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, §1.274-5T - Substantiation Requirements (Temporary) (Treasury Regulations)
Rev Rul. 99-7, 1999-5 C.B. 4 - Deductibility of Daily Transportation Expenses
IRS Publication 463 (2008) – (Travel, Entertainment, Gift, and Car Expenses)

2) PURPOSE OF THIS TECHNICAL GUIDANCE. The Office of the State Controller is
providing this technical guidance to inform State Agencies and Institutions of Higher
Education of tax issues related to reimbursement for State travel. State Agencies and
Institutions of Higher Education are responsible for compliance with all IRS regulations and
should consult a tax advisor as they deem necessary.

3) DEFINITIONS.
a. Internal Revenue Code – U.S. Code, Title 26, §§, et seq.
b. IRS Publications – Publications issued by the Internal Revenue Service, including
without limitation the Internal Revenue Service cumulative bulletins.
c. IRS Regulations – The rules and regulations of the Internal Revenue
Service/Department of the Treasury promulgated under the Internal Revenue Code.
d. 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 Work Location, regardless of the location of the Traveler’s Residence. See the
attached map for the 35-mile radius for Denver.
e. Regular Work Location – Generally, the traveler’s regular work location is the primary
location where the traveler works. For purposes of assessing taxability, Traveler’s Regular
Work Location includes the entire metropolitan area of the traveler’s regular work location.
State Business – Official State business or other duties undertaken for State purposes and
for the benefit of the State.
f. Temporary Work Location – A location where employment is expected to last, and does
last, for one year or less.
g. Traveler – An employee or State official who receives required approvals to travel on State
Business.
h. Traveler’s Residence – The location where the Traveler maintains his/her primary family
home.
i. Traveling Away from Home – A Traveler is traveling away from home if:
   i. The Traveler’s duties require him/her to be away from the Traveler’s Regular Work
      Location (Metropolitan Area) substantially longer than an ordinary day’s work, and
   ii. The Traveler needs to sleep or rest to meet the demands of his/her work while away
      from home.

4) RELATIONSHIP BETWEEN REIMBURSEMENT AND TAXABLE INCOME
a. Reimbursement - Travel expense reimbursement polices are set by the State.
STATE CONTROLLER TECHNICAL GUIDANCE

i. Traveling Away from Home – Fiscal Rule 5-1, §6 provides for the reimbursement of various types of travel expenses provided that the Traveler is Traveling Away from Home, with one exception for breakfast and dinner in a single day in Fiscal Rule 5-1 §11.1.

ii. Standard Allowance – The State of Colorado has chosen to use the standard allowance method, rather than the actual cost method, for meals and incidental expenses.

iii. Actual Costs - For lodging, rental vehicles, airfare, and other allowable expenses included in Fiscal Rule 5-1, §6, the State will reimburse a Traveler for actual costs.

iv. Mileage - For mileage, the State will reimburse a Traveler based on mileage, as provided in the State Controller Policy, entitled “Mileage Reimbursement”, and at rates as provided in CRS §24-9-104(2).

b. Taxable Income or Deduction – The Internal Revenue Code, IRS Regulations, and IRS Publications determine if a reimbursement is taxable income to the Traveler or if a non-reimbursed amount may be taken as a deduction on a Traveler’s income tax return.

c. Income Tax Consequences – Once the Traveler determines the allowable State reimbursement, 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 Traveler can determine the income tax consequences of that reimbursement. The Internal Revenue Code, IRS Regulations, and IRS Publications determine the taxability of the reimbursement or the availability of a deduction.

5) MILEAGE – TRANSPORTATION EXPENSES

a. COMMUTING. The cost of commuting from a Traveler’s residence to the Traveler’s Regular Work Location generally is a nondeductible personal expense and will not be reimbursed by a State Agency or Institution of Higher Education.

b. GENERAL REIMBURSEMENT FOR MILEAGE
A state 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), provided that Travelers shall be reimbursed at 90% of the prevailing IRS mileage reimbursement rate for two-wheel drive vehicles 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 State Business, the Traveler shall be reimbursed for an amount equal to the State’s prevailing mileage rate multiplied by the allowable miles as outlined in the Policy. The difference between the reimbursement provided by the State Agency or Institution of Higher Education and the allowable reimbursement provided by the IRS regulations will result in a tax consequence for the Traveler. Travelers should seek independent tax advice regarding their individual tax situation if they believe the difference between the IRS allowable amount and the State reimbursement amount is significant.

c. TRAVEL TO A TEMPORARY WORK LOCATION
A State Agency or Institution of Higher Education may reimburse a Traveler for the cost of traveling to a Temporary Work Location in accordance with the State Controller Policy entitled, “Mileage Reimbursement.” Taxability does not govern reimbursement. Rev Rule 99-7 provides three exceptions to the general rule, that commuting expenses are nondeductible personal expenses:

i. One or More Regular Work Locations – This is exception is likely to apply to State office employees - In this exception, 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 Rule 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 exception: 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 Traveler’s Regular Work Location is Denver. The State 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 the Traveler’s Residence to the Temporary Work Location in Lakewood. If the State 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 State Agency follows the State Controller Policy entitled “Mileage Reimbursement,” which provides that a Traveler will be reimbursed to the extent the number of miles between the Traveler’s Residence and the Temporary Work Location exceeds the normal commuting miles from the Traveler’s Residence to the Traveler’s Regular Work Location (assuming the Traveler normally commutes by personal vehicle). In this example, 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 distance to the Traveler’s Temporary Work Location exceeds the distance to the Traveler’s Regular Work Location by 9 miles. 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 provided in 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 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 exception, 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.

1. The Temporary Work location may be inside or outside the Metropolitan Area in which the Traveler 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/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. Alternatively, if the Agency does not reimburse the Traveler, the Traveler may deduct the travel expenses on the Traveler’s income tax return.

iii. No Regular Work Location – This is unlikely to apply to State office workers – In this exception, a Traveler does not have a 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 both of the following conditions are met:
   a. The Temporary Work Location is outside the Metropolitan Area of the Traveler’s Residence, and
   b. The Traveler normally lives and works in the same Metropolitan Area and has no Regular Work Location.
2. If the Traveler does not meet both of the conditions, 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’s Residence is located in one Metropolitan Area and the Traveler commutes to his or her Regular Work Location located outside of that Metropolitan Area, any reimbursement amounts paid by the State to the Traveler, shall be included the Traveler’s W-2.
3. Key elements for this exception: 1) Traveler has no Regular Work Location, 2) Traveler’s Temporary Work location is located outside of the Metropolitan Area in which the Traveler’s Residence is located, and 3) the Traveler normally works and lives in the same Metropolitan Area.

4. Example 4 – The Traveler’s residence is in Aurora. The Traveler is a skilled laborer who does not have a Regular Work Location outside of the Traveler’s Residence, but travels within the Metropolitan Area in which Traveler’s Residence is located working on temporary projects at Temporary Work Locations. In this example, the Traveler is prohibited from deducting transportation expenses on his/her income tax return related to travel from the Traveler’s Residence to the Traveler’s first job of the day and from the Traveler’s last job of the day to the Traveler’s Residence. If the Traveler is reimbursed for the travel from the Traveler’s Residence to the first job of the day or from the Traveler’s last job of the day to the Traveler’s Residence, 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 IRS Regulations as to the duration of conferences, meeting or training sessions. Examples provided in the IRS Regulations include time periods extending for days or weeks. If a training period extends beyond weeks, to months, then the training situation may fall outside of the IRS Regulations pertaining to 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 as or a different city from 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, such 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) 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.

8) SUMMARY (see next page)
### Type of Travel Expense

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<thead>
<tr>
<th>Type of Travel Expense</th>
<th>Reimbursement</th>
<th>Taxable Income if Reimbursed?</th>
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<td>Traveling Away from Home</td>
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- **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 $\times 90\% \times$ prevailing mileage rate ($95\%$ for 4 wheel drive)
  - No | No
  - 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

* As noted in §4 of this Technical Guidance, the State shall reimburse a Traveler only as provided in Fiscal Rule 5-1. With the exception of breakfast and dinner in a single day, the State shall reimburse only Travelers who are Traveling Away from Home.

### 9) 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, the Internal Revenue Code, IRS Regulations, IRS Publications and all other Internal Revenue Service guidance.

### 9) ATTACHED MAP

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State Controller