



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-009

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section Treas 1.12 regulates distributions due to death, disability, or the scholarship of a beneficiary. This section appears to be predicated upon the provisions of 26 U.S.C. s. 529 (b) (3) as found in the Internal Revenue Code. However, this provision applies to tax years beginning on or before December 31, 2001. The provision has been removed for tax years 2002 to 2010 by P.L. 107-16. Has this provision been restated in another portion of the Internal Revenue Code? If not, is it necessary to retain s. Treas 1.12?

b. Section Treas 1.02 (2) defines the term “account owner” in a manner inconsistent with that found in the statutory definition in s. 14.64 (1) (a), Stats. The rule should use the statutory definition and designate in a substantive provision that an account owner may select or change the designated beneficiary or designate any person other than the designated beneficiary to whom funds may be paid from an account.

c. The rule avoids the rule-making process in numerous areas. For example, s. Treas 1.02 (9) provides that the maximum contribution limit will be established by the Wisconsin College Savings Program Board (Board). Unless statutorily exempted, this is a standard that meets the definition of the term “rule” in s. 227.01 (13), Stats., and must be promulgated as a rule. While it may be convenient to draft a rule that allows an agency to set standards and policies in the future without public or legislative review, such a practice does not comport with the statutes. [See also ss. Treas 1.06 (information required for a change of account ownership), 1.08 (2) (information required to change a beneficiary), 1.09 (1) (maximum contribution limit),

1.09 (3) (disclosure of financial information), 1.11 (2) (information required to request distributions), 1.14 (account termination), and 1.16 (penalties).] Also, s. Treas 1.09 (2) that states that minimum contribution amounts will be established from time to time by the board, while s. 14.64 (3) (c), Stats., specifically directs the board to establish a minimum initial contribution to a college savings account.

2. Form, Style and Placement in Administrative Code

- a. In s. Treas 1.01, the word “rule” should be replaced by the word “chapter.”
- b. The numbers designating the subsection headings in s. Treas 1.02 should be in parentheses and should not be followed by periods.
- c. In s. Treas 1.02 (8), “educational institution” should not be capitalized.
- d. In s. Treas 1.02 (11), “of funds from an account” should be inserted after “distribution.”
- e. Section Treas 1.02 (16) states that a qualified distribution may be made only pursuant to a “distribution notice” from the account owner. However, s. Treas 1.11 (2) provides that an account owner may request a distribution of funds by submitting a “distribution request form.” The rule should be revised so that consistent terminology is used.
- f. In s. Treas 1.04 (2), “must” should be changed to “shall.” [See s. 1.01 (2), Manual.]
- g. In s. Treas 1.05 (intro.), the phrase “any of” should be inserted after the phrase “account for.”
- h. In s. Treas 1.06, a subsection should be created containing the material immediately following the title and the existing subsections should be renumbered correspondingly. This comment also applies to s. Treas 1.09. Also, in s. Treas 1.06 (2), the word “must” should be replaced by the word “shall.” See, also, s. Treas 1.08 (2).
- i. A title should be inserted for s. Treas 1.11 (3). See s. 1.05 (1), Manual.
- j. It appears that the material contained in the first sentence of s. Treas 1.11 (5) is unnecessary since the definition of “qualified distribution” is set forth in s. Treas 1.02 (16). In addition, the rest of the material in that subsection pertains to distribution requests and therefore should be included in s. Treas 1.11 (2).

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

- a. In s. Treas 1.04 (1), the notation “s.” should be inserted before the reference to “Treas 1.09.” [See, also, s. Treas 1.09 (2).]

b. If s. Treas 1.11 (2) requires a new form, then the provisions of s. 227.14 (3), Stats., should be met. [See, also, s. Treas 1.04 (1).]

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

a. Notes should be added to the rule indicating where the reader can obtain information about the minimum and maximum contribution limits (but see comment 1. c.) and how the various forms which are referred to may be obtained.

b. It appears that s. Treas 1.05 (3) would be more clear if it were written as follows: “The maximum contribution level for the proposed designated beneficiary has already been met.”

c. In order to open an account under s. Treas 1.04, must an applicant make an initial contribution? If so, what is the minimum amount of the initial contribution? Is the payment of an application fee required to open an account?

d. It appears that s. Treas 1.04 (3) should specify that the program manager has the duty to supply the information listed.

e. Section Treas 1.04 should specify how an applicant is to be notified that an application has been accepted and an account has been opened.

f. It appears that s. Treas 1.04 (5) should specify that the program manager shall accept applications that meet all the requirements for opening an account under the program.

g. In s. Treas 1.06 (intro.), in the sentence immediately following the title, “his or her death” should be replaced with “the death of the account owner.”

h. In s. Treas 1.06, is there any requirement that the program manager process designations in a certain amount of time from when they are received?

i. Section Treas 1.06 (1) should specify what must be received by the program manager in order for a change in the ownership of an account to be effective.

j. Should s. Treas 1.08 require the program manager to obtain verification that a proposed new beneficiary is a member of the family of the current beneficiary?

k. The last sentence of s. Treas 1.09 (3) should be rewritten to specify who shall refuse the excess funds. Likewise, the last sentence of s. Treas 1.10 should be rewritten to specify who must issue the reports to the account owners.

l. In s. Treas 1.11 (1), “a” should be changed to “the.”

m. In s. Treas 1.11 (3), “shall” should be changed to “may.” [See s. 1.01 (2), Manual.]

n. In s. Treas 1.12 (1), “Prior to a distribution” should be changed to “Prior to making a distribution.” In addition, in that subsection, “the beneficiary” should be changed to “a beneficiary.” Also, in that subsection, should “may” be changed to “shall”? If not, how will the program manager verify that a beneficiary has died, become disabled, or received a scholarship? Finally, it is unclear why the rule states that the program may require “either” of the following, when par. (a) appears to require written confirmation from an appropriate authority in addition to certification from the account owner.

o. In s. Treas 1.12 (1) (a), it is unclear exactly what an account owner must provide to the program manager in order to obtain a distribution due to the death or disability of, or receipt of a scholarship by, a beneficiary. Specifically, what is meant by “certification” and “appropriate authority”?

p. In s. Treas 1.13, should “or for any other reason” be inserted after “expenses”?

q. In s. Treas 1.14 (1) (a), “the” should be capitalized.

r. In s. Treas 1.14 (1) (b), “is” should be changed to “has been.”