



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

April 14, 2003

Number: **INFO 2003-0109**  
Release Date: 6/30/2003  
U.I.L: 457.07-02  
CONEX-121325-03/CC:TEGE:EB:QP2



Dear [REDACTED]

This letter responds to your inquiry of February 19, 2003, to the Department of the Treasury. Your constituent, Mr. [REDACTED], requests a Treasury Department ruling concerning his application for a hardship withdrawal from his section 457 plan account. I cannot discuss [REDACTED] situation without additional information, including a copy of his employer's section 457 plan. However, I can give you general information concerning the hardship withdrawal and other relevant provisions of section 457 of the Internal Revenue Code (the Code).

Section 457(a)(1)(A) states that compensation deferred under an eligible plan of a governmental entity and any income attributed to that deferred compensation are taxable in the year the deferred amounts are paid to the plan participant or the participant's beneficiary, not in the year deferred.

Amounts deferred in an eligible plan generally cannot be distributed until a participant ends employment with the employer or attains age 70½, whichever is earlier. However, an exception to this general rule allows payments to be made at any time for an unforeseeable emergency. Section 457(d)(1)(A)(iii) allows the plan and its administrator to accelerate the payment of the amount remaining payable to the participant for an unforeseeable emergency.

Proposed § 1.457-6(c)(2) of the Income Tax Regulations defines an unforeseeable emergency as a severe financial hardship to the employee resulting from a sudden and unexpected illness or accident of the employee or of a dependent, loss of property due to casualty, or other similar extraordinary and unforeseeable circumstances arising from events beyond the employee's control. The plan cannot make emergency payments if the hardship can be relieved through insurance, by liquidating other assets (if this would not cause a hardship), or by ceasing deferrals under the section 457 plan. In addition,

the amount the participant withdraws must be limited to the amount reasonably necessary to satisfy the emergency.

It appears from your constituent's letter that his employer's section 457 plan permits its administrator to approve accelerated payments for an unforeseeable emergency if the requested payments comply with these requirements. However, section 457 does not require plans to offer hardship withdrawals. Employers or their plan administrators, not the IRS, decide how to apply these guidelines and whether to grant emergency payments to the employee or retiree.

Recently, we published proposed regulations to update the section 457 regulations to clarify what constitutes an unforeseeable emergency. Proposed § 1.457-6(c) states, "the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency."

Another provision of the proposed regulations under § 1.457-6(f)(2) would authorize (but not require) governmental section 457(b) plans to make bona-fide loans to participants from their accounts within certain limitations. If the governmental 457(b) plan permits loans, its participants would not have to demonstrate an unforeseeable emergency or any other reason to obtain a loan for a term of five-years or less for amounts under \$50,000 to the extent available in their section 457(b) plan accounts. I have enclosed a copy of these proposed regulations and highlighted the portions that deal with an unforeseeable emergency and plan loans. We hope to promulgate these revised provisions as final regulations by this summer.

I hope this information, including the proposed regulations, is helpful. If you need more information, please contact [REDACTED] of my staff at [REDACTED]

Sincerely,

ALAN TAWSHUNSKY  
Assistant Chief Counsel (Employee Benefits)  
Office of the Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)

Enclosure