

## Tax Treatment of Legal Fees for Individuals

You can usually deduct legal expenses that you incur in the production, conservation, maintenance or collection of income.

Deductible legal expenses:

- Fees incurred in doing or keeping your job, such as those you paid to defend yourself against criminal charges arising out of your trade or business
- Fees incurred for tax advice related to a divorce, if the bill specifies how much is for tax advice and it is determined in a reasonable way
- Fees incurred to collect taxable alimony
- Fees incurred for collecting or producing taxable income
- Fees incurred in a voluntary bankruptcy to the extent attributable to the taxpayer's business
- Fees incurred for receiving your share of a class action settlement in a lawsuit against your employer or former employer
- Fees incurred for certain unlawful discrimination actions and whistleblower claims
- Fees incurred for the preparation of a Qualified Domestic Relations Order
- Fees incurred for tax planning
- Fees incurred for estate planning may be deductible in three instances:
  1. When the estate planning costs were incurred for the production or collection of income;
  2. When the estate planning costs were incurred for the maintenance, management or conservation of property that is being used for the production of income; or
  3. When the estate planning costs were incurred in the course of tax advice and tax planning.
- Fees incurred regarding offers in compromise, tax resolution and tax controversies.

Non-deductible legal expenses:

- Custody of children including the collection of child support
- Breach of a promise to marry suit
- Civil or criminal charges resulting from a personal relationship
- Damages for personal injury
- Preparation of a title, defense of a title or perfection of a title
- Preparation of a will, healthcare directive and durable power of attorney
- Preparation of prenuptial and postnuptial agreements

- Property claims or property settlement in a divorce
- Fees incurred in a wrongful death action
- Fees incurred in the buying and selling of real estate (including your personal residence) are to be treated as an adjustment to the basis of the real estate

You cannot deduct these expenses even if a result of the legal proceeding is the loss of income-producing property.

Where to report legal fees:

- Legal fees incurred in the active conduct of a trade or business, including trust and nonprofit organizations, should be reported on the appropriate line of that entities tax return (i.e. Forms 1120, 1120S, 1065, 1041 and 990)
- Deductible legal fees incurred by an individual are reported on Schedule A as a miscellaneous itemized deduction subject to the 2% limitation
- Legal fees incurred by a sole proprietor should be reported on Schedule C or Schedule F
- Legal fees incurred by a unincorporated lessor of real estate should be reported on Schedule E

The above discussion of legal fees is not all inclusive and should not be relied upon as the final authority in determining the deductibility of legal fees. You should contact a qualified tax professional before making a final decision on the deductibility of legal fees you have incurred.