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

OFFICE OF THE CHIEF COUNSEL

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Dear :

I am responding to your inquiry to the White House dated August 29, 2014. You wrote that you need to take a distribution from your section 457(b) eligible plan to pay for your wife’s cancer treatments. The plan administrator requested that you provide receipts to substantiate the unforeseen emergency expenses before distributing this money to you. You asked why this is necessary.

The rules that apply to distributions from section 457(b) eligible plans for unforeseeable emergencies are found in section 1.457-6(c) of the Income Tax Regulations (copy enclosed). In this context, an “unforeseeable emergency” is a severe financial hardship of the participant resulting from an illness or accident, 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 that is the result of a natural disaster), or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The facts and circumstances of each case determine whether a particular financial hardship meets this standard. An emergency distribution may not be made to the extent the participant is reimbursed or otherwise compensated for the emergency. 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 must 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% additional tax for early withdrawals under section 72(t) of the Internal Revenue Code. Because section 457(b) plan distributions for these emergencies are not subject to the additional 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.

I am sorry that your family is experiencing an unforeseeable emergency, and I hope this information is helpful to you. If you have any questions, please call me, , or at .

Sincerely,

Branch Chief, Qualified Plans Branch 2
Employee Benefits
Tax Exempt & Government Entities