

NICHOLS PATRICK WEEKLY TAX UPDATE
With E. Lynn Nichols, CPA

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1. Substitution Power Does Not Cause Inclusion of Insurance Policy in Asset Value of Grantor's Estate

(Rev. Rul. 2011-28; 2011-49 IRB 830; 12/5/2011)

The IRS has ruled that a grantor's retention of the power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held in trust by substituting assets of equal value will not, by itself, cause the value of the policy to be includable in the grantor's estate under section 2042.

2. No First-Time Home Buyer Tax Credit for Son's Residence

(Ralph Grosso et ux. v. United States; USDC E PA; No. 2:11-cv-01758; 11/30/2011)

A U.S. district court granted the government summary judgment against a couple who sued to obtain a first-time home buyer tax credit for a town home they purchased for their son, finding that they were ineligible for the credit because they did not use the home as their primary residence as required in section 36.

3. Medical Practice Included in Hospital Affiliated Group

(ILM 201148006; 8/12/2011; rel. 12/2/2011)

In a legal memorandum, the IRS rejected a field memorandum's analysis and concluded that a medical practice should be included in a hospital consolidated group because the hospital meets the 80 percent vote requirement and likely meets the 80 percent value requirement for affiliation.

4. Hawkins Explains OPR Sanction Guidelines and Warns of Referrals from Appeals

(Tax Notes Today; 12/6/2011; Article by Jeremiah Coder)

The process for seeking particular sanctions in Circular 230 disciplinary proceedings may seem opaque from the outside, IRS Office of Professional Responsibility Director Karen Hawkins acknowledged on December 2, joking that "I may be all that stands between you and irrationality."

5. Individual Would Not Suffer Hardship, Innocent Spouse Relief Denied

(Mary E. Haggerty v. Commissioner; T.C. Memo. 2011-284; 12/5/2011)

The Tax Court held that an individual was not entitled to equitable innocent spouse relief under section 6015(f), finding that she would not suffer economic hardship if relief were denied and that she knew of the tax liability when the return was filed and benefited from the unpaid liability.

6. Thirty-Six FAQ on Continuing Education Requirements

(FAQ on Continuing Education Requirements; 12/6/2011)

The IRS has posted to its website a list of frequently asked questions for tax return preparers, continuing education providers, and continuing education accrediting organizations on the annual continuing education requirement that will begin in 2012.

7. Earnings from CFC Invested in U.S. Property Were Not Qualified Dividends

(Osvaldo Rodriguez et ux. v. Commissioner; 137 T.C. No. 14; 12/7/2011)

The Tax Court held that earnings from a couple's controlled foreign corporation that were invested in U.S. property and included in their gross income under sections 951 and 956 were not qualified dividend income entitled to preferential tax treatment under section 1(h)(11).

8. Wrongful Levy Suit Time-Barred, No Equitable Tolling for Statutory Limits

(Logan Volpicelli v. United States; No. 3:10-cv-00548; 12/7/2011)

A U.S. district court held that an individual's suit challenging a wrongful levy that occurred before he reached the age of majority is time-barred, finding that there is no age-related equitable exception to the statute of limitations for filing a wrongful levy suit.