Central Accounting System

White Paper

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Providing Meals and State Owned Vehicles To Employees

This white paper is a product of the New Mexico Department of Finance and Administration's Financial Control Division. It is a "key" for understanding finance and accounting related issues and does not supersede statute or the rules and regulations of the Department of Finance and Administration and the General Services Department.

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Introduction

Circumstances can sometimes warrant a state agency[1] providing an employee with a meal or the use of a state owned vehicle. This white paper addresses when it is proper to do so and when it is not.[2]

Depending on the circumstances, when an agency provides a meal to an employee or allows the employee to use a state owned vehicle, the meal or use might be a fringe benefit. A fringe benefit is the equivalent of money.

Giving an employee a fringe benefit increases his or her compensation. The maximum amount an agency may compensate an individual employee—this includes elected officials— is established by law (either by the State's constitution, by statute, or by rule). Depending on the circumstances, an agency that adds a fringe benefit to the maximum compensation allowed by law violates Section 30-23-2, NMSA 1978, which states in part:

> Whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony.

Therefore, as a general rule, an agency should not provide meals to employees or allow employees to use state owned vehicles, if it results in compensation.

[1] For purposes of this white paper, "agency" means any department, institution, board, bureau, commission, district, or committee of the government of the State of New Mexico.

[2] The Per Diem and Mileage Act, the Transportation and Services Act, and the New Mexico Administrative Code (Title 1, Chapter 5, Part 2 and Title 2, Chapter 42, Part 2) also address the propriety of providing meals and State owned vehicles to employees. To ensure a thorough understanding of this subject, the reader of this white paper should also read the acts and code.

Meals

De Minimis Meals

De minimis meals are meals that have little value, taking into account how frequently an agency provides them to an employee. Examples include the following: 1) coffee, doughnuts, or soft drinks served at a formal training seminar; 2) meals provided by a vendor and included as part of a registration fee for a seminar, forum, conference, etc.; or 3) an occasional meal provided to an employee, at the employee's work place— for the convenience of the agency— to enable the employee to work overtime.

If an agency is providing meals more than four times a fiscal year to an employee, it may be frequent enough that the meals would not qualify as de minimis. Therefore, an agency must obtain written permission from the Financial Control Division of the Department of Finance and Administration to go beyond four meals a fiscal year, even if each individual meal is considered de minimis.

Other Types of Meals

There are limited circumstances under which an agency may purchase a meal for an employee. First, a meal may be provided to an employee who is traveling under the provisions of the Per Diem and Mileage Act.

Second, a meal may be provided to an employee when there are not sufficient eating facilities near the work site, provided that the meal is for the convenience of the agency and is provided during working hours. An example would be a meal provided to an employee who is responding to a disaster or emergency and cannot leave his or her post of duty.

Third, a "business" meal, but only when entertainment expenses are specifically authorized by the Legislature. An example of a business meal would be a meal for an economic development employee using his or her attendance at a luncheon as an opportunity to promote New Mexico as a business location.

An example of a specific authorization by the Legislature would be an appropriation that includes language authorizing entertainment expenses. Absent specific language in an appropriation, specific language in the budget request or recommendation that is the basis for the appropriation will suffice. However, the "intent" of a budget request, a budget recommendation, or an appropriation would not.

An agency should not purchase employees meals as a means of promoting goodwill or boosting employee morale. This also applies to de minimis meals.

State Owned Vehicles

An agency should not allow an employee the personal use of a state owned vehicle. There are no exceptions to this. (This does not mean that an employee cannot render emergency aid or assistance to any person.)

If an employee is traveling, as defined by the Regulations Governing the Per Diem and Mileage Act, use of the vehicle for business purposes would include the employee using the vehicle to reach the destination of the trip and to obtain food, shelter, and the other necessities needed to maintain his or her health while traveling. Use of the vehicle to enjoy the local tourist attractions would not be a business use. Neither would be traveling sixty miles to have dinner when a restaurant is available nearby.

In general, an agency should not allow an employee to use a state owned vehicle to commute between his or her designated post of duty and residence. The three exceptions to this, which are business use of a vehicle, are as follows: 1) a public safety employee commuting in a clearly marked police or fire vehicle, when the commuting is for the convenience of the State (e.g., the officer must have his or her vehicle with him or her at all times to respond immediately to emergency calls); 2) a law enforcement officer commuting in an unmarked vehicle, when the commuting is for the convenience of the State; or 3) an employee commuting in a vehicle to safeguard the vehicle after working hours.

For item 3 in the previous paragraph, whether voluntary or required, the agency must include the value of using the vehicle in the employee's wages. Consistent with the Internal Revenue Service's guidelines, the value is $1.50 one way. However, if the employee is an elected official or highly compensated employee (an employee who received over $90,000 in compensation in the prior calendar year), the agency must instead use the annual lease value from the table below:

Automobile's Cost	Annual Lease Value
$0 to 999	$600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6.350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 28,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

The agency may prorate the annual lease value by multiplying the value by a fraction: the numerator being the number of days the vehicle is available to the employee and the denominator being 365. For example, if a vehicle costing $25,000 is available to an employee for 10 days in a given pay period, the prorated annual lease value is $187.67 ($6,850 times 10/365). The agency must include the $187.67 in the employee's wages. (To do this, contact the Central Payroll Bureau, Financial Control Division, for instructions.)

An agency must receive permission, in writing, from the Financial Control Division of the Department of Finance and Administration before requiring or allowing an employee to take an automobile home to safeguard it. The Financial Control Division will require the agency to justify its action in terms of cost effectiveness, given the options available for protecting the vehicle. In order to ensure that protection of the vehicle is in fact the agency's goal, the Division will also scrutinize the agency's choice of the employee who will be taking care of the vehicle.