NICHOLS PATRICK WEEKLY TAX UPDATE

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1. **Request to Change Accounting Period Deemed Timely Filed**

(LTR 201408028; 2/21/2014)

The IRS ruled that an entity's late request to change its accounting period will be considered timely filed.

1. ***Qui Tam* Award Fails to Meet Requirements for Capital Gains Treatment**

(Craig Patrick et ux. v. Commissioner; 142 T.C. No. 5; 2/24/2014)

The Tax Court held that a *qui tam* award was treated as ordinary income rather than as a capital asset under section 1221(a) since the award didn't result from a sale or exchange; moreover, information a petitioner provided to the government was not his property and, therefore, not a capital asset.

1. **State Court Document Doesn't Meet Requirements to Let Noncustodial Parent Claim Dependency Exemption**

(Lisa Beamon Swint v. Commissioner; 142 T.C. No. 6; 2/24/2014)

The Tax Court held that an individual wasn't entitled to a dependency exemption deduction and child tax credit that she and her late husband, a noncustodial parent, claimed for his child, finding that a state court document that conditionally allowed him to claim the deduction and credit did not meet the requirements of section 152(e)(2)(A).

1. **Transaction Involving Allocation of State Tax Credits Was Disguised Sale**

(Route 231 LLC et al. v. Commissioner; T.C. Memo. 2014-30; 2/24/2014)

The Tax Court held that a conservation partnership's capital cash contribution to a limited liability company followed by the LLC's allocation of state tax credits to the partnership was a disguised sale under section 707(a) and that the proceeds from the disguised sale were income to the LLC in the tax year it acquired and sold the credits.

1. **Court Dismisses Suit Challenging Levy on Retirement Benefits**

(Dennis A. Blanchette v. Social Security Administration; DC MA; No. 1:13-cv-12655; 2/21/2014)

A U.S. district court dismissed an individual's suit seeking damages from the Social Security Administration for garnishing his retirement benefits as part of an IRS levy, holding that he failed to state a claim on which relief could be granted and because he failed to comply with section 7433.

1. **IRS Issues Retirement Plans FAQ on EP Team Audit Program**

(Retirement Plans FAQs regarding the EP Team Audit (EPTA) Program; 2/18/2014)

The IRS has released frequently asked questions for employers that are going through or are concerned about going through an employee plans team audit.

1. **Final Regs on Property Transferred for Services**

(T.D. 9659; 79 F.R. 10663-10665; 2/26/2014)

The IRS has published final regulations that clarify a substantial risk of forfeiture for purposes of determining the amount includable in gross income when property is transferred in connection with the performance of services under section 83.

1. **Limits on Depreciation Deductions for Autos**

(Rev. Proc. 2014-21; 2014-11 IRB 1; 2/25/2014)

The IRS has announced the depreciation limitations for owners of passenger cars that are first placed in service in 2014 and the amounts to be included in income by lessees of passenger cars first leased in 2014.

1. **IRS Properly Disallowed Deduction for IRA Contribution**

(Rebecca Smackey Hurd v. Commissioner; T.C. Summ. Op. 2014-17; 2/25/2014)

The Tax Court, in a summary opinion, held that the IRS properly disallowed an individual's deduction for her contribution to an IRA, and upheld the IRS's deficiency determination, finding that the individual was an active participant in a qualified plan and her adjusted gross income exceeded the IRA contribution deduction phaseout amount.

1. **Ninth Circuit Affirms Tax Lien Survived Bankruptcy, IRS May Levy on Pension Plan**

(Stuart A. Gross v. Commissioner; CA 9; No. 12-72279; 2/25/2014)

The Ninth Circuit, in an unpublished per curiam opinion, affirmed a Tax Court decision that held that an IRS lien remained on an individual's ERISA-qualified pension plan that was exempted from his bankruptcy estate and the IRS may levy on the plan to collect unpaid taxes, holding that the bankruptcy proceeding didn't affect the lien.

1. **IRS Updates FAQ on Net Investment Income Tax**

(Questions and Answers on the Net Investment Income Tax; 2/7/2014)

The IRS has updated a list of frequently asked questions on the section 1411 net investment income tax, which imposes a 3.8 percent tax on some net investment income of individuals, estates, and trusts that have income above the statutory threshold amounts.