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CORRESPONDENCE MEMORANDUM

DATE: February 18, 2013

TO: Employee Trust Funds Board

FROM: Mary Alice McGreevy, Compliance Officer
Office of Policy, Privacy and Compliance

SUBJECT: Clearinghouse Rule 13-004 relating to clarifying how the Department of Employee Trust Funds (ETF) complies with applicable provisions of the Internal Revenue Code (IRC).

Staff recommends the Employee Trust Funds Board (Board) approve the final version of this proposed rule.

ETF staff proposes to revise existing ETF administrative rules to maintain ongoing compliance of the Wisconsin Retirement System (WRS) with the IRC and regulations and guidance from the Internal Revenue Service.

The rule changes related to compliance include additional language to clarify that ETF will adjust allowable maximum voluntary contributions according to limits set by the IRS; that ETF will refund excess contributions as required by the IRS; that ETF will not violate section 503(b) of the IRC regarding prohibited transactions; and that the WRS is maintained for the exclusive benefit of participants and their beneficiaries, as required by the IRC.

ETF has previously taken the following actions as part of the rule promulgation process:

- Statement of Scope approved by ETF Secretary on September 19, 2012.
- Statement of Scope approved by the Governor on October 2, 2012.
- Scope Statement published in Wisconsin Administrative Register No. 682 on October 31, 2012.
- Proposed rule submitted to Legislative Council Administrative Rules Clearinghouse on January 10, 2013.
- Published notice of hearing in Wisconsin Administrative Register No. 685 on January 31, 2013.
- Received Legislative Council Rules Clearinghouse Report on February 6, 2013.
- Held a public hearing on February 13, 2013.

The final draft report on the proposed administrative rule is attached to this

Reviewed and approved by Steve Hurley, Director, Office of Policy, Privacy and Compliance

Electronically Signed 2/22/13

Board	Mtg Date	Item #
ETF	3.7.13	5B1

Clearinghouse Rule # CR 13-004

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memorandum. Staff made minor changes to the rule in response to comments received in the Legislative Council Staff Clearinghouse Report. The rule now conforms to recommended form and style. There were no appearances at the public hearing held at ETF on February 13, 2013, and no written comments were received.

Board approval of the final version of the proposed rule is the next step in the administrative rule promulgation process. Once approved, ETF will first submit the proposed rule to the Governor for approval, and then to the State Legislature for consideration.

Staff will be available at the meeting to discuss this memorandum and answer any questions regarding the proposed rule.

Attachment A: Final Draft Report on Clearinghouse Rule 13-004

Attachment B: Fiscal and Economic Impact Analysis

**State of Wisconsin
Department of Employee Trust Funds,
Employee Trust Funds Board**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #13-004

AN ORDER to repeal ETF 10.65 (1)(a) to (f), (2) and (3); to amend ETF 10.01(3i) and 10.65 (1)(intro); and to create ETF 10.65 (Note), 10.85, ETF 20.0251 and ETF 20.0251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code (IRC).

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Agency Person to be Contacted for Questions

Please direct any questions about this rule-making to Mary Alice McGreevy, Compliance Officer, Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-2354. E-mail address: maryalice.mcgreevy@etf.wi.gov.

Statement Explaining Need for Rule

This rule-making is needed to maintain ongoing compliance of the Wisconsin Retirement System (WRS) with the IRC and regulations and guidance from the Internal Revenue Service.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes Interpreted:
Sections 40.015, 40.03 (1), (1) (am), 40.31, 40.32, Stats., relating to compliance with the IRC.
2. Statutory Authority:
Sections 40.03 (1) (am), (2) (i), (t), and 227.11 (2) (a)(intro), 1. to 3., Stats.
3. Explanation of Agency Authority:
By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered

by the agency if the agency considers it necessary to effectuate the purpose of the statute.

The ETF Secretary is also required by statute to ensure that the WRS maintains compliance with the IRC as a qualified plan for tax purposes and each plan is administered in compliance with the code. Numerous provisions in Chapter 40 require ETF to comply with the IRC.

This rule is subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule was approved by the Governor on October 2, 2012, and published in Register No. 682 on November 1, 2012.

4. Related Statute or Rule:

There are no other relevant statutes or rules that are related to WRS compliance with the IRC that are not addressed in this rule.

5. Plain Language Analysis:

Clarify how ETF treats specific situations under the IRC to ensure WRS compliance. These changes are consistent with current statutory requirements.

- Amending the definition of “maximum voluntary contribution” to clarify that ETF will adjust the amounts according to the limits set by the Internal Revenue Service (IRS) and which are changed periodically.
- Amending ETF 10.65 regarding the refund of excess contributions to clarify that refunds will be processed as required by the IRS.
- Clarifies that ETF will not violate section 503(b) of the IRC regarding prohibited transactions.
- Clarifies that the WRS is maintained for the exclusive benefit of participants and their beneficiaries, as required by the IRC.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

This rule complies with the IRC, IRS regulations and other requirements. The rules are written to ensure continued compliance with these laws, regulations and requirements. Section 4 of the rule refers to a January 1, 1989 effective date, the date after which certain qualified retirement plans such as the WRS were prohibited from engaging in certain transactions. This statement is required to comply with the IRC, IRS and other guidance and standards.

7. Comparison with Rules in Adjacent States

Please see attached Fiscal and Economic Impact Analysis.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule is intended to clarify ETF’s rules regarding compliance with the IRC . ETF worked closely with its outside tax counsel to develop the proposed rule.

9. Accuracy, Integrity, Objectivity and Consistency of Data:

The present rule changes were a result of recommendations from ETF’s outside tax counsel and as required to maintain compliance with the IRC. ETF conducted

analysis with integrity in an accurate, objective, and consistent manner in accordance with its fiduciary responsibilities to its members.

10. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

11. Effect on small business:

There is no effect on small business.

12. Place Where Comments are to be Submitted and Deadline for Submissions:

Comments may be submitted to the contact person no later than 4:30 p.m., Wednesday, February, 20, 2013. The public hearing was held at 2:00 p.m. on Wednesday, February 13, 2013 in conference room GB of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.

13. Proposed Effective Date:

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

14. Fiscal Estimate:

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

15. Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

Text of Proposed Rule

1 **SECTION 1. ETF 10.01 (3i) is amended to read:**

2 **ETF 10.01(3i)** "Maximum voluntary contribution" means the total amount eligible under
3 section 415 (c) of the internal revenue code , as adjusted pursuant to section 415(d) of the
4 internal revenue code, and the regulations promulgated pursuant to that section, to be
5 contributed to the Wisconsin retirement system in a calendar year by or on behalf of a
6 participating employee, ~~less all benefit adjustment contributions and required and~~
7 employer-paid additional contributions which are includable in the limits of section 415 (c)
8 of the internal revenue code, as determined by the department.

9

10 **SECTION 2. ETF 10.65 is amended to read:**

11 **ETF 10.65 Refund of excess contributions.**

12 ~~(4)~~ The department shall refund contributions to be allocated to a participant's account that
13 exceed the limits specified in s. 40.32, Stats., in accordance with s. 40.08 (6), Stats., ~~in the~~
14 ~~following order:~~ according to the correction methods allowed under the Employee Plans
15 Compliance Resolution System developed by the internal revenue service or similar
16 correction program developed by the internal revenue service. Nothing in this section shall
17 be interpreted as a basis for a determination of whether any payments credited to an
18 employer are required to be paid by the employer to an employee under contractual
19 agreements or other negotiated agreements or provisions of law.

20

21 **SECTION 3. ETF 10.65 (Note) is created to read:**

22 Note: Revenue Procedure 2013-12 sets forth the Employee Plans Compliance Resolution
23 System. The Procedure is updated periodically. A copy of the ruling may be obtained by

24 writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000 or on
25 the Internet at <http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors>.

26

27 **SECTION 4. ETF 10.85 is created to read:**

28 **ETF 10.85 Prohibited transactions.**

29 Effective January 1, 1989, the department may not engage in a prohibited transaction as
30 defined in section 503 (b) of the internal revenue code.

31

32 **SECTION 5: ETF 20.0251 is created to read:**

33 **ETF 20.0251 Exclusive benefit.** (1) The Wisconsin retirement system is maintained for
34 the exclusive benefit of participants and their beneficiaries.

35 (2) No contributions or earnings on contributions may revert, and no contributions may be
36 permitted to be returned to a participating employer, except as permitted by Revenue
37 Ruling 91-4.

38

39 **SECTION 6: ETF 20.0251 (Note) is created to read:**

40 Note: Revenue Ruling 91-4 provides for circumstances under which money contributed by
41 a participating employer may be returned to the employer. A copy of the ruling may be
42 obtained by writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO
43 63197-9000 or on the Internet at <http://bookstore.gpo.gov/help/ordering.jsp>.

44

(END OF RULE TEXT)

45

46 **SECTION 7. EFFECTIVE DATE.** This rule shall take effect on the first day of the month
47 following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2)
48 (intro.), Stats.



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 13-004

AN ORDER to amend ETF 10.01 (3i) and 10.65; and to create ETF 10.65 (Note), 10.86, 20.0251, and 20.1251 (Note), relating to clarifying how ETF complies with applicable provisions of the Internal Revenue Code.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

01-14-2013 RECEIVED BY LEGISLATIVE COUNCIL.

02-06-2013 REPORT SENT TO AGENCY.

JKR:DWS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2)(a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

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CLEARINGHOUSE RULE 13-004

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause indicates that the proposed rule creates s. ETF 10.86, whereas the text of the rule creates s. ETF 10.85. The latter appears correct and the introductory clause should be amended to reflect the correct section. In addition, in the introductory clause, “to clarify” should be replaced with “, relating to clarifying”. [s. 1.02 (1) (a), Manual.]

b. SECTION 2 of the proposed rule amends s. ETF 10.65. However, given the amount of stricken-through text, the agency may want to consider the following treatment for s. ETF 10.65: (1) amend s. ETF 10.65 (1) (intro.); and (2) repeal s. ETF 10.65 (1) (a) to (f) and (2). The agency should avoid renumbering s. ETF 10.65 (3). Renumbering is generally discouraged because it impairs the ability to trace a provision’s history. [s. 1.03 (5), Manual.]

c. In SECTION 2 of the proposed rule, “~~one-hundredth~~” should be inserted after “one” in s. ETF 10.65 (2) (a) to reflect the current text of the rule.

d. The proposed rule should contain an effective date section. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

The agency may want to consider providing brief descriptions of the material covered in the Internal Revenue Code (IRC) citations mentioned in the text of the proposed rule. This may help clarify the subject area for the reader. For example, SECTION 1 of the proposed rule refers to “section 415 (c)” and “section 415 (d)” of the IRC. The agency may want to explain those sections in a note following the rule provision. [s. 1.09 (1), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule summary, the agency should explain why the date January 1, 1989 applies in SECTION 4 of the proposed rule.

b. In ss. ETF 10.85 (SECTION 4) and 20.0251 (SECTION 5), “shall” should be replaced with “may”. [s. 1.01 (2), Manual.]

Response to Legislative Council Staff Recommendations

ETF implemented nearly all Legislative Council staff recommendations. Staff did not implement the recommendation that explanatory notes regarding certain provisions of the IRC be included, as staff believe they are unnecessary.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared at the hearing or registered for or against the rule at the public hearing on February 13, 2013.

Summary of Comments Received at the Public Hearing

No person testified concerning the rule. The record was held open for written comments until February 20, 2013 but ETF did not receive any written comments.

Modifications to Rule as Originally Proposed

No changes were made from the original proposal as a result of public comments.

Modifications to the Analysis Accompanying the Proposed Rule

No changes were made to the analysis accompanying the proposed rule.

Modifications to Fiscal Estimate as Originally Proposed

No changes were made to the fiscal estimate in the original proposal.

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Amend ETF 10.01(3i) , 10.65 and create ETF 10.85 and 20.0251 regarding compliance with the Internal Revenue Code.

Subject

Internal Revenue Code compliance.

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

This rule-making is needed to amend the existing rules and create new rules to clarify how the Wisconsin Retirement System complies with the Internal Revenue Code.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There is no economic and fiscal impact on small business, business sectors, public utility rate payers, local governmental units and the state's economy as a whole. The rule change addresses the need to clarify how the Wisconsin Retirement System complies with the Internal Revenue Code.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule language more accurately reflects tax requirements under IRC §§ 401 (a) and 415. The agency does not see alternatives to achieving the policy goal of the rule amendments.

Long Range Implications of Implementing the Rule

There are no long range economic or fiscal impacts of the rule.

Compare With Approaches Being Used by Federal Government

The proposed rule amendments are required to maintain written plan document compliance with federal tax requirements under IRC §§401 (a) and 415. Therefore the goal of the rule amendment is to more accurately reflect current legal requirements under the federal government.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois – The Illinois Pension Code provides comparable provisions regarding compliance of the public employee pension system with the Internal Revenue Code.

Iowa – The Iowa Public Employees’ Retirement System is governed by Iowa Code Chapter 97(B) and Chapter 495 of the Iowa Administrative Rules. These laws and rules provide comparable provisions regarding compliance of the public employee pension system with the Internal Revenue Code.

Michigan – Chapter 38 of the Michigan Statutes contain some provisions that are comparable regarding the State Employees’ Defined Benefit Pension Plan compliance with the Internal Revenue Code.

Minnesota – Chapters 352 to 356A of the Minnesota Statutes contain some provisions that are comparable regarding compliance of the Public Employees’ Retirement Association Defined Benefit Pension Plan with the Internal Revenue Code.