

STATE CONTROLLER TECHNICAL GUIDANCE

TAXABILITY OF STATE TRAVEL REIMBURSEMENTS

1) AUTHORITY.

U.S. Code, Title 26, §§162(a), 262, and 274(d) (Internal Revenue Code)

26 CFR Ch 1, §1274-ST Substantiation Requirements (Treasury Regulations)

Rev Rul. 99-7 Deductibility of Daily Transportation Expenses

IRS Publication 463 Travel, Entertainment, Gift, and Car Expenses

2) PURPOSE OF THIS TECHNICAL GUIDANCE. The Office of the State Controller is providing this guidance to assist State Agencies and Institutions of Higher Education with tax issues related to State travel. If Agencies and Institutions of Higher Education have issues beyond the scope of this guidance, they should consult a tax advisor.

3) DEFINITIONS.

- a. Metropolitan Area** - The region including a city and the densely populated surrounding areas that are socially and economically integrated with it. For the State of Colorado, metropolitan area shall be defined as the 35-mile radius surrounding the Traveler's regular place of business, regardless of the location of the Traveler's family home. See the attached map for the 35-mile radius for Denver.
- b. Traveler's Regular Work Location** – Generally, the Traveler's regular work location is the primary location where the Traveler works, and includes the entire metropolitan area of the Traveler's regular work location.
- c. Temporary Work Location** - Location where employment is expected to last, and does last, for one year or less.
- d. Traveler** – Employee or State official who receives appropriate approvals to travel on behalf of the State.
- e. Traveler's Residence** – The Traveler's residence is the location where the Traveler maintains his/her family home.
- f. Traveling Away from Home** – Traveler is traveling away from home if:
 - i.** Traveler's duties require him/her to be away from the general area of his/her regular work location (Metropolitan Area) substantially longer than an ordinary day's work, *and*
 - ii.** Traveler needs to sleep or rest to meet the demands of his/her work while away from home.

4) DISTINCTION BETWEEN REIMBURSEMENT AND TAXABLE INCOME

a. Reimbursement

- i. Standard Meal Allowance** – Fiscal Rule 5-1 §6 includes the reimbursement of various types of travel expenses. The State of Colorado has chosen to use the standard meal allowance method for meals and incidental expenses, rather than the actual cost method for meals and incidental expenses.
- ii. Actual Costs** - For lodging, rental vehicles, airfare, and other allowable expenses included in Fiscal Rule 5-1 §7, the State reimburses for actual costs.
- iii. Mileage** - For mileage, the State reimburses based on mileage included in State Controller Policy entitled "Mileage Reimbursement" and rates as provided in CRS §24-9-104(2).

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b. Taxable Income – The Internal Revenue Code, rules, regulations, bulletins, and publications determine whether the reimbursement is taxable income to the Traveler.

c. Reimbursement and Taxable Income – The Traveler should first determine the reimbursement for the travel expense by referring to Fiscal Rule 5-1, State Controller Policy entitled, “Mileage Reimbursement,” and travel policies of the Traveler’s Agency or Institution of Higher Education. The reimbursement is set by the State. Once the Traveler determines the reimbursement, then the Traveler can determine the income tax consequences of that reimbursement. The Internal Revenue Service Code, Regulations, Bulletins, and Publications determine the taxability of the reimbursement.

d. MEALS - TRAVEL WITHIN A SINGLE DAY. Generally, if the State Agency or Institution of Higher Education reimburses a Traveler for breakfast and/or dinner while the Traveler is traveling in a single day, the amount paid is reportable as income on an employee’s W-2.

5) MILEAGE – TRANSPORTATION EXPENSES

a. COMMUTING. The cost of commuting from a Traveler’s residence to the Traveler’s regular place of business is generally a nondeductible personal expense.

b. GENERAL REIMBURSEMENT FOR MILEAGE

For the reimbursement of travel expenses, an Agency or Institution of Higher Education may choose a reimbursement plan for mileage that differs from the IRS rates and allowable miles. The Colorado Legislature in CRS §24-9-104(2), provides that Travelers shall be reimbursed at 90% of the prevailing IRS mileage reimbursement rate and 95% of the IRS rate for four-wheel drive vehicles. Under the State Controller Policy entitled “*Mileage Reimbursement*,” when a Traveler uses his/her personal vehicle while on official state business, the Traveler shall be reimbursed for an amount equal to the prevailing mileage rate multiplied by the allowable miles as outlined in the Policy. Because there is a difference between the reimbursement provided by the State Agency or Institution of Higher Education and the allowable reimbursement provided by the IRS regulations, a Traveler will have tax consequences. Travelers should seek independent tax advice regarding their individual tax situation regarding reimbursement of State travel expenses if they believe the difference between the IRS allowable amount and the State reimbursement amount is significant.

c. TRAVEL TO A TEMPORARY WORK LOCATION

Under Rev Rul 99-7, there are three cases for travel to a temporary work location:

i. One or More Regular Work Locations – This is likely to apply to State office employees - In this case, a Traveler has one or more *regular* work locations. A Traveler may be reimbursed for transportation expenses to a *temporary* work location as an IRS qualified reimbursable nontaxable travel expense regardless of distance only if the temporary work location is in the same trade or business as the Traveler’s regular work location.

1. A Traveler may go directly from his/her residence to the temporary work location rather than going to the regular work location first. In this instance, under Rev

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Rul 99-7, there is no distance requirement that would act to make the reimbursement taxable to the Traveler.

2. The temporary work location may be inside or outside the metropolitan area in which the taxpayer normally lives and works.
3. Key elements for this case: 1) the temporary job is in the same trade or business as the employee's regular job, and 2) the Traveler has a regular work location away from his/her residence.
4. Example 1 – Traveler's residence is Aurora and regular work location is Denver. The Agency assigns the Traveler to a temporary work location in Lakewood, and the Traveler does the same work he/she did at the Denver location. Lakewood is within the Denver Metropolitan Area. The Traveler goes directly from his/her residence to the temporary work location in Lakewood. If the Agency has a travel reimbursement policy that provides for reimbursement of the Traveler for travel expenses from Traveler's residence in Aurora to the temporary work location in Lakewood, this reimbursement is nontaxable to the Traveler (reimbursement would not be reported on the Traveler's W2). Alternatively, if the Agency does not reimburse the Traveler, the Traveler may deduct the travel expenses on the Traveler's income tax return.
5. Example 2 – Same facts as in Example 1 except that the Agency follows the State Controller Policy entitled "*Mileage Reimbursement*," which provides that a Traveler will be reimbursed for the positive number of miles between the Traveler's residence and the temporary work location less the normal commuting miles from the Traveler's residence to the Traveler's normal work location. In this case, the distance from the Traveler's residence in Aurora to the temporary work location in Lakewood is 24 miles. The distance from the Traveler's residence in Aurora to the regular work location in Denver is 15 miles. The positive difference is 9 miles, and under the Agency's policy, the Traveler would be reimbursed for the cost of this travel (9 miles multiplied by the 90% of the prevailing IRS mileage rate per CRS §24-9-104(2)). Using the rates as of January 1, 2009, the Traveler would receive \$4.50 each way (9 miles multiplied by \$0.50 per mile) or \$9.00 per day as reimbursement (reimbursement would not be reported on the Traveler's W2). The Traveler may deduct on the Traveler's income tax return the difference between the total amount allowed by the IRS and the amount reimbursed on the Traveler's income tax return. The total amount allowed by the IRS is \$13.20 each way (24 miles x \$0.55) or \$26.40 per day. The Traveler could deduct the difference between the total amount allowed by the IRS (\$26.40 per day) and the amount reimbursed (\$9.00 per day), or \$17.40 per day on the Traveler's income tax return.

- ii. **Traveler's residence is the Traveler's Principal Place of Business – This only applies if the State employee works solely from his/her residence** – In this case, the Traveler's residence is considered to be the Traveler's principal place of business within the meaning of Internal Revenue Code Sec 280A(c)(1)(A). A Traveler may be reimbursed for transportation expenses to a temporary work location as an IRS qualified reimbursable nontaxable travel expense regardless of distance only if the temporary work location is in the same trade or business as the Traveler's regular business.

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1. The temporary work location may be inside or outside the metropolitan area in which the taxpayer normally lives and works.
2. Key elements for this case: 1) the temporary job is in the same trade or business as that of the regular job, and 2) the Traveler's residence is the Traveler's principal place of business.
3. Example 3 – Traveler's residence is in Aurora, which is also the Traveler's principal place of business. The Traveler visits clients in Denver. The Traveler performs the same work at a temporary work location in Denver as the Traveler performs at the Traveler's residence, which is the Traveler's principal place of business. In this case, the Traveler may deduct the travel expenses from the Traveler's residence in Aurora to the temporary work location in Denver on the Traveler's income tax return. If the Traveler is reimbursed, the reimbursement is a qualified reimbursable nontaxable travel expense and would not be included on the employee's W2.

iii. No Regular Work Location – This is unlikely to apply to State office workers – In this case, a Traveler has no regular work location.

1. A Traveler may be reimbursed for transportation expenses to a temporary work location as an IRS qualified reimbursable nontaxable travel expense only if:
 - a. The temporary work location is outside the metropolitan area of both the Traveler's residence and Traveler's regular work location, and
 - b. The Traveler normally lives and works in the same metropolitan area and has no regular work location.
2. If either condition a or b is not met, then the Traveler's reimbursed amount is taxable income, and the State Agency or Institution of Higher Education shall include the amount reimbursed on the Traveler's W-2. For instance, if the Traveler normally lives in one metropolitan area and commutes to his or her normal work location that is outside that metropolitan area, and the State reimburses the Traveler, then State shall include the amount reimbursed on the Traveler's W-2
3. Key elements for this case: 1) Traveler has no regular work location, 2) temporary work location is outside the metropolitan area of both the Traveler's residence and Traveler's regular work location, and 3) Traveler normally works and lives in the same metropolitan area.
4. Example 4 – Traveler's residence is in Aurora, and is offered temporary work in Colorado Springs. The Traveler does not have a regular work location (the Traveler is new to the State). The Traveler normally works in the Denver Metropolitan Area. The Traveler may deduct travel expenses from his/her residence in Aurora to Colorado Springs on the Traveler's income tax return. If the Agency reimburses the Traveler for travel expenses from Aurora to Colorado Springs, the reimbursement shall not be taxable to the Traveler, and therefore, it should not be included on the Traveler's W2.
5. Example 4 - Same facts as in Example 4, except that the Traveler normally works in Colorado Springs. In this case, the Traveler cannot deduct travel expenses from Aurora to Colorado Springs because the Traveler normally commutes across metropolitan areas. Any reimbursement in this situation would be included on the employee's W2.
6. Example 5 – Traveler's residence is in Aurora. Traveler is a skilled laborer who does not have a regular work location outside of his/her residence, but travels

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within his/her metropolitan area working on temporary projects. In this case, the Traveler is prohibited from deducting transportation expenses on his/her income tax return related travel to their first job and from their last job back home. If the employee is reimbursed for the travel to the first job and from the last job to home, those amounts are taxable and must be included on the employee's W2.

d. TRAVEL TO CONFERENCES, MEETINGS, AND TRAINING SESSIONS

A Traveler may be reimbursed for transportation expenses to conferences, meetings, and training sessions as an IRS qualified reimbursable nontaxable travel expense if the purpose of the conference, meeting, or training session is connected to the Traveler's present business or area of responsibility. If the Traveler is reimbursed, the reimbursement is a qualified reimbursable nontaxable travel expense and would not be included on the employee's W2.

- i. Time Limitations** – There are no limitations in the regulations. Examples include time periods using days or weeks. If training extends beyond weeks, to months, then the situation may fall outside of the regulations regarding conferences, meetings, and training sessions.
- ii. Distance Requirements** – There are no distance requirements. A Traveler may be reimbursed as an IRS qualified reimbursable nontaxable travel expense for travel to a conference, meeting, or training session that is held in the same city in a different city as the Traveler's regular work location.

6) LODGING

a. Reimbursement and Traveling Away from Home – If an Agency or Institution of Higher Education reimburses a Traveler for travel expenses incurred while the Traveler is Traveling Away from Home then that reimbursement is an IRS qualified reimbursable nontaxable travel expense and would not be included on the employee's W2.

b. Reimbursement and *Not* Traveling Away from Home - If an Agency or Institution of Higher Education reimburses a Traveler for travel expenses incurred while the Traveler is *not* Traveling Away from Home, then that reimbursement is taxable income to the Traveler and must be included on the employee's W2.

7) SUMMARY (see next page)

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Type of Travel Expense	Reimbursement	Taxable Income if Reimbursed?	
		Traveling Away from Home	NOT Traveling Away from Home
Lodging	Actual	No	Yes
Meals	Per Diem Rate	No	Yes
Incidental Expenses	Per Diem Rate	No	Yes
Rental Vehicles	Actual	No	Yes
Mileage for Personal Vehicles	Miles x 90% x prevailing mileage rate (95% for 4 wheel drive)		
1. One or more regular work locations		No	No
2. Residence is principal place of business		No	No
3. No regular work location		No	Yes
4. Travel to conferences, meetings, and training sessions		No	No
Airfare	Actual	No	Yes
Tips	Included in Per Diem Rate	No	Yes
Other Allowable Travel Expenses	Actual	No	Yes

8) REIMBURSEMENT POLICIES – State Agencies and Institutions of Higher Education shall develop reimbursement policies regarding State Travel. In all cases, these policies shall comply with Fiscal Rule 5-1 and IRS laws, statutes, regulations, and all other guidance.

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Radius Around Point Map

