



DON'T TAX YOURSELF

A Publication of Bowditch & Dewey's Estate, Financial & Tax Planning Group

Are Your Unreimbursed Partner's Expenses Deductible?

BY SCOTT C. CASHMAN • JANUARY 25, 2021

Since the Tax Cuts and Job Act of 2017 (TCJA) was passed, a little-known deduction for unreimbursed partner's expenses (UPE) has taken on more significance.

Partners in partnership and members of an LLC often incur significant out of pocket expenses for travel to conduct business with clients, professional education, seminars, professional dues, client entertainment, and expenses for maintaining a home office (assuming that the expense meets the definition of a deductible trade or business expense [ordinary, necessary etc.]). Often the partnership will reimburse the partner or member for these expenses, and the partnership will claim these reimbursement as expense on their own [tax return Form 1065](#).

In other cases, pursuant to the partnership, operating agreement, or policy of the firm, partners and members are expected to pay these expenses from their own funds. Prior to the TCJA, the partner or member would then deduct these (often significant) expenses on Schedule A as a miscellaneous itemized deduction. However, the TCJA suspended [the ability to deduct miscellaneous itemized deductions](#) through the year 2025.

Does this mean that the partner or LLC member has lost a valuable tax deduction for legitimate business expenses? The answer, as it often does, depends.

There is a little-known exception that will allow a partner or member to continue to deduct these unreimbursed expenses. If these expenses are deductible, they are deducted directly on [Schedule E](#) with the notation "UPE", and offset the distributive share of income which is also reported on Schedule E.

For these unreimbursed expenses to be deductible, the partnership or operating agreement (or firm policy) cannot provide for reimbursement (See T.C. Memo. 2011-289 *McLaughlan v. Commissioner* for a discussion of this requirement).

Therefore, it may be a good practice for the firm to actually amend their partnership or operating agreement to explicitly require the partner or member to pay these partnership expenses out of pocket.

To learn more about [home office deductions during the pandemic](#), please read this previous blog post.