



STATE OF WISCONSIN  
Department of Employee Trust Funds  
Robert J. Conlin  
SECRETARY

801 W Badger Road  
PO Box 7931  
Madison WI 53707-7931

1-877-533-5020 (toll free)  
Fax (608) 267-4549  
<http://etf.wi.gov>

**CORRESPONDENCE MEMORANDUM**

**DATE:** October 10, 2013  
**TO:** Deferred Compensation Board  
**FROM:** Tarna Hunter, Legislative Liaison  
**SUBJECT:** Legislative Update

**This memo is for informational purposes only. No Board action is required.**

This memorandum provides information on legislative issues that may be of interest to the Deferred Compensation Board (Board).

On June 30, 2013, Governor Walker signed the 2013-15 biennial budget bill (2013 Wisconsin Act 20). The Department of Employee Trust Funds (ETF) has completed a review of the law and prepared a summary of the provisions that relate to ETF. A detailed summary of all ETF provisions is attached for your review.

Revenue Ruling 2013-17

On August 29, 2013, the Internal Revenue Service (IRS) issued Revenue Ruling 2013-17. This ruling states that as of September 16, 2013, for federal tax purposes the IRS will recognize all valid same-sex marriages, regardless of whether or not the state in which the persons are living recognizes same-sex marriages. The ruling does not affect people who are in a registered domestic partnership, civil union or other similar formal relationship under state law that is not considered a marriage under the laws of that state.

The IRS issued additional guidance for employers and employees to claim refunds or adjust overpayments of FICA taxes and employment taxes with respect to certain benefits and remunerations provided to same-sex spouse on Sept. 23, 2013 via Notice 2013-61. Both the IRS and the Department of Labor are expected to issue additional guidance regarding implementation of this ruling. In the meantime, ETF will continue to research the effects of the ruling on the Wisconsin Deferred Compensation Program (WDC), which may include revisions to forms and Plan and Trust Document amendments. ETF staff will provide more information to the Board and WDC participants as it becomes available.

Reviewed and approved by Robert Marchant, Deputy Secretary

Electronically Signed 10/14/13

Board	Mtg Date	Item #
DC	11.5.13	4

I will be available at the November 5, 2013 Board meeting to discuss the contents of this memo.

Attachments:

- A. ETF Summary of 2013 Wisconsin Act 20 <http://etf.wi.gov/news/leg-update07032013.htm>
- B. IR-2013-72, 8/29/13 <http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes--Ruling-Provides-Certainty--Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples>
- C. "IRS Recognizes All Legal Same-Sex Marriages for Retirement Plan Purposes"  
Focus on 457, Vol. 26, Issue 4. 9/5/13. Great-West Financial
- D. ETF "Federal Tax Compliance for Same-Sex Marriages Information for Members" 10/1/13 (<http://etf.wi.gov/news/doma10012013.htm>)



STATE OF WISCONSIN  
Department of Employee Trust Funds  
Robert J. Conlin  
SECRETARY

801 W Badger Road  
PO Box 7931  
Madison WI 53707-7931  
1-877-533-5020 (toll free)  
Fax (608) 267-4549  
<http://etf.wi.gov>

## Summary of 2013 Wisconsin Act 20

### WISCONSIN RETIREMENT SYSTEM (WRS)

- **Rehired Annuitants – Increase Required Minimum Period of Separation from Employment before Returning to Work for a WRS-Participating Employer**

Under current law, a WRS participant who has applied to receive a retirement annuity must wait at least 30 days between terminating covered employment with a WRS employer and returning as a participating employee. If the participant does not wait the 30-day period, and is rehired before the expiration of the 30-day period, the participant is not eligible to receive a WRS retirement annuity.

Act 20 provides that the participant must remain separated from employment with a WRS participating employer for at least 75 days in order to be an eligible rehired annuitant. This provision first applies to a WRS participating employee who terminates after July 1, 2013.

- **Rehired Annuitants – Automatic Termination of Annuity upon Returning to Work for a Participating Employer in a Position in which the Member is Expected to Work at Least Two-Thirds of Full-Time Annually**

Currently, when a member terminates employment and receives an annuity, the member may later return to work with a WRS-participating employer and either terminate the annuity and again become a WRS-participating employee or, instead, continue to receive the annuity, as well as wages. If the member does not terminate the annuity, the member may not be a WRS participating employee and, in the case of state employment, is not eligible for group insurance benefits, and may not use any of his or her employment service as a rehired annuitant for any WRS purposes. If the participant terminates the annuity, the participant returns to participating employee status, is eligible for all group insurance benefits provided to other participating employees, and is able to accumulate additional years of creditable service under the WRS for the additional period of covered employment.

The act provides that if a WRS annuitant, or a disability annuitant who has attained his or her normal retirement date, is appointed to a position with a WRS-participating employer, in which he or she is expected to work at least two-thirds of full-time, as defined by ETF, annually, the annuity must be terminated and no

annuity payment is payable until after the participant again terminates covered employment. The act also provides that WRS annuitants who enter in a contract with a WRS-participating employer, in which he or she is expected to work at least two-thirds of full-time, as defined by ETF, annually, the annuity must be terminated and no annuity payment is payable until the participant no longer provides services under the contract.

- **Re-established and Re-Retirement Calculation Methodology**

Currently, when a WRS annuitant returns to employment as a WRS-participating employee, the annuity is terminated and the original annuity is reestablished as if the employee never retired. When the rehired annuitant terminates employment, the new annuity is calculated with an off-set for annuity payments already received. The reestablished account calculation can be problematic because the statutory guidelines are inconsistent with other Chapter 40 processes. This can sometimes produce inequitable results, which ETF has attempted to address by administrative rules permitting equity adjustments.

The act requires the original annuity to be suspended, rather than terminated. A new account is created for any subsequent period of WRS-participating employment. When the rehired annuitant terminates the period of reemployment and applies for a retirement annuity, the original annuity is unsuspending and a new annuity is calculated under the same guidelines as the original annuity for the subsequent period of employment. This annuity is credited with accumulated amounts from a memorandum account that actuarially provide for the proper benefit amount. The new provisions first apply to any annuitant who returns to WRS-participating employment on or after July 1, 2013.

- **Eligibility for Employees who were first hired by a WRS Employer before July 1, 2011**

2011 Wisconsin Act 32 increased the number of hours that an employee must work in order to become a participating employee in the WRS, from one-third of what is considered full-time employment to two-thirds of what is considered full-time employment, as determined by ETF.

Under 2011 Wisconsin Act 32, this change did not apply to those employees who were first hired by a WRS employer before July 1, 2011, regardless of whether or not the employees were participating employees before that date. This provision provides that, to be exempt from Act 32's two-thirds-time eligibility standard, employees must have been participating employees before July 1, 2011.

- **Disclosure of Member Information to Department of Revenue (DOR)**

ETF is permitted, but not required, to disclose member information (including Social Security Numbers) concerning the payment of WRS annuities to DOR for the purposes of administering the payment of state taxes; collecting debts owed to DOR; locating WRS participants, or the assets of WRS participants, who have failed to file tax returns, underreported their taxable income, or who are

delinquent debtors; identifying fraudulent tax returns and credit claims; or providing information for tax-related prosecutions.

- **Internal Revenue Code Compliance**

The WRS is a governmental plan and is a tax-qualified retirement plan under s. 401(a) of the Internal Revenue Code (IRC). Members of tax-qualified plans enjoy many benefits, including that they do not have to pay income tax on contributions until they withdraw money from the plan. Similarly, contributed amounts are permitted to grow tax deferred. However, statutory changes are occasionally necessary to ensure the qualified status of the WRS and to allow for flexibility in the event of future changes to the IRC.

The act contains technical adjustments to Chapter 40 to conform to requirements of the Internal Revenue Code.

- **Additional Funding for Actuarial Studies**

The law provides an additional \$15,000 GPR in FY 2014 to the Joint Legislative Council's appropriation to conduct actuarial studies. This is one-time funding, which increases the amount available for studies on FY 2014 to \$30,000.

## **GROUP INSURANCE**

- **Group Insurance Board (GIB) Discretion to Modify Benefits to Maintain or Reduce Premiums**

Current law provides that the GIB may not enter into an agreement to modify or expand any group insurance coverage in a manner that conflicts with laws or rules promulgated by ETF or that materially affects the level of premiums or the level of benefits under any group insurance coverage.

Act 20 permits the GIB to modify or expand benefits if the modification or expansion is required by law or would maintain or reduce premium costs for the state or its employees in the current or any future year.

- **“Craft Employees” Payment of Health Insurance Premiums**

The law creates a definition for “craft employee” in Chapter 40. Craft employees must pay all of their health insurance premiums, unless otherwise determined by the director. A craft employee is a state employee who is a skilled journeyman craftsman, including the skilled journeyman craftsman’s apprentices and helpers, but does not include employees not in direct line of progression in the craft.

- **Optional High Deductible Plan and Health Savings Account**

The GIB must offer to state employees an optional high deductible health insurance plan and health savings account beginning January 1, 2015. The actuary must recommend changes to the program design to make the plan more

cost effective. Requires the Office of State Employment Relations (OSER) and ETF to study the feasibility and cost effectiveness of offering health reimbursement accounts compared to health savings accounts. OSER and ETF must present their findings and recommendations to the Governor and the Joint Committee on Finance no later than January 31, 2014.

The GIB may collect fees from state agencies to pay all administrative costs relating to health savings accounts. The state must make contributions to employees' health savings accounts in an amount determined annually by the Director of OSER.

- **State Payment of Health Insurance Premiums**

Current law is that the state may not pay more than the average premium costs of the lowest cost health insurance plans.

Under Act 20, the state is not permitted to pay more than 88 percent of the average premium costs in each tier.

In addition, if any tier contains no health insurance plans, but is used to establish premiums for employees who work and reside out of state, the amount these employees must pay is based on the premium contribution amount for that tier in the prior year, adjusted by the average percentage change of the premium contribution amount of the other tiers from the prior year.

- **Study to Exclude certain Spouses and Domestic Partners from State Employee Health Insurance Coverage**

Requires OSER and ETF to jointly study the feasibility of excluding from state employee health insurance coverage a spouse or domestic partner who has health insurance available from his or her employer. The study will also evaluate the creation of a \$2,000 incentive payment program for state employees that opt not to take health insurance through the state. The act provides \$75,000 GPR in FY 2014 to conduct an actuarial study of the plan to exclude from state employee health insurance coverage a spouse or domestic partner who has health insurance available from his or her employer and an incentive payment program for state employees that opt not to take health insurance through the state.

OSER and ETF must present their findings, results of the actuarial study, and recommendations to the Governor and the Joint Committee on Finance no later than June 30, 2014.

- **Health Insurance Data Collection and Analysis – Requirements for Health Care Information Organizations**

Under current law, the Department of Health Services (DHS) and ETF may contract with a health care information organization (“data organization” in Chapter 153, Stats.) to request health care claims information from health insurers and insurance plan administrators. The data organization must analyze and publicly report this information with respect to the cost, quality and

effectiveness of health care; provide DHS with health care claims information and reports upon request; and maintain a centralized data repository. If DHS and ETF determine that the data organization is not fulfilling certain requirements, DHS must carry out these functions itself.

The act requires the data organization to take actions including all of the following:

- provide an Internet site to offer health care provider cost and quality data and reports to consumers;
- conduct statewide consumer information campaigns to improve health literacy; and
- provide software to allow providers to validate data prior to its publication on the Internet site.

## **ETF BUDGET**

- **Annual Report on Progress of Modernization Efforts**

ETF must submit an annual report by July 1 to the DOA Secretary and the Joint Committee on Finance regarding ETF's progress in modernizing its business processes and integrating its information technology systems.

- **Funding for promotion of state employee wellness in the workplace**
- **Funding for the Modernization of Business Processes and Technology Integration**



## Treasury and IRS Announce That All Legal Same-Sex Marriages Will Be Recognized For Federal Tax Purposes; Ruling Provides Certainty, Benefits and Protections Under Federal Tax Law for Same-Sex Married Couples

*Note: On Sept. 23, 2013 IRS issued Notice 2013-61 providing guidance for employers and employees to claim refunds or adjust overpayments of FICA taxes and employment taxes with respect to certain benefits and remunerations provided to same-sex spouses.*

IR-2013-72, Aug. 29, 2013

WASHINGTON — The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

The ruling implements federal tax aspects of the June 26 Supreme Court decision invalidating a key provision of the 1996 Defense of Marriage Act.

Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.

Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be covered by the ruling. However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

Legally-married same-sex couples generally must file their 2013 federal income tax return using either the married filing jointly or married filing separately filing status.

Individuals who were in same-sex marriages may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations.

Generally, the statute of limitations for filing a refund claim is three years from the date the return was filed or two years from the date the tax was paid, whichever is later. As a result, refund claims can still be filed for tax years 2010, 2011 and 2012. Some taxpayers may have special circumstances, such as signing an agreement with the IRS to keep the statute of limitations open, that permit them to file refund claims for tax years 2009 and earlier.

Additionally, employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts paid for that coverage as pre-tax and excludable from income.

### **How to File a Claim for Refund**

Taxpayers who wish to file a refund claim for income taxes should use [Form 1040X](#), Amended U.S. Individual Income Tax Return.





Taxpayers who wish to file a refund claim for gift or estate taxes should file [Form 843](#), Claim for Refund and Request for Abatement. For information on filing an amended return, see [Tax Topic 308](#), Amended Returns, available on IRS.gov, or the Instructions to Forms 1040X and 843. Information on where to file your amended returns is available in the instructions to the form.

### **Future Guidance**

Treasury and the IRS intend to issue streamlined procedures for employers who wish to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses. Treasury and IRS also intend to issue further guidance on cafeteria plans and on how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the effective date of this Revenue Ruling.

Other agencies may provide guidance on other federal programs that they administer that are affected by the Code.

[Revenue Ruling 2013-17](#), along with updated [Frequently Asked Questions for same-sex couples](#) and updated [FAQs for registered domestic partners and individuals in civil unions](#), are available today on IRS.gov. See also [Publication 555](#), Community Property.

Treasury and the IRS will begin applying the terms of Revenue Ruling 2013-17 on Sept. 16, 2013, but taxpayers who wish to rely on the terms of the Revenue Ruling for earlier periods may choose to do so, as long as the statute of limitations for the earlier period has not expired.



THE LEADING TECHNICAL NEWSLETTER FOR GOVERNMENT DEFINED CONTRIBUTION PLANS SINCE 1987

Published by Great-West Financial<sup>SM</sup> - Specialists in Government Defined Contribution Plans

## IRS Recognizes All Legal Same-Sex Marriages for Retirement Plan Purposes

On August 29, the Internal Revenue Service (IRS) and Department of Treasury issued Revenue Ruling 2013-17 providing guidance on the federal taxation of same-sex couples following the Supreme Court decision striking down Section 3 of the Defense of Marriage Act as unconstitutional. See *Focus on 457* Volume 26, Issue #3 dated July 12, 2013 for a summary of the court's decision.

**Holding:** Rev. Rul. 2013-17 holds that for all federal tax purposes, including retirement plans, the IRS will recognize same-sex marriages that are legally valid in the jurisdiction where the couple married, regardless of whether the state in which the couple resides would recognize the validity of the marriage.

**Effective Date:** Retirement plans must begin operating pursuant to Rev. Rul. 2013-17 as of September 16, 2013.

### Definitions and applicable state laws:

- **“Spouse” includes lawful same-sex marriages.** The terms “spouse,” “husband” and “wife” include an individual married to a person of the same sex if they are lawfully married under state law<sup>1</sup>, the laws of a U.S. territory or a foreign jurisdiction. The term “marriage” includes a same sex marriage.
- **“Place of Celebration” controls.** The IRS rule recognizes a marriage of same-sex individuals validly entered into in a state whose laws authorize same-sex marriage, even if the married couple resides in a state that does not recognize same-sex marriages.
- **No impact on Domestic Partnerships or Civil Unions.** The ruling does not apply to individuals in a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state.

### Qualified retirement plan rules pursuant to Rev. Rul. 2013-17 and IRS’s Frequently Asked Questions:

- Qualified retirement plans (including 401(a)/(k), 403(b), 457(b) and IRAs) are required to treat a legally married same-sex spouse as a spouse for purposes of satisfying the federal tax laws relating to qualified retirement plans, regardless of the laws of the state of domicile.
- Employers operating in a state that does not recognize same-sex marriages must still treat the participant as married to a same-sex spouse based upon the place of celebration.
- Defined contribution plans that pay the account balance to the spouse upon the participant’s death with no annuity option, must pay the same-sex spouse unless the spouse has consented to another beneficiary.

<sup>1</sup> In the United States there are now 14 jurisdictions that issue marriage licenses to same-sex couples: California, Connecticut, Delaware, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington. In addition, certain counties in New Mexico (which neither prohibits nor authorizes same-sex marriage) are beginning to issue same-sex marriage licenses.



Action Steps - The ruling will have a significant impact on the administration of employee benefit plans, from both the employer and employee perspective, and there is very little time to prepare. By the September 16, 2013 effective date, employers and plan administrators should take the following steps with respect to their retirement plans:

- Regardless of the plan document terms, beginning September 16, 2013, treat all same-sex spouses as “spouses” for plan purposes. This is particularly important for beneficiary designations and plan benefit payments to ensure that same-sex spouses receive spousal rights and protections, including spousal consent rights.
- Review and update plan distribution forms and administrative procedures to make sure they treat a same-sex spouse as a spouse for plan purposes. This includes:
  - Beneficiary designations - Default spousal designations apply to same-sex spouses.
  - Spousal Consent – Spousal consent rights, including for plan loans, apply to same-sex spouses.
  - Rollovers – Same-sex spouses may rollover a death benefit to their own IRA or employer-sponsored plan.
  - Minimum Required Distributions – Surviving same-sex spouses may defer their required beginning date under Code §401(a)(9) to their own age 70 ½.
  - Hardship/Unforeseeable Emergency Distributions – Any hardship payment allowed for a spouse must be allowed with respect to a same-sex spouse.
  - Qualified Domestic Relations Orders (QDROs) - Plans must comply with QDROs that order the distribution of benefits to former same-sex spouses.
  - Qualified joint and survivor annuities and qualified pre-retirement survivor annuities - A same-sex spouse is now protected by these rules under ERISA plans. Governmental and church plans are exempt from these rules so check your plan documents provisions to determine a spouse’s rights under your plan.
- Consider sending a participant communication to notify participants of the new rules.
- Encourage participants to update their participant records, including their beneficiary designation forms, and to indicate marital status on the distribution forms, and provide spousal consent, when required.

Plan Document Amendments: Plan document amendments are not required at this time. The IRS has stated that it intends to issue additional guidance on plan amendment requirements, including the timing of any required amendments.

Retroactivity: Rev. Rul. 2013-17 is applicable prospectively only for retirement plans. IRS has stated that it intends to provide future guidance regarding the application of Rev. Rul. 2013-17 to qualified retirement plans with respect to periods prior to September 16, 2013.

Operational Errors: IRS is expected to provide guidance with respect to any necessary corrections relating to plan operations between the September 16<sup>th</sup> effect date and the date future guidance is issued.

Department of Labor (DOL): DOL has not yet issued any guidance for retirement plans but is expected to do so. Any such DOL guidance may or may not impact governmental plans.

Summary: At a matter of plan qualification, plan sponsors need to begin operating their plans in compliance with Rev. Rul. 2013-17 on September 16, 2013. Any plan amendments that may be necessary in order to comply with the new rules, however, do not need to be made until future guidance is released by the IRS.

We will provide you with additional information as guidance or new information becomes available. In the meantime, if you have any questions, please contact your representative listed below.



Brent Neese Vice President, Government Markets 978-407-9000	John Borne Vice President, Western Region 619-410-3481	Amy Heyel Vice President, Eastern Region 912-433-0490	Theresa Cruz Myers Vice President, Central Region 800-537-2033 x 77701	Perry Christie Vice President, DCIO 800-537-2033 x73724
Denise Fortune Regional Sales Director, Eastern Region 301-627-7579	Harriet Jacobs Regional Sales Director, Western Region 310-988-8794	Chris Solimine Regional Sales Dir., Central Region 800-537-2033 x71142	Steven Bresler Director, Retirement Plan Counseling, CO 800-537-2033x77703	Robert Dwyer Manager, Market & Strategic Development 800-537-2033 x72408
Tim Bock National Accounts Director, USCM, 800-537-2033 x 72551	Darryl Collier National Accounts Director, 800-537-2033 x73208	Lisa Tilley National Accounts Director, 800-537-2033 x75159	Michelle Williams National Accounts Director, 800-537-2033 x74648	Brion Beetz Client Relationship Director, San Ramon 925-980-9063
Jaimie Biesel Director, Client Relations & Plan Counseling, IN 877-728-6738	Trampus Bright Client Relationship Director, Denver 303-737-7706	Jim Condon Client Relationship Director, NY/NJ Region 718-238-2731	Bruce Dale Director, Client Relations & Plan Counseling, Texas 512-651-2288	Natalie Daniels Client Relationship Director, Nashville, TN 615-564-7003
Jennifer Leonard, Director, Client Relations & Plan Counseling, Alabama 205-873-3753	Karl Kroner, Client Relationship Director, New England 413 582-0062	Tem Miller, Client Relationship Director, Atlanta, GA 678-471-9348	Javier Obando Client Relationship Director, Long Beach 415-385-8969	Sue Oelke Client Relationship Director, Wisconsin 608-241-6604
Nancy Ornduff, Client Relationship Director, S.C. 803-754-7997	Connie Rettig, Client Relationship Director, St. Louis 314-241-1334	Nancy Roth, Client Relationship Director, Florida 904-652-3595	Eric Sanderson, Client Relationship Director, Ohio 603-801-6269	John Steggell, Client Relationship Director, Los Angeles 949-474-1446x45972
Connie L. Stevens, CRPC, Director, Client Relations & Plan Counseling, LA 255-926-8082 x35501	Alice Tajeron, Director, Client Relations & Plan Counseling, Guam/ Micronesia 671 -475-8945	Linda Ulrich, Client Relationship Director, Pacific Northwest 425-241-8845	Gary Wilkins, Client Relationship Director, Houston 713-426-5588 x 114	Steven Wright, Client Relationship Director, Mid-Atlantic 304-268-7753

## Federal Tax Compliance for Same-Sex Marriages

### Information for Members

As a result of the U.S. Supreme Court ruling on the federal Defense of Marriage Act (DOMA), the Internal Revenue Service (IRS) issued Revenue Ruling 2013-17, effective September 16, 2013, related to same-sex marriages. Federal law requires the Department of Employee Trust Funds (ETF) to remain in compliance with IRS regulations when administering benefit programs.

The Revenue Ruling affects administration of benefits only when that administration is governed by federal tax law. Wisconsin law does not recognize same-sex marriages; even if such marriages are legal in the jurisdiction the marriage was performed.

#### General outcomes of the Revenue Ruling:

- No enrollment opportunity is created for insurance-related programs.
- Employers should not request a marriage certificate for proof of same-sex marriage.
- Members who qualify must file an [Affidavit of Domestic Partnership](#) form (ET-2371) to get health insurance for a same-sex spouse.
- Imputed income rules are affected. There are differences between state and federal imputed income.

Benefit programs administered by ETF are established by Chapter 40 of Wisconsin Statutes. A same-sex marriage is not considered the equivalent of a Chapter 40 domestic partnership in Wisconsin. Recognition of domestic partnerships for Chapter 40 benefit purposes has specific statutory requirements.

The following are frequently asked questions and answers regarding the effect of the Revenue Ruling on the benefit programs administered by ETF.

For more information, contact your employer if you are an active employee. If you are a retired member, contact ETF toll free at 877-533-5020 or locally at 608-266-3285.

### General Questions

#### **1. I am in a Chapter 40 Domestic Partnership with a same-sex partner, but am not married. Does federal recognition of same-sex marriage have any effect on me?**

The federal recognition of same-sex marriage has no impact on Chapter 40 domestic partnerships. Chapter 40 [domestic partnerships](#) are statutorily defined by Wisconsin.



**2. I was legally married to my same-sex spouse before coming to Wisconsin. Is my same-sex spouse automatically recognized for purposes of Chapter 40 benefits? If not, will my same-sex spouse automatically be considered my domestic partner?**

Your same-sex spouse is not considered a legal spouse in Wisconsin. Your same-sex spouse is not automatically considered a domestic partner in Wisconsin. You can obtain coverage as a domestic partner if you meet the statutory requirements for a domestic partnership in Chapter 40 of Wisconsin laws and file an [Affidavit of Domestic Partnership](#) form (ET-2371) with ETF.

## Health Insurance

**3) How can I cover my same-sex spouse on my health insurance?**

Under Wisconsin law, a Chapter 40 domestic partner can be covered under a member's state or local group health insurance. Individuals in a same-sex marriage that satisfy statutory requirements for a Chapter 40 domestic partnership may obtain coverage as a domestic partner.

**4) How are my income taxes affected by the addition of my Chapter 40 domestic partner (who is also my same-sex spouse) and his/her eligible dependents to my group health insurance?**

If your domestic partner is also your same-sex spouse, your employer must exclude the employer contributions from your gross income for federal tax purposes, which would result in no imputed income and no additional federal tax liability. However, there will still be imputed income for the purposes of Wisconsin income taxes. See a tax professional for more guidance.

**5) What proof do I need to cover my domestic partner who is also my same-sex spouse (and to not have imputed income for that coverage)?**

To establish a domestic partnership you must submit an [Affidavit of Domestic Partnership](#) form (ET-2371) to ETF. When filing a [Group Health Insurance Application/Change Form](#) (ET-2301) indicate your marital status for federal tax purposes. Your signature on the health insurance application legally attests to your status. As in all health coverage situations, ETF may require additional documentation in a specific instance if necessary to resolve discrepancies.

**6) What actions can I take to prevent imputed income if I have a same-sex marriage with my domestic partner?**

If you are an active employee, you should contact your employer. If you are retired, please contact ETF.

**7) Can I cover the children of my domestic partner who is my same-sex spouse?**

You may add your domestic partner and his or her eligible dependents. For more detailed instructions on establishing a domestic partner and making health insurance coverage changes your contact employer. Retired members should contact ETF.

**8) Will I have imputed income if I have a domestic partner who is also my same-sex spouse, I am retired, and I pay my own health insurance premiums?**

No.

**9) What if I use accumulated sick leave conversion credits (retired state employees only) for health insurance coverage of my Chapter 40 domestic partner who is also my same-sex spouse?**

There is no income imputed for federal tax purposes. For Wisconsin tax purposes, the fair market value of the group health insurance benefits provided to the partner and partner's eligible dependents are included in your gross income.

**10) My former employer is a local government entity that is paying all or a portion of my health insurance premium that covers my domestic partner who is also my same-sex spouse?**

The local government employer will determine and manage any imputed income amounts for Wisconsin tax purposes.

## **Wisconsin Retirement System (WRS)**

**11) Can I name my same-sex spouse as my beneficiary?**

Yes, WRS death benefits are paid according to the most recent Beneficiary Designation form received prior to your death. If you have never filed a Beneficiary Designation form, your death benefits will be paid according to the Chapter 40 statutory standard sequence. The [Beneficiary Designation](#) form ([ET-2320](#) or [ET-2321](#)) is for WRS benefits. The [Wisconsin Deferred Compensation program Beneficiary Designation](#) form is separate from the WRS beneficiary designation.

**12) If I am in a same-sex marriage do I need to fill out a beneficiary designation to provide death benefits for my spouse?**

“Surviving Spouse” in the state “standard sequence” is a matter of Wisconsin law, and therefore is not effective in relation to same-sex marriages. Without a beneficiary designation on file with ETF, any benefits payable would go to survivors in the other categories.

Members in same-sex marriages are strongly encouraged to consider filing a Beneficiary Designation with ETF and keep the form current. The Wisconsin Deferred Compensation program beneficiary designation form is separate from the WRS beneficiary designation. If you qualify under the Chapter 40 definition of domestic partnership, submit an [Affidavit of Domestic Partnership](#) form (ET-2371).

**13) If I die after my WRS annuity begins, will my same-sex spouse receive my annuity?**

Once your annuity begins, any death benefits payable are based on the annuity option you selected when you applied for retirement or § 40.63 disability retirement. Detailed information about annuity options is available in the [Choosing an Annuity Option](#) brochure (ET-4117).

**14) When applying for a retirement or § 40.63 disability retirement benefit is my same-sex spouse legally presumed to be my named survivor?**

Under federal tax law, if you have been married for at least one year prior to your annuity effective date, your same-sex spouse is legally presumed to be your named survivor when you apply for retirement. Unlike an ETF beneficiary designation form (which can be updated as often as you wish), you can never change your named survivor regardless of changes in your personal situation.

**15) Does my same-sex spouse have to sign my retirement application when I retire?**

Federal tax law creates a legal presumption that for marriages, the named survivor is the spouse. Same-sex spouses are now included.

If your marriage has been in effect for at least one full year immediately preceding the date that your WRS annuity begins, you must either select a joint and survivor annuity option with your same-sex spouse as your named survivor or your spouse must sign your application consenting to an alternate option.

**16) If I die while I am an active employee, will my same-sex spouse receive any death benefits that are payable?**

Eligibility for death benefits under the WRS is established by Wisconsin law, which does not recognize same-sex marriages. Members in same-sex marriages are strongly encouraged to consider filing a Beneficiary Designation form with ETF and keep the form current. The WDC beneficiary designation form is separate from the WRS beneficiary designation. If you qualify under the Chapter 40 definition of domestic partnership, submit an [Affidavit of Domestic Partnership](#) form (ET-2371).



**17) If my same-sex marriage ends, can my WRS account or annuity be divided by a Qualified Domestic Relations Order (QDRO) and a portion of my account or annuity be awarded to my former same-sex spouse?**

Yes; QDROs are governed by federal tax law. More detailed information about how WRS accounts and annuities are divided by a QDRO is available in the [How Divorce Can Affect Your WRS Benefits](#) brochure (ET-4925).

**18) Can my surviving same-sex spouse roll over my WRS death benefits into another retirement plan or account, such as to an Individual Retirement Account (IRA) that has been set up exclusively for receiving the distribution?**

A spousal beneficiary is eligible to roll over lump sum WRS death benefits into his or her own (non-WRS) retirement account. Rollover options include traditional and Roth IRAs, Sec. 403(b) tax deferred plans, and Sec. 457 plans (except WRS). For additional information, consult your tax advisor.

### **Wisconsin Deferred Compensation Program (WDC)**

For more information regarding the WDC, call 1-877-457-9377.

**19) Can my surviving same-sex beneficiary roll over my WDC account into another retirement plan or account, such as to an IRA that has been set up exclusively for receiving the distribution?**

Yes. Same-sex spouse beneficiaries will qualify for the more favorable plan and IRA required minimum distribution, and rollover rules that apply to surviving spouses. The IRS website shows [where retirement savings may be transferred](#). For additional information, consult your tax advisor.

**20) If my same-sex marriage ends, can my WDC account be divided by a Domestic Relations Order (DRO) and a portion of my account be awarded to my former same-sex spouse?**

Yes. To divide a WDC account with a DRO, use the [Order to Divide Wisconsin Deferred Compensation Program Account](#) (ET-2367) form.

### **Life Insurance**

**21) Can I purchase life insurance for my same-sex spouse through the Wisconsin Public Employers Group Life Insurance Program?**

Under Wisconsin law, a Chapter 40 domestic partner can be covered under a member's insurance. If your same-sex spouse is also your domestic partner, you may obtain coverage as a domestic partner.

## Employee Reimbursement Account Program (ERA)

For more information regarding the Employee Reimbursement Account Program, contact your employer.

### **22) Can I use the ERA program for expenses of my same-sex spouse and/or our dependent children?**

Yes, the ERA program is governed by federal law and is authorized under Section 125 of the Internal Revenue Code.

### **23) Do the federal tax law changes apply retroactively to the ERA Program?**

The changes may apply to past situations. The IRS indicated in the ruling that it is still working on guidance regarding the retroactivity.

## Optional Plans

For more information regarding optional plans, contact your employer.

### **24) Can I cover my same-sex spouse on the optional plans (vision, dental, excess medical, etc.)?**

Under Wisconsin law, a Chapter 40 domestic partner can be covered under a member's insurance. If your same-sex spouse is your domestic partner, you can obtain coverage by filing an [Affidavit of Domestic Partnership](#) form (ET-2371) with ETF.

### **25) How is my payroll deduction affected by the addition of my domestic partner (who is also my same-sex spouse) and his/her eligible dependents to my optional plan insurance?**

Deductions for optional plans are not handled separately. All optional plans are deducted post tax if any of the member's optional plans cover a person who, under state tax law, is not considered a tax dependent or spouse. Because Wisconsin law does not currently recognize same-sex marriage, payroll deductions for payment of optional plan premiums will be taken post tax.