

## **Convict Freed From Recognizing Income on IRA Distributions**

Article By:

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After committing a crime, Joseph Balint was sentenced to jail in Florida. He sent a letter to his wife, Jacqueline, saying that he wanted to give her all of his property so that the State of Florida could not get it and told Jacqueline to contact his lawyer. The lawyer prepared documents and on March 19, 2014, Joseph signed a Florida power of attorney giving Jacqueline full power over his property, including the power to withdraw benefits from any retirement plan and the power to make gifts of property to any person.

Jacqueline immediately began using the power of attorney to withdraw \$154,000 from Joseph's IRA and \$67,000 from his insurance policy. Jacqueline used this money to move from Florida to Kentucky, to renovate a Kentucky house, to care for her ailing mother and to pay her living expenses. In September 2014, Jacqueline filed for divorce while Joseph was still incarcerated. Joseph was released from prison in January 2015. Joseph did not think the IRA distributions were properly taxable to him. He nevertheless reported them on his 2014 tax return because he was issued a Form 1099-R and was concerned that failing to report them would constitute a violation of his probation.

The IRS assessed the tax reported on the return and when Joseph did not pay, the IRS issued a notice of intent to levy. In response, Joseph timely requested a collection due process (CDP) hearing and asserted that the withdrawals should not constitute taxable income. At the CDP hearing, the appeals officer concluded that the tax and the proposed levy were proper. Joseph then petitioned the Tax Court for review.

In *Balint v. Commissioner*, T.C. Memo 2023-118 (Sept. 25, 2023), the Tax Court ruled that Joseph had no taxable income from the IRA withdrawals. The Court said the critical factor in determining whether there is gross income is whether an economic benefit accrued to the taxpayer. The Court reasoned that Joseph had no taxable income because Joseph was not the payee, distributee or recipient of the funds misappropriated by Jacqueline.

The Court further explained that notwithstanding the provisions in the power of attorney, Jacqueline was bound under Florida law to act in good faith and not to act contrary to the principal's reasonable expectations. Moreover, Jacqueline's right to make gifts, even if they would constitute self-dealing, was limited for the purposes of tax, financial or estate planning for Joseph's benefit. Because the evidence established that Jacqueline engaged in self-dealing for her own benefit and not for any authorized purposes on Joseph's behalf, the withdrawals were not considered taxable income to Joseph.

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