**NICHOLS PATRICK WEEKLY TAX UPDATE**

**With E. Lynn Nichols, CPA**

**April 14, 2014**

**CITATIONS**

1. **Guidance on Application of *Windsor* to Pension Plans**

(Notice 2014-19; 2014-17 IRB 1; 4/4/2014)

The IRS has issued guidance on the application of the Supreme Court's decision in *United States v. Windsor* and the rulings in related guidance to qualified retirement plans under section 401(a).

1. **Penalty for Failure to Deposit Employment Taxes**

(ECC 201414017; 4/4/2014)

In e-mailed advice, the IRS advised that a section 6656(a) penalty for a taxpayer's failure to timely deposit employment taxes, owed as a result of the exercise of nonqualified stock options, is appropriate because the taxpayer did not fall within the reasonable cause exception to the penalty.

1. **Tax Consequences of Guaranteeing LLC Debt**

(AM 2014-003;

In generic legal advice, the IRS examined the tax consequences under section 465 that arise when a member of a limited liability company classified as a partnership or disregarded entity for federal tax purposes guarantees debt of the LLC.

1. **Thoroughbred Owner Materially Participated, Entitled to Losses**

(Stefan A. Tolin v. Commissioner; T.C. Memo. 2014-65; 4/9/2014)

A taxpayer materially participated in thoroughbred horse breeding and racing activities, and was thus entitled to loss deductions. The “narrative summary” proffered by Stefan A. Tolin—which was corroborated by phone records, third-party witness testimony and other stipulated facts—proved Tolin “performed more than 500 hours of qualifying ‘work done' in connection with the thoroughbred activity in each of 2002, 2003, and 2004” tax years. Since he materially participated in the activity, “the thoroughbred activity was not a passive activity and section 469 does not prohibit petitioner's deduction of the loss therefrom for any of the years at issue.”

1. **Guidance on State-Chartered Credit Unions and UBIT**

(TEGE-04-0314-0005; 3/24/2014)

The IRS's Tax-Exempt and Government Entities Division, in light of two court decisions, has issued a memorandum on how examiners should process unrelated business income tax issues of state-chartered credit unions.

1. **Company Officers Held Liable for Trust Fund Recovery Penalties**

(Richard Schiffmann v. United States; DC RI; No. 1:12-cv-00695; 4/9/2014

A U.S. district court granted the government summary judgment on its counterclaim for trust fund recovery penalties against the officers of a company that failed to pay its federal payroll taxes, finding that the officers were responsible persons who willfully failed to pay over the company's taxes.

1. **Individual Didn't Reasonably Rely on Tax Savings Plan Promoter**

(Derek W. Somogyi v. Commissioner; T.C. Summ. Op. 2014-33; 4/10/2014)

The Tax Court, in a summary opinion, sustained accuracy-related penalties against an individual, holding that he did not rely reasonably or in good faith on an adviser who promoted a purported tax savings plan because he had a financial interest in the positions claimed on the individual's returns.

1. **6-Year Limitations Period Applies to Injured Spouse Claims**

(PMTA 2013-024; 9/23/2013 (released 4/10/2014)

In program manager technical assistance, the IRS concluded that six years is the applicable limitations period for a non-debtor spouse to submit Form 8379, "Injured Spouse Allocation," to recover her allocable share of a joint tax overpayment that the IRS offset against a debtor-spouse's past-due child support.