", commissions paid to executors and trustees for traditional estate and trust administration services generally would not be subject to the two percent floor. However, if an executor or trustee delegates some of its fiduciary responsibilities or duties to a third party, this approach would require that the commissions paid to the executor or trustee be unbundled and allocated among the services provided by the third party to determine the portion of the commissions that are subject to the two percent floor.

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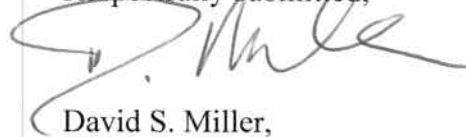
Under the second approach, which is the approach reflected in the proposed regulations, executors' and trustees' commissions generally would be unbundled and allocated among the services provided by the executor or trustee. If this approach is adopted, we suggest a safe harbor for executors' commissions and a safe harbor for trustees' commissions.

Very generally, the executors' safe harbor would apply to fixed-dollar fee commissions and commissions based on the income collected or the value of the assets of the estate. The trustees' safe harbor would apply to commissions paid to trustees that are not required to follow the instructions of another party with respect to investment management, and would apply to the extent of the commission that would be payable under applicable local law to a non-professional trustee (i.e., a trustee who has no fiduciary duty to exercise special investment skills) of a comparable trust. The trustees' safe harbor might further permit the use of statutory commission rates to determine the commission payable under local law to a non-professional trustee.

Commissions qualifying for a safe harbor would not be subject to the two percent floor. Commissions that do not qualify for a safe harbor would be subject to the two percent floor to the extent they are allocable to costs that would be subject to the two percent floor if paid directly.

We appreciate your consideration of our suggestions. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Miller", written over a horizontal line.

David S. Miller,  
Chair

Enclosure

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