

ACCOUNTABLE PLAN
FOR LEGISLATOR CONSTITUENT SERVICES STIPEND REIMBURSEMENT
Prepared for the Legislative Council
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Background

The 2015 Legislature passed Senate Bill No. 283 (Ch. 452) providing for a stipend for legislators and allowing for reimbursement of constituent services expenses not paid from a constituent services account or otherwise reimbursed. The legislation provided a \$3,000 stipend for each legislator and an additional stipend of between \$1,000 and \$4,000, depending on the square mileage of a legislator's district. The effective date is July 1, 2017, as a Legislature is not allowed to set its own compensation.

The legislation did not specify that receipts were required for the first \$3,000. The primary stipend may be used for providing constituent services, which include but are not limited to:

- unreimbursed expenses for mileage, per diem (meals), or lodging;
- telecommunications/internet and computer hardware and software;
- postage; and
- education-related expenses.

For the secondary stipend, the law specifies that legislators must apply for reimbursement to the Legislative Services Division (LSD) by submitting written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, that apply to meals, lodging, and transportation for otherwise unreimbursed expenses related to the legislator's expenses incurred for providing constituent services. The secondary stipend is a variable amount that is determined by the square mileage of the legislator's district and requires the LSD to inform legislators by July 1, 2017, of the amount authorized in SB 283, section 1(2).

The Internal Revenue Service requires an employee (legislator) to account for items of expense reimbursed by an employer in order to avoid the employee having to take the amounts as income on the employee's income tax return. By adopting an accountable plan, legislators may be reimbursed for certain expenses incurred in performing legislative duties regarding providing services for constituents.

Legislator Options for the Primary Stipend

Option A: Legislator requests full primary stipend at the beginning of the interim. After July 1, 2017, Legislative Services would issue the full \$3,000, minus taxes. The payment is treated as taxable income; however, the legislator may be able to claim certain expenses as deductions for

federal income tax purposes. In general, taxable fringe benefits are subject to withholding when they are made available. The employer may elect to treat taxable fringe benefits as paid in a pay period or on a quarterly, semiannual, or annual basis, but no less frequently than annually. (IRS Ann. 85-113). The employer may elect to add taxable fringe benefits to the employee's regular wages and withhold on the total, or may withhold on the benefit at the supplemental wage flat rate of 25%. (Reg. §31.3402(g)-1; Reg. §31.3501(a)-1T)

Option B: Legislator requests full primary stipend at the beginning of the interim. After July 1, 2017, Legislative Services would issue the full \$3,000. Under this option, the stipend must be made under an accountable plan and meet the following requirements:

- There is a business connection to the expenditure.
- There is adequate accounting by the recipient within a reasonable period of time.
- Excess reimbursements or advances are returned within a reasonable period of time. (IRC §62(c); Reg. §1.62(c)(2)-2(c)(2))

"Business connection" means that the expense must be a deductible business expense incurred in connection with services performed as an employee. If not reimbursed by the employer, the expense would qualify as a deductible expense by the employee on the employee's 1040 income tax return. (Reg. §1.62-2(d))

The best advice for this option will be for the legislator to maintain a business log. The legislator must verify the date, time, place, amount, and business purpose of expenses. Receipts are required unless the reimbursement is made under a per diem plan. (Reg. §1.62-2(e); Reg. §1.274-5(b)(2))

Employees generally should have documentary evidence, such as bills, receipts, canceled checks, or similar items to support their claimed expenses. This rule does not apply in the following circumstances:

- Meal or lodging expenses that you reimburse on a per diem basis (discussed later), at a rate at or below the allowable maximum, under an accountable plan.
- Individual expenditures (except for lodging) of less than \$75.
- Expenditures for transportation expense for which a receipt is not readily available. (Reg. §1.274-5(c)(2))

If a legislator does not plan on incurring expenses equivalent to the \$3,000 within 6 months (by the end of the tax year), a legislator may opt to have two payments of \$1,500 made to assist in meeting IRS requirements.

Option C: Legislators submit an appropriate claim form for reimbursable expenses that have been incurred (not necessarily already paid, but that the expense is now due and owing or has been accrued). It may be most efficient to submit on a monthly or quarterly basis. By claiming expenses individually, the expenses that are allowed under IRS regulations will be reimbursed

and not taxed. For these payments, the meeting description, date, time, place, amount and business purpose must be identified.

This option would also allow for a travel advance for expected meeting expenses. The reimbursement form would be used and any excess advance would need to be returned or accounted for.

Requirements for Secondary Stipend

For the secondary stipend, the legislator may submit a claim form for reimbursement at any time. Depending on the type of claim, certain reimbursements may be taxable. For instance:

1. reimbursed meals for meetings that do not require an overnight stay; and
2. information technology equipment for which a percentage may be for personal or other business use.

Taxation

This information is provided for discussion purposes only. Legislators should consult with their personal taxation specialist for the appropriate option for their purposes.

The primary reimbursement amount, if provided up front under Option A, would be considered taxable and reported on the W-2 form as gross income for tax purposes, including but not limited to federal tax, social security, medicare taxes, and other employment taxes. If, on the other hand, the reimbursements are part of an accountable plan and reimbursed upon submitting a receipt (Option C), many of the reimbursements would not be taxed or considered income.¹

Under Option B and under an accountable plan, allowances or reimbursements paid to employees for job-related expenses are excluded from wages and are not subject to withholding. An allowance or reimbursement policy (not necessarily a written plan) that includes the following requirements (reiterated from above) is considered an accountable plan:

- Meal or lodging expenses that you reimburse on a per diem basis (discussed later), at a rate at or below the allowable maximum, under an accountable plan. (*State rates qualify*)
- Individual expenditures (except for lodging) of less than \$75.
- Expenditures for transportation expense for which a receipt is not readily available. (Reg. §1.274-5(c)(2))

¹This relates to information provided regarding legislators "tax home." The rules will be different for legislators who live in or within 50 miles of Helena and will depend on where the constituent services take place.

Under Option B, a legislator will be required to account for the \$3,000 primary stipend amount by the end of the tax year. The employee must return any excess reimbursement within a reasonable period of time. The determination of the length of a reasonable period of time will depend on the facts and circumstances. The regulations provide “safe harbors” for meeting the test of timeliness, as discussed below. (Reg. §1.62-2(f)(1); Reg. §1.62-2(g)) For this reason, a legislator may wish to divide the Option B payment into two payments of July 2017 and January 2018.

Legislative Services Support Provided

By July 1, 2017, LSD will develop a packet of information including a brochure, expense log, and multiple reimbursement forms for each legislator. It will contain information on the options for the primary stipend and requirements for the secondary stipend (if any), limitations on expenditures or reimbursements, tax ramifications, and on how to submit a claim, etc. A sample packet is attached.

There would not be a need for leadership approval for any reimbursement provided (once the policy was set), only LSD review for appropriateness of type of expense, taxable status, and amount available. This option would be the most efficient as staff would not need to create or learn new procedures and the current state accountable plan rules would mean that we would not have to create a new system from scratch.

Rules

It may be helpful to adopt some policies or rules (examples to follow):

- A legislator must use the authorized form for unreimbursed expenses for mileage, per diem, lodging, or education-related expenses for the primary amount Option C and for the secondary amount.
- A legislator must use a separate form for communications and information technology, i.e. for telecommunications or phone, internet, computer hardware and software, and postage. Currently and under Option C for the primary stipend and the secondary stipend, we allow a signed affidavit, and the entire amount may be taxed accordingly. Legislators may then deduct it as a business expense when they file their taxes.
- Receipts would be required for lodging and registration for Option C for the primary stipend and the secondary stipend.
- On any reimbursement form and the legislator log for all options, the legislator must indicate that these expenses were not reimbursed by any other legislative or state fund, organization, or constituent services account provided for in 13-37-402, MCA.
- For Option C and the secondary stipend, LSD could provide a quarterly report to legislators on the status and use of their account.
- Council members discussed limiting expenses for which the stipends could be used after campaign season begins.

- Salary was not mentioned as an expense in the legislation, but it is an expense that legislators often expect to be reimbursed. Council should clarify whether a legislator may seek reimbursement for salary for constituent services-related events.

Funding

The total anticipated cost of SB 283 is \$450,000, resulting in an increased cost of \$270,000, if the past amounts for the technology allowance are used to offset the total. This amount will be required next biennium to fund the legislative constituent services amounts. Currently in HB 1, as passed by the 64th Legislature, there are funds for 120 legislators to receive up to \$1,500 for expenses incurred related to information technology. The total funds appropriated for the information technology allowance is \$180,000.

Currently in HB 2 passed in 2015 in Legislative Branch Program 21, Interim Committees and Activities, there are appropriated funds for interim committees and activities. We have allocated specific funds for each interim committee and the Legislative Council, as well as funds for interstate and international organizations.

This budget needs to continue for legislator expenses for participation in interim committees and dues for interstate organizations. However, for participation in interstate activities that do not involve specific membership appointments, of the total program amount (\$735,441) appropriated, \$69,636 was funded for NCSL and CSG participation that is at the discretion of the President, Speaker, and minority leaders. Council will be able to make a decision on whether to keep those funds in the same format – participation for 2 legislators/each year of the biennium/ for each organization/ for each caucus -- or roll that funding into the new constituent services account.

There are also leadership funds of \$10,000 for the Speaker and the President, and \$5,000 for each minority leader. These funds have sometimes been used to assist legislators with some training or travel expenses; however, there are other expenses for which leaders have used these funds. With the SB 283 funds, leaders would no longer have to use these funds to assist legislators with expenses not covered otherwise.