**NICHOLS PATRICK WEEKLY TAX UPDATE**

**With E. Lynn Nichols, CPA**

**April 21, 2014**

**CITATIONS**

1. **Foreclosure on Passive Activity Property Is Taxable Transaction**

(ILM 201415002; 4/11/2014)

In a legal memorandum, the IRS concluded that foreclosure on real property subject to recourse debt comprising the taxpayer's entire interest in a passive activity is a fully taxable transaction for purposes of section 469, regardless of whether any income from COD is excluded under section 108.

1. **Estate Failed to Make a Valid Installment Payment Election**

(Estate of Wallace R. Woodbury et al. v. Commissioner; T.C. Memo. 2014-66; 4/14/2014)

The Tax Court held that the IRS properly denied an estate's section 6166 election to pay its federal estate tax liability in installments because the election wasn't made on a timely filed estate tax return; the court also held that the estate did not substantially comply with the requirements of reg. section 20.6166-1(b).

1. **Tax Court Orders Production of Opinion Letters, Privilege Waived**

(AD Investment 2000 Fund LLC et al. v. Commissioner; 142 T.C. No. 13; 4/16/2014)

The Tax Court held that two partnerships must produce attorney opinion letters on shelter transactions if the partnerships persist in good-faith affirmative defenses to accuracy-related penalties, finding that they forfeited the attorney-client privilege by putting the partnerships' state of mind and beliefs into issue.

1. **Individual Entitled to Dependency Exemption Deduction and Child Credits**

(Rodney Harris v. Commissioner; T.C. Memo. 2014-69; 4/16/2014)

The Tax Court held that an individual is entitled to dependency exemption deductions for his qualifying child, finding that the individual was the child's custodial parent during the applicable tax years and that the terms of the conciliation agreement between the individual and the child's mother were not followed in those years.

1. **Individual Not Allowed to Deduct Losses From Rental Activity**

(George L. Billeci v. Commissioner; T.C. Summ. Op. 2014-38; 4/17/2014)

The Tax Court, in a summary opinion sustaining an addition to tax but not accuracy-related penalties, held that an individual wasn't entitled to deduct losses from his real estate rental activity, finding that he didn't qualify as a real estate professional and his passive activity losses were subject to phaseout based on adjusted gross income.