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Correspondence Memorandum

Date: May 22, 2020

To: Employee Trust Funds Board

From: Monica Anderson, Attorney
 Office of Legal Services

Subject: Delegation of Authority to Solicit Proposals for and Contract with Federal Tax Counsel

Staff recommends the Board delegate to the Department of Employee Trust Funds (ETF) Secretary the authority to solicit proposals for and execute a contract and contract amendments with federal tax counsel. This delegation of authority to execute contracts and amendments will remain in effect until June 30, 2027. The Board may withdraw this delegation at any time.

BACKGROUND

State law requires the Board and the ETF Secretary to ensure that the Wisconsin Retirement System (WRS) complies with and is administered in a manner consistent with the Internal Revenue Code (IRC). Wis. Stat. §§ 40.03(1)(am) and (2)(t); Wis. Stat. § 40.015. A pension system’s compliance with federal tax law is a very specialized field of the law. To ensure access to expertise in this highly complex area of law, ETF has maintained a contract with outside federal tax counsel to consult as necessary.

The Board last approved a delegation authority in 2014, and in July of 2014, ETF contracted with outside tax counsel pursuant to that delegation of authority. The final one-year extension on the current contract has been signed and will expire on June 30, 2021. Staff believes ETF and the Board would benefit by again 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. Stat. § 40.03(1)(c). The Board may also delegate its powers or duties as deemed necessary or desirable. Wis. Stat. § 40.03(1)(L).

Reviewed and approved by David Nispel, General Counsel, Office of Legal Services

Electronically Signed 6/4/20

Board	Mtg Date	Item #
ETF	6.18.20	5D

All the benefit plans that ETF administers are affected by the IRC. The WRS is a tax-qualified benefit plan that is heavily regulated by the IRC. In 2010, with assistance from outside tax counsel, ETF received a favorable determination letter from the IRS, which ensures that the WRS plan document is in compliance with the IRC. Outside tax counsel has assisted ETF with numerous tax projects over the past 10 years, including:

- domestic partner benefits;
- Social Security Number Verification Service and Taxpayer Identification Number use;
- non-wage payments;
- disability benefit withholdings;
- disability survivor benefits;
- 401(a)(17) limitations on annual compensation;
- legislative proposals;
- unsubstantiated claims for medical flexible spending accounts;
- wellness program tax impacts;
- 415(b) limitations on benefits and contributions;
- and other ad hoc issues.

JUSTIFICATION

The Department has found working with outside tax counsel to be highly valuable to the compliance of our benefit programs and the education of staff in administering these complex benefits. As one of the largest public pension funds in the United States, it is imperative that ETF continue to manage the WRS in express compliance with the IRC. Maintaining a working relationship with effective and experienced outside tax counsel is a very important component in that compliance.

It is important to have the ability to consult with counsel who specializes in tax law, has extensive experience handling tax matters before the IRS, and has experience working with public pension plans on a regular basis.

Consistent with the approach used with the existing Contract, the Department anticipates soliciting proposals for and entering into a one-year contract, with five, one-year extensions.

Any contract activity will be provided to the Board in Operational Updates at future Board meetings.

Staff will be available at the Board meeting to answer any questions.

**Delegation of Authority to the ETF Secretary to execute
federal tax counsel contracts and amendments, until such delegation
is withdrawn by the Board or June 30, 2027**

Pursuant to Wis. Stat. § 40.03(1)(L), the Employee Trust Funds (ETF) Board hereby delegates to the ETF Secretary its authority under Wis. Stat. § 40.03(1)(c) to execute contracts and contract amendments with the Board's federal tax counsel.

Authority for Delegation

The ETF Board has authority under Wis. Stat. § 40.03 (1)(L), to “delegate powers and duties as deemed necessary or desirable.” Wis. Stat. §40.03(1)(c) grants the ETF Board the authority to “employ or select any medical, legal and other independent contractors as are required for the administration of the fund.”

Character of Delegated Authority

The ETF Board intends this delegation to authorize the ETF Secretary to execute federal tax counsel contracts, including contract amendments, until such delegation is withdrawn by the Board.

ETF staff intends to provide the Board with Operational Updates on contract activity at all future Board meetings.

Oversight

This delegation will continue until withdrawn by the Board or June 30, 2027, whichever is earlier.