Announcement 2012-44 - Loans, hardship distributions from retirement plans for taxpayers affected by Hurricane Sandy

November 16: The IRS today released an advance copy of Announcement 2012-44 to provide relief for taxpayers affected by Hurricane Sandy.

Announcement 2012-44 [PDF 22 KB] allows taxpayers affected Hurricane Sandy to use retirement assets in their qualified employer plans without having to comply with certain verification procedures that may otherwise be required under retirement plans with respect to loans and hardship distributions.

Loan, hardship distribution streamlined procedures

In a related release—IR-2012-93 [PDF 51 KB]—the IRS explained streamlined procedures for section 401(k) plans and similar employer-sponsored retirement plans making loans and hardship distributions to victims of Hurricane Sandy and members of their families.

Streamlined procedures are available for loans and hardship distribution for:

- 401(k) plan participants
- Employees of public schools and tax-exempt organizations with 403(b) tax-sheltered annuities
- State and local government employees with 457(b) deferred-compensation plans

While IRA participants are barred from taking out loans, the IRS noted that may be eligible to receive distributions under liberalized procedures.

Retirement plans can provide this relief to employees and certain members of their families who live or work in the disaster area. To qualify for this relief, hardship withdrawals must be made by February 1, 2013.

The IRS also is "relaxing" procedural and administrative rules that normally apply to retirement plan loans and hardship distributions.

The six-month ban on 401(k) and 403(b) contributions that normally affects employees who take hardship distributions will not apply.

As the IRS explained, this relief is intended to allow a Hurricane Sandy victim to take a hardship distribution or borrow up to the specified statutory limits from the victim's retirement plan. Also, a person who lives outside the disaster area can take out a retirement plan loan or hardship distribution and use it to assist a son, daughter, parent, grandparent or other dependent who lived or worked in the disaster area.

Plans will be allowed to make loans or hardship distributions before the plan is formally amended to provide for such features. In addition, the plan can ignore the limits that normally apply to hardship distributions, thus allowing them, for example, to be used for food and shelter. If a plan requires certain documentation before a distribution is made, the plan can relax this requirement as described in Announcement 2012-44.

Ordinarily, retirement plan loan proceeds are tax-free if they are repaid over a period of five years or less. Under current law, hardship distributions are generally taxable. Also, a 10% early-withdrawal tax usually applies.

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