

Family Matters: New Considerations For Structuring Family Offices

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Insights from Brown Advisory

Families that have created or inherited considerable wealth are incredibly fortunate, but such privileges can come with a wide range of challenges and responsibilities. Overseeing the often-complex lifestyle of the current generation can involve responsibility for homes, boats, planes, large support staffs, curated art and other substantial fixed assets, not to mention stewardship of ongoing business and investment entities. Additionally, these families are seeking to preserve both their wealth and their beliefs and principles to benefit future generations and, in many cases, fund broader community and philanthropic aims.

These family matters can become enormously complicated, and many multigenerational families have created family offices to manage these complex financial and investment matters. The term “family office” can mean different things to different people, but family offices typically provide the family with support and coordination around legal, tax, accounting, and bill pay, and in many cases such family offices manage investments for multiple family members. Recent years have brought some changes to the rules governing such offices and how they are taxed, leading many families to reconsider (or consider for the first time) questions about whether to start a family office, or whether to restructure an office already in place to better manage shared assets, shared needs for professional services and potential for cost efficiencies.

Background

Family offices today face a renewed imperative to examine whether their operating costs can be treated as trade-or-business expenses rather than miscellaneous itemized deductions. For decades, many offices simply accepted that their investment-related expenses fell into the latter category. However, the 2017 Tax Cuts and Jobs Act suspended those deductions for tax years 2018-2025, removing the long-standing safety net for recovering sizable professional and advisory costs. Then in 2025, the One Big Beautiful Bill Act

made that suspension permanent, eliminating the possibility that these deductions might return when earlier provisions were set to expire. As a result, families who do not operate as a bona fide trade or business (under Section 162) have effectively lost their ability to deduct costs that often reach into the millions each year.

With the One Big Beautiful Bill Act now in place, the strategic value of qualifying as an actual trade or business has increased. The Act provides long-term certainty and permanence, allowing family offices to evaluate structural changes with far greater confidence in the rules that will govern their expenses and revenues for years to come. For ultra-high-net-worth families, this clarity makes it important to determine whether strengthening operations, governance, and economic relationships within the family office could support a shift toward trade-or-business treatment.

At the same time, courts have provided a clearer picture of what it takes to operate as a genuine business. Two family-office tax controversies in recent years – Lender Management LLC v. Commissioner and the Hellmann (GF Family Management LLC) matter – have become influential touchpoints in determining when a family office qualifies as a trade or business under IRC §162. These cases emerged after the 2017 Tax Cuts and Jobs Act eliminated almost all miscellaneous itemized deductions (now permanent under the One Big Beautiful Bill Act). The Lender decision, which upheld full deductibility, serves as a practical blueprint for establishing trade-or-business status, while the Hellmann case, which settled without a merits opinion, illustrates factual pitfalls and underscores the IRS’s scrutiny when the family office resembles self-management rather than an independent advisory enterprise.

The chart below compares the facts of the Lender and Hellmann cases that had different outcomes on the qualification as a trade or business and have emerged as fact-based guidance on the business rigor required to attempt the trade or business status for a family office.

Side By Side Comparison Table Of The Differentiating Fact Patterns Of Lender And Hellmann

Factor	Lender Management (T.C. Memo 2017-246)	Hellmann (GF Family Management LLC)
Outcome / Procedural Status	Tax Court held the family office was a trade or business under §162; deductions allowed. ¹	No merits ruling; Tax Court ordered further factual development, and the case subsequently settled; order not precedent. ²
Structure of Family Office	Operated as a separate investment-management company managing multiple family investment LLCs with distinct strategies. ³	GF Family Management LLC was owned proportionally by the four family members and appeared aligned with self-management. ²
Ownership Separation	Management LLC held only minority profits interests; most capital owned by family members who did not own the management entity. ^{3 4}	Same four individuals owned both the family office and 99% of the investment partnerships—minimal separation. ²
Nature of Clients	Family members were geographically dispersed and treated individually rather than acting as a collective investor. ²	All four family members lived in Atlanta, had strong relationships, and made investment decisions collectively. ²
Compensation Structure	Included performance-based profits interests / carried interest, consistent with commercial investment-management compensation. ⁵	No independent, performance-based fee structure documented; appeared consistent with internal self-management. ²
Staffing & Operations	Professionally staffed with CIO, CFO, office manager, and part-time workers; operated like an investment firm. ⁶	No comparable operational structure emphasized; Tax Court requested further factual development. ²
Court's Emphasis	Activities went “far beyond those of an investor,” supporting trade-or-business classification. ⁵	Court flagged proportionality concerns and potential self-management; sought additional facts. ²
Precedential Value	Considered a roadmap for family-office structuring under §162. ⁶	Serves as a cautionary fact pattern but is not precedent due to settlement. ²

These cases reinforce a central theme: deductibility is now reserved for family offices that operate with true commercial substance. We outline our framework for evaluating whether a family office is well positioned to pursue this status.

A Framework For Evaluating Family Office Options

Given these tax considerations, many family offices will seek to structure themselves in a manner that qualifies as a trade or business under IRS rules.

Furthermore, restructuring a family office may create new problems while solving old ones. If a family office qualifies as a business, it may also be required to register with the SEC as a registered investment adviser (RIA), as outlined in the Investment Advisers Act of 1940 (the “Advisers Act”). SEC registration creates an entirely different set of costs, burdens, and risks. So, the theoretical ideal for families is to “thread the needle” and structure the family office so the IRS recognizes it as a business and the SEC recognizes it as exempt from

registration. For example, if the family office provides investment advice for compensation and does not fit within the SEC’s Family Office Rule exclusion, it may need to register (or find another exemption) under the Advisers Act. The SEC’s Family Office Rule (17 C.F.R. § 275.202(a)(11)(G)-1) generally excludes a qualifying family office from the definition of “investment adviser” if (1) has no clients other than “family clients,” (2) is wholly owned by family clients and exclusively controlled by family members and/or family entities, and (3) does not hold itself out to the public as an investment adviser. Adding outside investors or non-family advisory clients can jeopardize this exclusion.

Establishing or restructuring a family office to fit the Lender template is much more challenging in reality than on paper. These structural decisions generally have impacts that extend far beyond the tax benefits being pursued.

Families who are considering their options may follow this three-step process to evaluate the level of family office infrastructure or sustained change required of an existing family office to attempt qualification as a trade or business, thereby allowing for greater income tax deductibility:

Step 1: Evaluate Current Expenses

Families should quantify and evaluate their current costs, including staff, retained legal/accounting services, direct and indirect investment expenses, technology, infrastructure and any other costs. They should further review their current effective tax rate and then look at how the effective rate could change under a Lender-like structure. State taxes are important to examine as well. For example, many states tax realized capital gains no differently than ordinary income.

This first step should help a number of families make a quick determination. Every family is different, but when aggregate expenses are less than \$1 million, often it may not make financial sense to form or restructure a family office and for such families, the option of outsourcing may now be more attractive than it was a few years ago. Additionally, families that already have operating businesses may find that the incremental deductions are not enough to justify a change.

Step 2: Evaluate Family's Fact Pattern

If the tax savings under a Lender-like structure would be compelling, the next step is to determine if such a structure is practical or even feasible. There are several hurdles to clear.

First, does the family's situation serve as a logical basis for the structure? A "Lender-like" model makes sense for a family with multiple branches and multiple generations, where family members need independent advice and where there is meaningful separation between the owners of managed capital and the owners of the management entity. However, for a family of two generations within the same branch, served collaboratively, it would be difficult to define the family office as an actual business in the eyes of the IRS, not to mention justify the many added costs of an intricate family office structure.

There are additional hurdles to qualification as a "trade or business." For example, it is not always feasible to compensate staff based on a profits interest in the family office. Further, the ideal structure may come at a cost. Many families look to create a C-Corp, for example, but in such an instance it is desirable to keep the business at breakeven to avoid the potential for double taxation of profits that a C-Corp creates (i.e., first at the corporate level, and again at the shareholder level once distributed). Finally, the structure may require new or different management skills, and it is important for families to know whether that talent is available at reasonable cost.

Step 3: Evaluate Likelihood Of Success

Finally, if a Lender-like structure appears both financially attractive and achievable in practical terms, the family members still need to take an honest look at its likely impact on their day-to-day lives and determine whether they would be comfortable adhering to a new set of rules over time. A new

family office structure, as mentioned, will likely require new costs and may require new staff and leadership to operate properly, and family members may not be unified in their desire to take on these additional burdens. Managing and calculating the profits interest in a family office is complicated and may very well create tension among family members. Any changes in how the family members meet and interact with the family office and each other may require adjustments as well.

No two families are identical, and every family will respond differently to a potential change in how its investment assets are managed and to any downstream adjustments that are required to adapt to a new management structure. In all cases, a complete understanding of the anticipated changes is critical to the long-term success of the office.

Conclusion

Families should keep in mind that much of the law discussed in this article is relatively new, and precedent is still emerging. The Lender case, for example, represents the ruling of one Tax Court judge; it may serve to guide future decisions, but that is not guaranteed. The risk of being wrong – or even of being right but having to pay the legal expense of proving it in court – is a meaningful one.

The issues involved with operating a family office have always been complex, and the recent changes in tax law have only added to that complexity. We expect it to be challenging for families to find the right solution that satisfies the demands of the IRS, the SEC and their own family, and the topic is worthy of extended and comprehensive consideration by families and their advisors. While maximizing the financial efficiency of the family office (by capturing allowable tax deductions) is important, it has become more challenging to achieve.

For families with family office expenses over \$1 million and a business that serves multiple family branches (and even some outside investors), an initial review through our suggested three-step process with their advisors is the prudent first step. The financial considerations are just one part of a complex analysis to determine whether a family should form a family office or how best to structure it. At the same time, families should evaluate securities-law posture under the SEC Family Office Rule (and whether any outside-investor or non-family advisory activity could trigger registration obligations).

Our Strategic Advisory team wants to help you understand these cases and this framework. We are here for any questions or concerns you may have. As always, we look forward to starting a conversation so please do not hesitate to contact us.

1. Lender Management, LLC v. Commissioner, T.C. Memo. 2017-246 (U.S. Tax Ct. Dec. 18, 2017).
2. Hellmann v. Commissioner (GF Family Management LLC), Tax Ct. order dated Oct. 1, 2018 (directing further factual development; case later settled).
3. Lender Management, LLC v. Commissioner, T.C. Memo. 2017-246 (facts regarding structure of the family office and managed entities).
4. Lender Management, LLC v. Commissioner, T.C. Memo. 2017-246 (facts regarding ownership separation).
5. Lender Management, LLC v. Commissioner, T.C. Memo. 2017-246 (discussion of performance-based compensation and trade-or-business analysis).
6. Lender Management, LLC v. Commissioner, T.C. Memo. 2017-246 (discussion of staffing and operational characteristics).

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