



**Section of Taxation**

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October 23, 2007

Hon. Eric Solomon  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Ms. Linda Stiff  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Re: Proposed Regulations Relating to Limitation on Estates or Trusts Deductions (REG-128224-06)

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

This letter represents the views of the American Bar Association Section of Real Property, Trust and Estate Law and the American Bar Association Section of Taxation. It has not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

We are writing on behalf of both the American Bar Association Section of Real Property, Trust and Estate Law and the American Bar Association Section of Taxation concerning the proposed regulations issued on July 27, 2007, by the United States Treasury Department ("Treasury") and the Internal Revenue Service ("Service") relating to which costs incurred by estates or non-grantor trusts are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(e) (the "Proposed Regulations").

The interpretation of section 67(e) will be before the United States Supreme Court in the current term (*Rudkin v. Commissioner*, 467 F.3d 149 (2<sup>nd</sup> Cir. 2006), *cert. granted sub nom. Knight v. Commissioner* (S. Ct. Doc. No. 06-1286)). Therefore, we respectfully request that the Treasury and the Service consider deferring 1) the submission date for the comments on the Proposed Regulations, 2) the hearing date for the comments on the Proposed Regulations, and 3) any action on the Proposed Regulations all until after the Court has issued its decision in the *Knight* case. This will afford the public the opportunity to take into account the effect, if any, of the Court's conclusions when submitting comments on the Proposed Regulations.

Sincerely,

Kathleen M. Martin  
Chair  
Section of Real Property, Trust & Estate Law

Stanley L. Blend  
Chair  
Section of Taxation

cc: Donald L. Korb, Chief Counsel, Internal Revenue Service  
Karen Gilbreath Sowell, Deputy Assistant Secretary (Tax Policy), Department of the Treasury  
Michael J. Desmond, Tax Legislative Counsel, Department of the Treasury  
Clarissa C. Potter, Deputy Chief Counsel (Technical), Internal Revenue Service  
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