

Fiscal Rule Hearing on April 13, 2009

Fiscal Rule hearing began at 9:07 a.m.

This is a public hearing on the Adoption of Fiscal Rules that is held under the authority of Part 1, Title 24, Article 30 of the Colorado Revised Statutes. The purpose of the hearing is to consider adoption of changes to the State of Colorado Fiscal Rules, 1 CCR 101-1.

I am David McDermott, the Colorado State Controller. I will be conducting the hearing. Also with me is Bob Jaros, the Deputy State Controller.

A Notice of Hearing, which included the proposed changes to the Fiscal Rules, was filed with the Secretary of State and the Department of Regulatory Agencies on May 30, 2008.

The proposed changes involve Fiscal Rule 5-1 on Travel. An initial hearing was held on December 31, 2008 and this hearing is to consider changes to the proposed rule made since December 1st, 2008.

We have received comments on the proposed Fiscal Rule. Copies of the proposed rule and comments are available on the table outside.

After the hearing, I as the State Controller, have up to 180 days to adopt or not adopt the proposed changes. This is to give you some idea of the timeframes we are looking at for this Fiscal Rule.

We are here to receive public comments on the proposed changes to Fiscal Rule 5-1. In general, we will not be answering your questions at this hearing unless your question is to clarify a provision of the proposed rule.

Before we receive comments, I would like to explain the differences between rules, policies, and technical guidance. We have received several comments related to the classification of those three different proposals. Based on the information/comments that were received at the December 1st hearing we determined that some of the information that we had proposed to have in the rules previously should be removed from the rules. When the requirements leave the fiscal rules the force of law related to them no longer applies. However, we believe that in several of the instances where we have moved requirements to policies that it is important for the State Controller's Office and State Controller to be on record regarding those policies. In addition, travel policies are unique within the state where there are a large number of agency policies already in place. We recognize that in the proposed policies currently and recommend that agencies develop their own policies, which may be simply adopting the state's policies or making changes that are appropriate for your individual conditions. And the other item that we have provided is technical guidance. In this instance again the technical guidance again does not carry the force of laws as do the rules. It is simply a mechanism where we can officially inform

agencies that there are tax implications related to the travel policies and how they're implemented. We are not representing that we are providing tax advice to anyone in those technical guidances. We plan to clarify that further. We believe that it was addressed already but I think there is some confusion about that and we intend add clarification to that issue. With that, I think let's proceed.

Because we have a number of people who wish to make comments at this hearing, I would ask that you limit your comments to 5 minutes each. Also, please provide new comments rather than reiterating comments from previous speakers. If you want to go on record in agreement with a previous speaker, you may do so. When expressing agreement, please limit your comments to expressing agreement and add any addition new comments you want on the record. Also, if you have submitted written comments prior to this Hearing, please do not read from you written comments. If you wish, you may summarize your written submission. People who wish to make a comment, please come forward to the table with tape recorder, give your name, agency or organization you are representing, and state your comments.

The floor is now open for comments for Fiscal Rule 5-1.

Lenora Kingston, Department of Personnel and Administration, State Travel Manager.
First off, I appreciate the efforts of the Office of the State Controller, with moving forward trying to define better clarification for the fiscal rules. There are some areas that I would like to address. First off I would like to commend the table for the summary for the allowable travel expenses. I think that provides clarity on where the receipts are required 6.11. I recommend that an addition be added to 7 on non-allowable travel expenses and to include late fees for the travel card not being reimbursable or at least for consideration for that. Also, under 10.2 for the state cards I would request consideration for a 10.2.2.2 and for .3. And there is a reference for using the essential travel card for personal travel and I think it would be best to use the language individual travel. The same for the 10.2.2.3, there's a reference there again for their personal travel. I recommend it be individual travel. Also, there may be a need for a 10.2.2.2 to have a reference to the encumbrance of funds or siting the appropriate fiscal rule leading them in that direction for that expectation. With the State Controller policy for travel rewards programs I believe providing guidance and clarification and expectations is important. That's been a challenge for my role on what travelers are expected to do with rewards programs. However, I do have concern with those individuals overseeing travel. The administrative burden for making sure travelers reimburse the state for rewards that are not used for state business. And there're many times where it might be a small portion of travel reward points that have been accumulated that are used for personal. So I just think it muddies the waters and makes it very challenging to try and provide proper over site for that. Whether or not it would be appropriate for an amendment 41 ruling by submission to the independent ethics commission. I don't know if that would be an appropriate direction. But there is cause for concern but I do appreciate the efforts on trying to provide the expectations on the travelers. Thank you.

Thanks Lenora. Thank you for your comments. Your comments are a part of the record of this hearing, and will be considered as part of the Fiscal Rule adoption process. Would anyone else like to testify?

My name is Scott Madsen – DPA. I’m going to kind of piggy-back off of some comments that Lenora had. My concerns are really are around travel reward program under 2B. I think this is going to be more difficult than just providing some additional guidance. I think it’s going to be unmanageable. I think we’ve got some issues that will make this virtually impossible to carry out the implications of these requires. And I’ll give you just a few examples of the kinds of things I might be problematic. If, and none of these are in any particular order, but let’s take an individual who basically of their travel reward program points have been accrued through state travel. So they’ve been with the state for who knows how long, for 20 years, and they’ve accrued a lot of points. Now they are going to leave state travel, not state travel but they’re going to leave the state, and so they’ve retired, they’ve left, they’ve quite. They whatever, they are no longer with the state. Based on this it basically says all those points they still owe the state if they should ever use those points they are going to owe the state some kind of reimbursement of value. I think that will be very difficult to track or ever to make a case for. I think you have other issues where you have travelers who have, they accrue some points for personal travel and they’ve been doing that. So whenever they travel personally they’ve been accruing points. They may have even brought points with them from previous employment and other business activities. And now they do some travel with the state so now they’ve accumulated some few points with the state or maybe a lot of points. But at some point in there they are probably going to use these points for some kind of an award. So let’s say they have 100,000 points built up 20,000 of those were with the state. They decide to turn this in for a \$50,000 travel award for themselves and their wife to go someplace. Which 50,000 points was that? Is that 50,000 points that they used include, is that 20% of that 50,000 points state accrued points? Was that all, the whole 50,000 totally excluded the 20,000 from that state? And I guess even a bigger issue is how would the state ever know one way or the other if somebody takes their points and they send their child to Europe for a vacation. I don’t know how the state would ever know period that anyone ever did that at all. There simply is no way to track most of this. I think it’s just incredibly problematic. I have, you know on my own, just kind of polled other states and I can’t find any other state that has attempted to take something like this on. And I think you’re setting yourselves up for not only problems but probably significant opportunity for failure on those particular issues. Thanks.

Thanks Scott. Your comments are a part of the record of this hearing, and will be considered as part of the Fiscal Rule adoption process.

Anyone else like to provide testimony? Seeing none. Thank you for your participation in the rule making process for the State Fiscal Rules. Your comments are a part of the record of this hearing, and will be considered as part of the Fiscal Rule adoption process.

Seeing no other persons who are interesting in making comments, I’m not prepared to render a decision on the adoption of these rule at this time. I need time to properly consider the comments presented today. I declare this hearing on the State Fiscal Rules is hereby concluded.

Fiscal Rule hearing ended at 9:19 a.m.