**NICHOLS PATRICK WEEKLY TAX UPDATE**

**With E. Lynn Nichols, CPA**

**March 17, 2014**

**CITATIONS**

1. **Tax Treatment of Per Capita Distributions to Members of Indian Tribes**

(Notice 2014-17; 2014-13 IRB 1; 3/10/2014)

The IRS has issued interim guidance on the federal income tax treatment of per capita distributions made to members of Indian tribes from funds held in trust by the Interior Department secretary.

1. **Guidance on Failure to File Affiliated Group Form**

(Rev. Proc. 2014-24; 2014-13 IRB 1; 3/10/2014)

The IRS has issued guidance describing the conditions under which a member of an affiliated group that failed to file a Form 1122, "Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Income Tax Return," is treated as if it filed the form and thus joined in the making of a consolidated return by the group.

1. **Separately Filing Wife Not Protected by Husband’s Participation Under Passive Activity Rules**

(Julie A. Oderio v. Commissioner; T.C. Memo. 2014-39; 3/10/2014)

The Tax Court disallowed an individual's rental losses as passive activity losses under section 469, finding that her husband's satisfaction of the material participation requirement in section 469(c)(7)(B) did not except her from the loss limitations rule on her separately filed return; the court sustained an accuracy-related penalty against her.

1. **Individual Didn't Meet Qualifications for Dependency Exemption or Credits,**

(Douglas Lemark Burse v. Commissioner; T.C. Summ. Op. 2014-21; 3/10/2014)

The Tax Court, in a summary opinion, upheld the IRS's deficiency determination against an individual, finding that he wasn't entitled to the dependency exemption deduction, head of household status, or the earned income tax credit for his stepdaughter who was a full-time student living on campus, and he wasn't entitled to education credits.

1. **Self-Insured Taxpayer's Legal Fees Are Not Specified Liability Losses**

(FAA 20141002F; 3/7/2014)

In field attorney advice, the IRS concluded that a taxpayer failed to show that the provisions of state worker compensation acts required it to pay legal fees incurred in contesting or investigating a worker compensation claim.

1. **State Law Bars Charitable Contribution Deductions for Easements**

(Patrick J. Wachter et ux. et al. v. Commissioner; 142 T.C. No. 7; 3/11/2014)

The Tax Court held that two couples weren't entitled to charitable contribution deductions for the bargain sale of easements, finding that the easements weren't qualified real property interests because a state law that restricted easements to 99 years prevented the granting of the easements in perpetuity as required under section 170(h).

1. **Estate's Deduction for Uncertain Litigation Claim Denied**

(Estate of Gertrude H. Saunders et al. v. Commissioner; CA 9; No. 12-70323; 3/12/2014)

The Ninth Circuit affirmed a Tax Court decision that found an estate wasn't entitled to a $30 million deduction for a claim against it because the value of the claim wasn't ascertainable with reasonable certainty at the time of the decedent's death and that allowed a deduction for the amount for which the claim was actually settled.

1. **Amounts Forfeited After Insider Trading Conviction are Deductible**

(Joseph P. Nacchio et ux. v. United States; Ct Fd Clms; No. 1:12-cv-00020; 3/12/2014)

The Court of Federal Claims held that an individual wasn't precluded by public policy or section 162(f) from deducting as a loss under section 165 the amounts forfeited after his insider trading conviction but held that there was a genuine issue of material fact as to whether he believed he had a claim of right to the forfeited stock proceeds.