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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Tammy Baldwin
United States Senator
30 West Mifflin Street, Suite 700
Madison, WI 53703

Attention:

Dear Senator Baldwin:

I am responding to your inquiry dated October 29, 2014, which you wrote on behalf of your constituent, . She wrote about needing to take a distribution from her section 457(b) eligible plan to pay for certain needed repairs to her home. The plan administrator denied her request for an unforeseeable emergency withdrawal. She asked if the tax laws prohibit such withdrawals in situations like hers.

You can find the rules applying to distributions from section 457(b) eligible plans for unforeseeable emergencies in section 1.457-6(c) of the Income Tax Regulations. In this context, an “unforeseeable emergency” is a severe financial hardship of the participant resulting from:

- An illness or accident;
- The loss of the participant’s property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner’s insurance, such as damage resulting from a natural disaster); or
- A similar extraordinary and unforeseeable circumstances resulting from events beyond the control of the participant.

The facts and circumstances of each case determine if a particular financial hardship meets one of these standards. If the participant receives reimbursement or another form of compensation for the emergency, then the participant cannot receive an emergency distribution.

In addition, an emergency distribution may not be made if the participant could liquidate other assets to cover the costs of the emergency, assuming such liquidation would not itself cause severe financial hardship. The regulations also require that any distribution due to unforeseeable emergency be limited to an amount reasonably necessary to satisfy the emergency need.

Unlike qualified retirement plans, distributions for unforeseeable emergencies from section 457(b) eligible plans are not subject to the 10 percent addition to tax for early withdrawals under section 72(t) of the Internal Revenue Code.

Because section 457(b) eligible plan distributions for these emergencies are not subject to the early withdrawal addition to tax, the regulations require that plan administrators limit the distribution to "the amount reasonably necessary to satisfy the emergency need." (See section 1.457-6(c)(2)(iii) of the Income Tax Regulations.) Administrators request receipts and similar documentation both to verify that the emergency imposes a severe financial hardship on the participant and to ensure that the distribution is limited to an amount that would reasonably satisfy the participant's need.

It is up to the plan administrator to determine, based on the relevant facts and circumstances, if the need to rewire a home and purchase a new air conditioning unit constitutes an extraordinary and unforeseeable circumstance resulting from events beyond one's control, as this type of hardship does not appear to have resulted from illness or accident, nor from the loss of property due to casualty. The plan administrator may require to produce receipts to substantiate the hardship and to make sure that the amount distributed is limited to the amount reasonably necessary to satisfy the emergency.

I hope this information is helpful. If you have questions, please call me, , or at ( ) .

Sincerely,

John T. Ricotta
Branch Chief, Qualified Plans Branch 2,
Employee Benefits,
Tax Exempt and Government Entities