**NICHOLS PATRICK WEEKLY TAX UPDATE**

**With E. Lynn Nichols, CPA**

**May 27, 2014**

**CITATIONS**

1. **Individual Must Recognize Previously Excluded Gain on Property**

(Marvin E. DeBough v. Commissioner; 142 T.C. No. 17; 5/19/2014

The Tax Court, addressing the interaction between sections 1038 and 121, held that an individual who excluded gain on property he sold under an installment agreement must recognize long-term capital gain under section 1038 after reacquiring the property because of the buyer's default on the agreement.

1. **IRS Guidance Expected on Dual Partner/Employee Status**

(Article; 5/21/2014 + Citation below)

A recent District Court decision \* lends support to the IRS's position in Rev. Rul. 69-184 that an individual can't be both an employee and a partner of the same partnership, the Service is thinking about dual partner/employee status, an IRS official said May 20.

[Doc 2014-12612]

*\*Riether v. United States*, 919 F. Supp.2d 1140 (D.N.M. 2012)

1. **Suspended Passive Losses Not Deductible – No Disposition**

(Alexander Herwig et ux. v. Commissioner; T.C. Memo. 2014-95; 5/20/2014

The Tax Court, sustaining accuracy-related penalties, held that a couple didn't dispose of their entire interests in a passive activity in 2008 or 2010 within the meaning of section 469(g) and, therefore, weren't entitled to treat their suspended passive losses as nonpassive losses during either of those years.

1. **Retirement Plan Penalty Relief Program Begins in June**

(IR-2014-66; 5/22/2014)

The IRS has announced the launch in June of its one-year pilot program to provide penalty relief to small business retirement plan administrators who fail to timely file Form 5500 EZ, "Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan."

1. **IRS Denied Summary Judgment in Estate Tax Deficiency Case**

(Estate of Bernard Kessel et al. v. Commissioner; T.C. Memo. 2014-97; 5/21/2014)

The Tax Court, in a deficiency proceeding involving a decedent's pension plan that had invested with Bernard Madoff, denied the IRS's motions for summary judgment, finding there are questions of fact as to the property interests includible in the estate and whether a hypothetical buyer or seller could have known Madoff was operating a Ponzi scheme.

1. **LLC Owner at Risk for Loan; Aircraft Leasing Wasn't Passive**

(Michel G. Moreno et al. v. United States; DC W LA; No. 6:12-cv-02920; 5/19/2014)

A U.S. district court, in a refund case involving a loss deduction related to the acquisition and leasing of an aircraft, held that an individual was 50 percent at risk for the loan his limited liability company obtained to acquire the aircraft and that the leasing activity wasn't a rental activity for purposes of the passive activity loss rules.

1. **IRS Releases Draft Form 990-EZ for 2014**

(5/20/2014)

The IRS has released draft Form 990-EZ, "Short Form, Return of Organization Exempt From Income Tax."

[Doc 2014-12655]

1. **Ranch Not Required to Use Accrual Method**

(Burnett Ranches Ltd. v. United States; CA 5; No. 13-10403; 5/22/2014)

The Fifth Circuit affirmed a district court's decision rejecting the IRS's attempt to tax a ranch limited partnership as a farming syndicate tax shelter under section 464 and require it to report income using the accrual method, finding that it qualified for the active participation exception to section 464.

[Doc 2014-12844]