



STATE OF WISCONSIN
Department of Employee Trust Funds
David A. Stella
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: August 25, 2008
TO: Employee Trust Funds Board
FROM: Bob Conlin, Deputy Secretary
SUBJECT: Delegation of Authority to Solicit Proposals For and Contract With Federal Tax Counsel

The Board is asked to delegate to the Department the authority to solicit proposals for and contract with federal tax counsel. In addition, a volunteer from the Board is sought to serve on a panel to evaluate the proposals.

Background

State law requires both the Board and the Department to ensure that the Wisconsin Retirement System (WRS) complies with and is administered in a manner consistent with the Internal Revenue Code (IRC). [Wis. Stats. §40.03 (1)(am) and (2)(t)] Federal tax law, and a pension system's compliance with it, is a highly complex and specialized field of the law. The Department believes it and the Board would benefit by retaining tax counsel who has experience representing public retirement plans before the Internal Revenue Service (IRS).

The Board is authorized by law to employ or select any legal contractors as are required for the administration of the Trust Fund. [Wis. Stats. §40.03 (1)(c)] The Board may also delegate its powers or duties as deemed necessary or desirable. [Wis. Stats. §40.03 (1)(L)]

The Department administers many complex employee benefit plans, including the WRS. All of them are affected in some manner by the IRC. It has been over 10 years since the Department has undertaken a thorough review of its compliance with the IRC with the assistance of tax counsel. We believe it is time to do so again and to have counsel retained in order to more regularly review WRS compliance with changes in the tax law and benefit changes under state law.

Historically, the IRS has not examined public retirement plans like the WRS to determine if the plans are in compliance with the IRC. The IRS has limited knowledge of how public plans operate. Recently, however, the IRS has indicated a significant interest in verifying public plans' compliance with the IRC. At a recent governmental plans round table discussion sponsored by the IRS, the IRS announced that it intends to begin surveying public retirement plans to obtain information about how public plans operate, in an effort to "find out if there are any issues [they]

Board	Mtg Date	Item #
ETF	9/19/08	4

need to be involved in.” The IRS anticipates sending extensive surveys to approximately 25 public retirement plans later this fall, possibly to be followed by surveys of approximately 200 public retirement plans. In addition, the IRS is encouraging public retirement plans to seek a determination letter that formally provides qualified tax status for the plan.

Although participants at the round table were assured that their responses to the surveys would not directly lead to audits of plans, many public plan executives and attorneys are skeptical. If the IRS conducts audits, public plan administrators would have to devote a great deal of time and resources to provide the IRS with information.

Justification

The Department believes it is important and beneficial to have the ability to consult with counsel who specializes in tax law, has experience handling tax matters before the IRS, and has experience working with public pension plans on a regular basis. Engaging outside tax counsel to assist in determining the WRS’ compliance with the IRC would benefit the Board and Department in a number of ways, including:

- Helping ensure that the Board and Department meet their respective statutory duties to operate the WRS in compliance with the IRC.
- Being able to better identify any compliance issues and take preemptive corrective action outside of the IRS audit process.
- Assisting in securing a favorable IRS determination letter confirming WRS compliance with the IRC.

The Department anticipates soliciting proposals for and entering a 1-year contract, with extensions possible, with an experienced law firm. The Department anticipates expending no more than \$50,000 in the current fiscal year for tax counsel services. It is anticipated that in future years, as the Department seeks more comprehensive assistance from counsel, this cost will increase. Once a relationship is established with counsel, the Department will be able to establish a better plan for the use of counsel services.