NICHOLS PATRICK WEEKLY TAX UPDATE

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CITATIONS

1. **Draft Instructions for Form 8960 and Pass-Thru Entities Provide Insight Into NII Tax Reporting**

The IRS on January 3 released 19 pages of instructions for completion of Form 8960 and draft instructions for the tax year 2013 Form 1065, "U.S. Return of Partnership Income," that detail the information partnerships must provide partners to allow them to correctly calculate net investment income tax.

The IRS also released draft instructions for Form 1120S, "U.S. Income Tax Return for an S Corporation," and draft instructions for Form 1065-B, "U.S. Return of Income for Electing Large Partnerships," which both provide NII calculation guidance.

1. **Business's Relocation Expenses**

(LTR 201401001; 1/3/2014)

The IRS ruled that a state limited partnership forced to relocate its business operations will not include in gross income relocation and other payments it receives from a state agency, may not deduct moving and equipment installation expenses for equipment, and may not assign any basis under section 1012 to some types of substitute equipment.

1. **Tax Implications of Short Sale of California Home**

(INFO 2013-0036; 12/27/2013)

The IRS, addressing the short sale of a home in California, advised that a homeowner's obligation under an anti-deficiency provision of the state civil procedure code would be a nonrecourse obligation to the extent that the homeowner won't have cancellation of indebtedness income.

1. **Reporting Obligations for Payments in Possible 2-Step Transaction**

(INFO 2013-0037; 12/27/2014)

The IRS addressed the proper information reporting for payments that are assigned by an eligible practitioner to the eligible practitioner's practice group.

1. **Payments to Care for Disabled Son Not Excludable From Parent’s Income**

(Robert Ray et ux. v. United States; SD OH E Div; No. 2:12-cv-00677; 1/6/2014)

A U.S. district court held that a couple wasn't entitled to exclude from gross income payments received from the state to care for their disabled 30-year old son as foster care payments because the mother was his legal guardian with a legal duty to care for him and there was no foster care relationship within the meaning of section 131.

1. **Executive Sues Deutsche Bank and BDO Seidman for Fraud**

(R.J. Lane v. Deutsche Bank AG et al.; Cook County Illinois Circuit Court; 1/3/2014)

The former president of a Fortune 100 computer software company filed a complaint in state court against Deutsche Bank AG, BDO Seidman LLP, and others for fraudulently inducing him to engage in an illegal tax shelter that resulted in him incurring substantial fees, penalties, interest, and other costs.

1. **Gain on Property Sales Was Taxable as Ordinary Income**

(Cordell D. Pool et al. v. Commissioner; T.C. Memo. 2014-3;1/8/2014)

The Tax Court, in consolidated cases, held that the gain partners realized from property sales was ordinary income and not capital gain, finding that the partnership held the property for sale in the ordinary course of business and not for investment; the court also sustained additions to tax against the partners for failure to timely file returns.

1. **Minister Not Liable for Self-Employment Tax; Exemption Form Timely Filed**

(Susan Corso v. Commissioner; T.C. Summ. Op. 2014-3; 1/9/2014)

The Tax Court, in a summary opinion, held that a minister isn't liable for self-employment tax, finding that she timely filed Form 4361 to apply for exemption from self-employment tax and that the form was approved by the IRS based on prior IRS determinations during two examinations and the minister's consistent reporting that she was exempt.

1. **Interest Paid on Unrecorded Mortgage Loan Was Not Deductible**

(Yong J. Dong and Lijun Weng v. Commissioner; T.C. Summ. Op. 2014-4;

The Tax Court, in a summary opinion, held that property owners were not entitled to home mortgage interest deductions in excess of the amounts allowed by the IRS because interest paid on a loan from the parents of one of the owners was not qualified residence interest under section 163(h)(2)(D).