



how does the suspension of miscellaneous itemized deductions impact your trust or estate?

January 25, 2018

The Tax Cuts and Jobs Act suspends miscellaneous itemized deductions (i.e., those deductions subject to a 2% floor) from 2018 through 2025, creating an incentive for taxpayers to try and characterize their expenses as giving rise to itemized deductions rather than miscellaneous itemized deductions. General discussion of the new tax law has overlooked this repeal's impact on estates and non-grantor trusts (i.e., most irrevocable trusts), including a time-sensitive planning opportunity.

Prior to the new legislation, an individual could claim miscellaneous itemized deductions for certain types of expenses that were not specifically enumerated in Internal Revenue Code Section 67. These expenses were not deductible until they exceeded 2% of an individual's adjusted gross income. Expenses specifically enumerated in Section 67 were itemized deductions not subject to the same 2% floor, making them more attractive to taxpayers than miscellaneous itemized deductions. The new legislation suspends miscellaneous itemized deductions but keeps itemized deductions (subject to certain other restrictions not relevant here).

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