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CORRESPONDENCE MEMORANDUM

DATE: September 29, 2004
TO: Wisconsin Deferred Compensation Board
FROM: Shelly Schueller, Director
Wisconsin Deferred Compensation Program
SUBJECT: Wisconsin Plan and Trust Document Amendments

This memo explains proposed revisions to the Wisconsin Plan and Trust document. These changes are recommended in order to maintain compliance with federal regulations that govern the Wisconsin Deferred Compensation (WDC) program.

The first attachment to this memo outlines the suggested revisions, which are based primarily on two recent Internal Revenue Service (IRS) publications: Revenue Procedure 2004-56 and Revenue Ruling 2004-12.

Revenue Procedure 2004-56 provides model amendments for use by section 457(b) plan sponsors such as the WDC. The model amendments reflect changes made to section 457 by the Economic Growth and Tax Relief Reconciliation Act of 2001. They were drafted to conform to applicable section 457(b) requirements, taking into account the general requirement that an eligible plan must include all of the material terms and conditions for benefits under the plan. For example, the model amendments do not incorporate the applicable legal requirements by reference, but instead describe those requirements thoroughly enough to enable a plan administrator to implement, to the extent feasible, the plan provisions on the basis of the model amendment language.

Revenue Procedure 2004-56 also provides that an employer may adopt the model amendments or substantially similar language in all material respects prior to December 31, 2005. It is important that the WDC adopt the model amendments or substantially similar language for two reasons:

- 1) If the WDC does not include the model amendments or substantially similar amendments, if at some point in the future the WDC requests a private letter ruling from the IRS on plan eligibility, we must clearly highlight and describe in the written request how our plan provisions differ from the model amendments.
- 2) If the WDC adopts one or more of the model amendments or substantially similar amendments, then the WDC will be treated as meeting the requirements of section 457(b) eligibility with respect to those provisions. If the WDC is ever audited by the IRS, reliance on this could be significant.

Reviewed and approved by Pam Henning, Office of Strategic Services

Signature

Date

Revenue Ruling 2004-12 is a special distribution timing rule. It clarifies that section 457(b) plans may permit "anytime distributions" from dollars rolled into the plan from other eligible plans and Individual Retirement Accounts (IRAs) if the plan sponsor chooses to offer this option. It is not a mandatory provision. To offer this option to WDC participants, the Board must revise the Plan and Trust document to include this provision, and the WDC must track any rolled-in amounts in separate rollover accounts.

The second attachment is the draft Wisconsin Plan and Trust document showing the proposed revisions, with additions shown with underlining and deletions marked by ~~strikeout~~. In addition to changes intended to keep the WDC in compliance with federal regulations, language related to excessive trading and the reinvestment of dividends and capital gains has also been added.

Staff recommends that the revisions be adopted so that the WDC remains in compliance with federal regulations.

Attachments

Wisconsin Plan and Trust Document Changes (November 2004)

| <u>Article</u> | <u>Intent of Change</u> |
|-----------------|---|
| Article 1.01(d) | Defines “compensation” in compliance with model IRS language, which is the same as is used by the IRS for qualified plans. |
| Article 1.01(n) | Defines “includible compensation” in compliance with model IRS language, which is the same as is used by the IRS for qualified plans. |
| Article 1.01(p) | Moves the language on normal retirement age for Wisconsin police or firefighters from Article 2.06 to under the definition of “normal retirement age.” |
| Article 1.01(q) | Defines “participant” in compliance with model IRS language. |
| Article 1.01(u) | Defines “severance from employment” in compliance with model IRS language. |
| Article 2.02 | Adds language in order to be in compliance with model IRS language. This section states that a participant can defer compensation, including accumulated sick, vacation and back pay, but only if the participant makes an election to do so before the beginning of the month in which the amounts would otherwise be paid or made available and if the participant was an employee in that month. The new language adds information on a special IRS rule that allows such an election after the beginning of a month in which they were retiring or having a severance from service, IF it would have otherwise been payable before the employee has a severance from employment and the election is made before the date on which the vacation pay would otherwise have been payable. <i>Note: the IRS has not fully completed its examination of the issue of vacation and sick pay deferrals and more guidance may be forthcoming.</i> |
| Article 2.03 | Adds language stating that the WDC policies are subject to restrictions and limitations that could be based on the plan document, the administrator, or legal requirements. |
| Article 2.06 | Revises this article entirely in order to repeat, verbatim, the federal requirements for special or conditional catch-up deferrals. |
| Article 2.07 | Replaces existing article regarding excess deferrals with model IRS language. |
| Article 2.08 | Updates language on military service by replacing reference to the Uniformed Services Employment and Reemployment Rights Act (USERRA) with a reference to IRC Section 414(u) ¹ , in compliance with model IRS language. |

¹ Section 414(u) of the IRC code explains how to comply with the requirements of USERRA.

Wisconsin Plan and Trust Document Changes (November 2004)

| <u>Article</u> | <u>Intent of Change</u> |
|----------------|--|
| Article 7.01 | Adds language on timely investment of deferrals to be in compliance with model IRS language, which tracks Employee Retirement Income Security Act (ERISA) language. |
| Article 7.03 | Adds language clarifying that the WDC will automatically reinvest dividends and capital gains as applicable. |
| Article 7.05 | Adds model IRS language on how investments made in error (or mistaken contributions) will be handled. Provides some flexibility to the WDC as there is a one year time period in which to return mistaken contributions to the participant. |
| Article 10.01 | Revises the WDC language on distributions to be in compliance with IRS ruling 2004-12, which contains guidance and permits plans to establish procedures to provide an anytime distribution option for eligible accounts rolled into the plan and tracked separately. <i>Note: the plan administrator's system already has the capability to do this.</i> |
| Article 10.02 | Replaces existing WDC required minimum distribution language with model IRS required minimum distribution language for qualified plans. |
| Article 12.02 | Adds language that mirrors Article 12.01 and is a written standard regarding how the Board operates. The article states that trustees may at any time establish, amend or terminate rules, procedures or policies necessary in their judgement for the effective administration of the WDC. |