



ED SLOTT'S IRA ADVISOR

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April 2015

TAX & ESTATE PLANNING FOR YOUR RETIREMENT SAVINGS

Court Allows IRA Owner to Claim Unreported Basis

Gustavo E. Morles v. Commissioner
T.C. Summ. Op. 2015-13
February 23, 2015

In a summary opinion, the Tax Court ruled that hardship distributions from a 401(k) and IRA were taxable and subject to the 10% early distribution penalty. That's nothing new, but in more important news for advisors, the Court also allowed the IRA owner to claim a portion of his distribution as a tax-free return of basis, even though he had never reported his basis to the IRS.

The Court allowed the IRA owner to claim a portion of his distribution as basis, even though no basis had previously been reported.

of that money to pay his rent and avoid eviction.

Morles received a \$6,893 distribution from his 401(k) plan in 2010. The plan distribution was reported to him and the IRS on Form 1099-R, which showed the entire distribution amount as taxable (i.e., there were no after-tax funds). He was under age 59½ at the time of the plan distribution.

Morles also had a small IRA that he used to pay his rent. His IRA was funded in 2008 with a \$1,000 contribution, but Morles didn't take a deduction for that contribution on his 2008 federal income tax return. Apparently, he only had one IRA and never made another IRA contribution or took a distribution from that IRA before he took a \$951 distribution in 2010. He was under age 59½ at the time, so the distribution was an early IRA distribution. He received a Form 1099-R from the IRA custodian reporting the distribution.

Morles' 2010 taxes were prepared by a paid tax preparer, but neither his

Facts of the Case

Gustavo Morles worked as a faculty member for the University of Phoenix and participated in its 401(k) plan. In 2010, he was unemployed for a period of time and having some financial trouble. He was living in an apartment and got behind on his rent. He then received an eviction notice that required him to move out unless he paid \$7,600 in a money order or cashier's check before a certain date. He took distributions from both his 401(k) plan and his IRA and used some

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Guest IRA Expert

Marty James, CPA
Martin James Investment & Tax Management
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