**NICHOLS PATRICK WEEKLY TAX UPDATE**

**With E. Lynn Nichols, CPA**

**April 7, 2014**

**CITATIONS**

1. **Health FSA Participants Are Ineligible for HSAs**

 (ILM 201413005; 3/28/2014)

In a legal memorandum, the IRS concluded that an individual covered by a general purpose health flexible spending arrangement that pays or reimburses all qualified medical expenses is ineligible to make contributions to a health savings account, even if participation in the FSA was the result of a carryover.

1. **Scope of Power of Attorney in Light of Disclosure Rules**

(ECC 201413010; 3/28/2014)

In e-mailed advice, the IRS advised that an individual given power of attorney on a Form 2848, "Power of Attorney and Declaration of Representative," may hear anything that would otherwise be said to the taxpayer, including that the IRS had to issue summonses to third parties because of the client's lack of responsiveness.

1. **IRS Reissues SB/SE Interim Guidance on In-Business Trust Fund Express Installment Agreements**

(SBSE-05-0314-0026; 3/27/2014)

The IRS Small Business/Self-Employed Division has reissued interim guidance to implement policy changes to In-Business Trust Fund Express Installment Agreements that were announced in February 2011.

1. **(a) Individual Denied Vehicle Expenses for Lack of Substantiation**

(Michael E. Houchin v. Commissioner; T.C. Summ. Op. 2014-29; 3/31/2014)

The Tax Court, in a summary opinion, held that an individual failed to meet the substantiation requirements of section 274(d) for vehicle expenses related to his recycling business, finding that he failed to provide evidence to corroborate information in his mileage log; the court also held him liable for self-employment taxes.

 **(b)Vehicle Expense Deductions Disallowed; Penalty Imposed**

(Jim Chapin et ux. v. Commissioner; T.C. Summ. Op. 2014-31; 4/3/2014)

The Tax Court, in a summary opinion, held that an individual failed to substantiate vehicle expenses as required by section 274(d), resulting in the disallowance of his claimed vehicle expense deductions and an accuracy-related penalty.

1. **Separate Filings Rule Should Apply to Allocate Joint Refund in Bankruptcy**

(Lester Lee v. Michael Walro; No. 4:13-cv-00087; 3/31/2014)

A U.S. district court reversed a bankruptcy court decision that used a 50/50 approach to determine the allocation of a joint income tax refund between a debtor and his nondebtor spouse and held that the separate filings rule should be applied to determine the ownership interests in the joint tax refund.

1. **Real Estate Professional Failed to Show Material Participation**

(Charles Gragg et ux. v. United States; No. 4:12-cv-03813; 3/31/2014)

A U.S. district court, in a couple's refund suit, held that a wife's position as a real estate professional didn't excuse them from the obligation of showing material participation under section 469(c)(7) to deduct their passive losses and found that they failed to show that the wife materially participated in their rental real estate activities.

1. **Accountants Awarded Damages Following False Information Return Filings**

(Kenneth B. Pitcher et al. v. Lawrence Waldman et al.; No. 1:11-cv-00148; 3/28/2014)

A U.S. district court held that two accountants were entitled to damage awards from their former partner and his accounting firm under section 7434, finding that the former partner and his firm issued false forms 1099 and W-2 to the two accountants in an effort to harass them after the acrimonious dissolution of their firm.

1. **How To Prepare a Collection Information Statement**

(Publication 1854; 4/2/2014)

The IRS has released Publication 1854 (rev. Mar. 2014), *How to Prepare a Collection Information Statement (Form 433-A)*, to explain who should use Form 433-A and how wage earners and self-employed individuals can satisfy an outstanding tax liability.

1. **Couple Co-owners of Property Despite Quitclaim Deed, Tax Lien Valid**

(Linda K. Stone v. United States et al.; No. 1:11-cv-07894; 3/31/2014)

A U.S. district court denied an individual's quiet title claim to property that she jointly owned with her husband, who purportedly transferred title to her with a quitclaim deed and who had unpaid tax liabilities, finding that she held his interest in the property as his nominee and that the government had a valid tax lien on the property.

1. **IRS Publication Provides Guidance for Religious Groups**

(Publication 1828; Rev. 11/2013; released 4/3/2014)

The IRS has released Publication 1828 (rev. Nov. 2013), *Tax Guide for Churches and Religious Organizations*, explaining benefits and responsibilities under the federal tax system for churches and religious organizations to encourage voluntary compliance.