

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

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CITATIONS

**1. Final Regs on Exclusion of Physical Injury or Sickness Damages**

(T.D. 9573; 77 F.R 3106-3108; 1/23/2012)

The IRS has published final regulations on the exclusion from gross income for amounts received on account of personal physical injuries or physical sickness to reflect amendments made by the Small Business Job Protection Act of 1996.

**2. Restaurant Property and Retail Improvement Property May Qualify for Bonus Depreciation**

(ILM 201203014; 12/14/2011, rel. 1/20/2012)

In a legal memorandum, the IRS determined that property satisfying the definitions of both qualified leasehold improvement property and qualified restaurant property or qualified retail improvement property is eligible for bonus depreciation under section 168(k).

**3. Work Product Privilege Waived for Penalty Defense Documents**

(Tax Notes Today; 1/24/2012, Article by Jeremiah Coder)

The Court of Federal Claims on January 23 held that a taxpayer waived possible work product privilege for tax reserve workpapers by claiming reliance on the advice of its independent auditor in order to avoid penalties.

**No Work Product Protection for Tax Workpapers in STARS Transaction Case**

(Salem Financial Inc. v. United States; Ct Fd Clms, No. 10-192; 1/18/2012)

The Court of Federal Claims, in a case involving the tax treatment of a structured trust advantaged repackaged securities transaction, held that BB&T Corp. waived work product protection of tax reserve documents and tax practitioner privilege of other documents by relying on tax advice from accounting firms in its defense against IRS penalties.

**4. Citibank Reports Airline Miles Awarded As Customer Incentive As Taxable**

(Tax Notes Today; 1/25/2012, Article by Marie Sapine)

By reporting some awards of airline miles as income to its customers, Citibank has thrust into the spotlight a latent issue regarding the taxation of airline miles.

**5. IRS Issues SB/SE Interim Guidance on Streamlined Installment Agreements**

(SBSE-05-0112-013; 1/20/2012)

The IRS Small Business/Self-Employed Division has issued interim guidance to collection field function employees to implement policy changes to streamlined installment agreements.

**6. Tax Court Denies Fuel Tax Credits; Vehicles Don't Qualify as Off-Highway**

(Myles Lorentz Inc. v. Comm.; 138 T.C. No. 3; 1/25/2012)

The Tax Court held that a trucking company involved in road building and mining wasn't entitled to claim fuel tax credits for off-highway business use of its vehicles, finding that the tractors it used didn't qualify for the off-highway transportation exception or as highway vehicles.

**7. Bankruptcy Court Holds Debtor Company Had Property Interest in QSub Status**

(Majestic Star Casino v. Barden Development; US Bk Ct Del; No. 10-56238; 1/24/2012)

A U.S. bankruptcy court held that a debtor company had a property interest in its status as a qualified subchapter S subsidiary and that when the nondebtor parent corporation revoked its subchapter S corporation status, resulting in the debtor company's loss of QSub status, an avoidable transfer from the bankruptcy estate occurred.