

Early Distribution Penalty Applied – Did not Meet QDRO Exception

Jeremy and Karie Summers obtained a divorce in a friendly manner. To minimize costs they decided to accomplish the divorce without involving lawyers. They reached agreement on the issues including child custody for their four children, visitation rights, spousal maintenance, and division of property.

Jeremy had an IRA worth about \$17,000. Shortly before the divorce was granted, Jeremy emptied the IRA and put it into a joint account. He then paid off a loan on Karie's car and gave her a check the rest of her "half". Jeremy reported the entire \$17,000 on his personal return but did not assess the 10% early distribution penalty.

IRS assessed the 10% early distribution penalty. Jeremy agreed that the 10% penalty should apply to his half but he argued the penalty should not apply to Karie's half because of the Qualified Domestic Relations Order (QDRO) exception to the penalty.

Tax Court agreed with IRS assessing the 10% penalty on the entire \$17,000 distribution. The QDRO exception applies to distributions to the ex-spouse which take place due to a QDRO. In Mr. Summers' case the distribution happened prior to the divorce becoming final, it was not paid pursuant to a QDRO, AND it was paid to Jeremy as opposed to his ex-spouse. Mr. Summers failed the exception provisions on more than one issue, therefore the 10% penalty applied to the entire distribution.

Tax Court stated it did have considerable sympathy for Mr. Summers and his desire to be as fair as possible in the divorce but the Court also stated it had to follow the tax laws as written.

Jeremy R. Summers, TC Memo 2017-125. This case can be found by going to www.ustaxcourt.gov, clicking on Opinion Search and entering Summers in the Case Name box.

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