



OFFICE OF
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DEPARTMENT OF THE TREASURY
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The Honorable Mike Kelly
Member, U.S. House of Representatives
208 East Bayfront Parkway, Suite 102
Erie, PA 16507

Attention:

Dear Congressman Kelly:

I am responding to your inquiry of January 22, 2015, on behalf of your constituent, . inquired about the rules for withdrawing amounts from the State of Pennsylvania deferred compensation program due to a financial hardship. While she does not indicate what type of deferred compensation plan she participates in, it appears that the plan is an eligible governmental section 457(b) plan. asks whether credit card debt can be considered for a hardship distribution under the rules that govern section 457 unforeseeable emergency distributions. This letter provides general information to help you respond to her concerns.

The rules under section 457(b) of the Internal Revenue Code (the Code) govern deferred compensation plans for eligible employers such as state and local governments and tax exempt organizations sponsoring these plans. Section 457(b)(5) of the Code provides that an eligible deferred compensation plan must meet the distribution requirements of section 457(d) of the Code.

To qualify as an eligible plan, a section 457(b) plan must provide that plan administrators will not make plan funds available unless the participant:

- Reaches age 70-1/2;
- Has a severance from employment with the employer; or
- Is faced with an unforeseeable emergency as determined under Treasury regulations (“regulations”)

An unforeseeable emergency is:

- A severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a));
- The loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, for example, as a result of a natural disaster);
- Any other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the participant or the beneficiary (section 1.457-6(c)(2)(i) of the regulations). For example, 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. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152(a) of the Code) may also constitute an unforeseeable emergency. However, the regulations do not consider the purchase of a home and the payment of college tuition as unforeseeable emergencies.

The other requirements under section 1.457-6(c)(2)(ii) of the regulations allow a hardship distribution only if the participant does not have other funds such as insurance reimbursements available to help pay for the emergency need.

In addition, section 1.457-6(c)(2)(iii) of the regulations limits a hardship distribution to the amount needed to satisfy the emergency need. If the fund withdrawal satisfies these general requirements, the plan administrator may approve a distribution.

On November 8, 2010, we published Revenue Ruling 2010-27 in Internal Revenue Bulletin 2010-45. I am enclosing page 620 for your reference. This revenue ruling provides guidance in the form of examples on what constitutes an unforeseeable emergency distribution under section 457(b) of the Code and section 1.457-6(c) of the regulations. The revenue ruling addresses certain situations with respect to which we have received inquiries since the publication of the final section 457 regulations in 2003 regarding the application of the unforeseeable emergency requirements.

One of these examples (Situation 3) addresses an unforeseeable emergency distribution to pay accumulated credit card debt, which is not due to any events that are extraordinary and unforeseeable circumstances arising as a result of events beyond an individual's control. The revenue ruling concludes that the facts in Situation 3 do not present facts indicating that an unforeseeable emergency circumstance has arisen as a result of events beyond the control of the individual.

If your constituent, however, is taking the position that the hardship distribution for her credit card debt is being sought due to events and circumstances beyond her control, such as her illness, she will need to show the plan administrator that the unforeseeable

emergency is the result of an illness and provide whatever documentation the plan administrator requires.

I hope this information is helpful. If you need more information, please contact me at

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Sincerely,

Victoria Judson
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure