

1 Bench Opinion By Special Trial Judge Lewis Carluzzo
2 Docket No. 4337-02S December 13, 2002

3 THE COURT: The Court has decided to render to
4 render oral findings of fact and opinion in this case, and
5 the following represents the Court's oral findings of fact
6 and opinion.

7 This proceeding was conducted as a Small Tax Case
8 pursuant to the provisions of section 7463 of the Internal
9 Revenue Code of 1986, as amended, and rules 170 through 179
10 of the Tax Court Rules of Practice and Procedure.

11 This bench opinion is made pursuant to the
12 authority granted by section 7459(b) of the Internal Revenue
13 Code of 1986 and Rule 152 of the Tax Court Rules of Practice
14 and Procedure.

15 Hereinafter in this bench opinion section
16 references are to the Internal Revenue Code in effect for
17 1999. Rule references are to the Tax Court Rules of
18 Practice and Procedure.

19 Lila Velez appeared pro se. Ric D. Hulshoff
20 appeared on behalf of respondent.

21 Respondent determined a deficiency of \$4,270 in
22 petitioner's 1999 Federal income tax. The issue for
23 decision is whether any portion of a distribution from an
24 individual retirement account (IRA) must be included in
25 petitioner's income.

Some of the facts have been stipulated and are so

1 found. At the time the petition was filed, petitioner
2 resided in Los Angeles, California.

3 The facts in this case are not in dispute and are
4 easily summarized. Sometime in the early 1980's petitioner
5 opened an IRA at People's Bank of California. Over the
6 years petitioner made contributions to the IRA and at first
7 claimed deductions for those contributions as allowable
8 under section 219. When the rules regarding IRA deductions
9 became too complicated for petitioner to understand, she
10 stopped claiming deductions for the contributions that she
11 made to the IRA.

12 As of the close of 1999 petitioner was more than
13 70 1/2 years old and had made contributions totaling \$21,654
14 to the IRA for which no section 219 deductions were claimed.
15 She requested and received a \$21,654 distribution from the
16 IRA during 1999. The IRA was closed during 2000 upon
17 petitioner's request for and receipt of a \$41,183.79
18 distribution.

19 Petitioner included a partially completed Form
20 8606, Nondeductible IRAs, with her timely filed 1999 Federal
21 income tax return. On that form petitioner indicated that
22 her basis in the IRA "for 1998 and earlier years" was
23 \$21,654. She reported "the total value" of all her
24 "traditional IRAs as of December 31, 1999" as \$41,183.79.
25 Petitioner did not include any portion of the IRA

1 distribution she received in 1999 in the income reported on
2 her return for that year. Apparently petitioner's 2000
3 Federal income tax liability was computed by respondent and
4 agreed to by petitioner as though the entire 2000 IRA
5 distribution was includable in her income for that year.

6 In the notice of deficiency respondent determined
7 that \$14,292 of the IRA distribution received by petitioner
8 during 1999 must be included in her income for that year.
9 The other adjustment made in the notice of deficiency has
10 been conceded by respondent and need not be discussed.

11 According to petitioner, no portion of the 1999
12 IRA distribution is includable in her income for that year
13 because the entire distribution represents the recovery of
14 her basis in that account, which basis she properly computed
15 with reference to the nondeductible contributions that she
16 made over the years. See Schmalzer v. Commissioner, T.C.
17 Memo. 1998-399. Petitioner argues that, in effect, she has
18 already been taxed once on the income that the distribution
19 represents and the same income should not be taxed twice in
20 the hands of the same taxpayer.

21 As a general proposition, petitioner's argument
22 reflects a fundamental principle of Federal income taxation
23 that can hardly be disputed. Requiring petitioner to
24 include a portion of the 1999 IRA distribution in her 1999
25 income, however, does not violate that principle.

1 Petitioner mistakenly proceeds as though the allocation of
2 an IRA distribution between nontaxable and taxable portions
3 can be made at the election of the taxpayer. Actually an
4 IRA distribution must allocated according to a formula
5 provided by statute. See secs. 72(e), 408(d).

6 We are satisfied that respondent's position in
7 this case properly reflects that application of the
8 controlling statutory formula. Moreover, in this case
9 respondent merely applied the formula to the information
10 reported on petitioner's 1999 return. Had petitioner
11 properly completed the Form 8606 included with her 1999
12 return, she would have reached the same result.
13 Respondent's adjustment requiring petitioner to include
14 \$14,292 in income is sustained.

15 In closing it is appropriate to comment on the
16 treatment of the 2000 IRA distribution. It appears that the
17 entire amount of that distribution has mistakenly been
18 included in petitioner's 2000 income. If so, it is that
19 mistake that no doubt gives rise to petitioner's impression
20 that she has been "twice taxed on the same income", not the
21 application of the relevant statutory scheme that allows for
22 a tax free recovery of a taxpayer's basis in an IRA. By
23 mistakenly including the entire 2000 IRA distribution in her
24 2000 income, petitioner's 2000 Federal income tax might very
25 well have been overpaid. If so, we strongly encourage

1 petitioner to consider making a claim for refund for any
2 such overpayment.

3 To reflect the foregoing, decision will be entered
4 under Rule 155.

5 This concludes the Court's oral findings of fact
6 and opinion in this case.

7 (Whereupon, at 9:15 a.m., the hearing in the above-
8 entitled matter was adjourned.)
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Petitioner,

V.

Docket No. 4337-02S

Notice of Service of Transcript

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

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