

**Proposed Rule Amendment for WRS compliance with the IRC**

**Clearinghouse Rule 13-004**

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

The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to amend administrative rules ETF 10.01(3i) and 10.65 and to create ETF 10.65 (Note), 10.86, ETF 20.0251 and ETF 20.0251 (Note) to clarify how ETF complies with applicable provisions of the Internal Revenue Code (IRC).

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**Notice of Public Hearing**

A public hearing on the proposed rule will be held on February 13, 2013 at 2:00 p.m. in Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

**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 Internal Revenue Code (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 internal revenue code.

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 10/2/12 and published in Register No. 682 on 11/01/2012.

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 ETF 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 IRS, IRS regulations and other requirements. The rules are written to ensure continued compliance with these laws, regulations and requirements.

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 internal revenue code. 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. Agency contact person:  
Mary Alice McGreevy, Compliance Officer, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Phone: 608-267- 2354; E-mail: maryalice.mcgreevy@etf.wi.gov
  13. Place where comments are to be submitted and deadline for submissions:  
Comments may be submitted to the contact person no later than 4:30pm, Wednesday, February, 20, 2013. The public hearing will be held at 2:00pm on Wednesday, February 13, 2013 in conference room GB of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.
  14. 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.
  15. 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.
  16. 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.
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## Text of Proposed Rule

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

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

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

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

**(1)** The department shall refund contributions to be allocated to a participant's account that exceed the limits specified in s. 40.32, Stats., in accordance with s. 40.08 (6), Stats., ~~in the following order:~~

~~(a) Employee additional contributions under s. 40.05 (1) (a) 5., Stats., paid directly to the department by the participant shall be refunded to the participant.~~

~~(b) Employee additional contributions under s. 40.05 (1) (a) 5., Stats., that are transmitted to the department by the employer shall be refunded as a credit to the employer, to be offset against subsequent employer contributions due to the department, who shall pay the amount of the credit to the employee as specified in s. 40.08 (6) (c), Stats.~~

~~(c) Employer additional contributions under s. 40.05 (2) (g) 1., Stats., shall be refunded as a credit to the employer, to be offset against subsequent employer contributions due the department.~~

~~(d) Benefit adjustments contributions paid by the participant under s. 40.05 (2m), Stats., that are transmitted to the department by the employer shall be refunded as a credit to the employer, to be offset against subsequent employer contributions due to the department, who shall pay the amount of the credit to the employee as specified in s. 40.08 (6) (c), Stats.~~

~~(e) Benefit adjustment contributions paid by the employer under s. 40.05 (2m), Stats., shall be refunded as a credit to the employer, to be offset against subsequent employer contributions due to the department, as provided in s. 40.08 (6) (b) and (c), Stats.~~

~~(f) Equal amounts of employee and employer required contributions under s. 40.05 (1) and (2), Stats., shall be refunded as provided in s. 40.08 (6) (b) and (c), Stats.~~

~~**(2)** (a) If the department refunds employee-paid benefit adjustment contributions under sub. (1) (d) and credits employer-paid benefit adjustment contributions under sub. (1) (e), or credits employer required contributions and refunds employee required contributions under sub. (1) (f), the department shall reduce the hours of service recorded under s. ETF 10.03 (1) and the earnings recorded for that calendar year by a percentage equal to the sum of the employee refund and employer credits under sub. (1) (d), (e) and (f) divided by the sum of the benefit adjustment contributions and employee and employer required contributions made by or on behalf of the participant for that calendar year. The~~

~~department shall grant adjusted creditable service to the nearest hundredth of a year, disregarding over and under payments equivalent to less than one of a year of service. If the participant's annual earnings period is not the calendar year, the reduction in creditable service and earnings shall be allocated equally to all annual earnings periods that fall during the calendar year.~~

~~(b) The adjusted creditable service and earnings under par. (a) shall apply only to benefits calculated under s. ETF 50.52 and under ss. 40.23, 40.25, 40.27 and 40.63, Stats.~~

~~(3) according to the correction methods allowed under the Employee Plans Compliance Resolution System developed by the internal revenue service or similar correction program developed by the internal revenue service.~~

~~(2) Nothing in this section shall be interpreted as a basis for a determination of whether any payments credited to an employer are required to be paid by the employer to an employee under contractual agreements or other negotiated agreements or provisions of law.~~

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

Note: Revenue Procedure 2013-12 sets forth the Employee Plans Compliance Resolution System. The Procedure is updated periodically. A copy of the ruling may be obtained by writing: Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000 or on the Internet at <http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors>.

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

**ETF 10.85 Prohibited transactions.**

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

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

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

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

**SECTION 5: ETF 20.0251 (Note) is created to read:**

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

(END OF RULE TEXT)