



The Associated Students of New Mexico State University

MSC 7110, P.O. Box 30001 | Las Cruces, NM 88003

T. 575.646.4415 | F. 575.646.5596

asnmsu.nmsu.edu

Office of the Attorney General

Official Opinion

TO: Ala Alhalholy, *ASNMSU President*

FROM: Ruben Morales, *ASNMSU Deputy Attorney General*

DATE: November 10th, 2024

TITLE: Official Opinion on Reimbursement for Convention Travel Under Bills 47 and 49

Subject:

What are legal routes that can be taken to address this reimbursement problem while also being in accordance with the ASNMSU Bylaws and Financial Procedures Manual?

Applicable Bylaw:

ASNMSU Bylaws:

7-2. REVENUE DISPOSITION ACT

7-2-1. DEFINITIONS

A. "Summer" begins at the end of the last ASNMSU Senate meeting in the spring and ends with the first ASNMSU Senate meeting in the fall; and

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7-3-3. MAIN PROVISIONS

E. The ASNMSU Senate shall make travel appropriations only if a bill enters first readings by the first regular meeting of the ASNMSU Senate following the return from the trip unless the



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return from travel is one day prior or on the same day as the first regular meeting of the ASNMSU Senate:

1. If an appropriation is requested for any travel, as defined by Section 7-4-1, during the time when the ASNMSU Senate is not in session, a bill for the organization may be introduced only if all of the following are met:
 - a. The bill is introduced into first readings no later than the second regular meeting of the ASNMSU Senate of the semester succeeding the trip; and
 - b. Appropriations for travel occurring more than ninety (90) days after a traveler return shall be taxable and the responsibility of the ASNMSU fee-paying members or organization requesting such appropriations.

G. Any bill which is making an appropriation that is introduced to the ASNMSU Senate and referred to the standing committees shall have a time limit placed upon it for which it can remain in the ASNMSU Senate standing committees or the ASNMSU Senate. Any bill for any type of travel shall be given six (6) working weeks from the date it is introduced in first reading to get to the ASNMSU Senate for second readings to be voted upon. Such a bill may be tabled in any committee for as long as the author desires so long as it reaches the ASNMSU Senate by the sixth week to be voted upon. It shall be automatically withdrawn if it stays in committees for any longer than six (6) working weeks. The bill shall be considered active during the time placed upon it and shall be withdrawn automatically if it goes over the time placed upon it:

1. The author of the appropriations bill shall inform the constituent(s) and provide a copy to the Chair of the committee by Monday at noon on the sixth week; and

2. "Working weeks" shall refer to weeks during which the ASNMSU holds ASNMSU Senate meetings or ASNMSU Senate standing committee meetings; and

3. Should an appropriations bill remain in the standing committees for six (6) working weeks, be referred to the ASNMSU Senate floor, and then be referred back to committees, the bill shall have until the next regularly scheduled general ASNMSU Senate meeting to return to the floor.



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Failure to return to the ASNMSU Senate floor by the next regularly scheduled general meeting will result in automatic withdrawal of the bill.

H. Appropriations for travel occurring more than ninety (90) days after a traveler return shall be taxable and the responsibility of the ASNMSU fee-paying members or organization requesting such appropriations.

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New Mexico State University (NMSU) Policy/Code:

5C.10 GENERAL TRAVEL INFORMATION

Claims for reimbursement must include payee signature and Appropriate Approval. For additional information on signature policy see section 2.05, Signature Approval for Routine Business Transactions. Employees are not allowed to approve their own reimbursements.

Reimbursement requests must clearly state a purpose of the travel and serve a bona fide business purpose. Reimbursement is limited to travel one day before and one day after the business to be conducted; allowance will be made for foreign travel of longer duration. Meal per diem should begin based on the actual day of first flight departure. Hotel overnight stays prior to the official first day of air travel in the airport city requires a bona fide business reason and Appropriate Approval.

Exception requests must have a bona fide business reason and justification. These requests should be initiated by the travel and Appropriate Approval is required.

Travel reimbursement vouchers should be submitted within ten days of returning from travel. Travel reimbursements issued greater than ninety (90) days after a traveler returns become taxable to the traveler and will be forwarded to Payroll Services for tax withholdings.

Receipts are required on amounts to be reimbursed, except meal per diems, lodging per diems, and mileage. Receipts must be identifiable as to payee, nature, and amount of expenditure and payment. Any information not included on the receipt must be added by the department; such additions must be attested to by the employee's signature on the receipt. The Illegible/Missing Receipts form becomes the documentation to support transactions for which receipts are not available.

Other expenses not related to travel can be reimbursed using the **Payment Request form**.



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5C.20.10 Employee Travel Advance

An employee travel advance is available to regular faculty, regular staff, and graduate assistants. Advances for student and temporary employees will be considered on a case-by-case basis with appropriate business justification.

Travel Advance requirements:

- An **Employee Travel Advance** form should be completed.
- An advance will not be issued to an employee who has a Diners Club card.
- An employee travel advance is issued to the traveler/payee.
- The amount of the advance may not exceed 90% of the estimated meals and lodging.
- Advances will not be issued for amounts less than \$100.
- A traveler on an extended trip may request an advance every 30 days and must clear the prior advance at the end of each 30 days.
- When an advance is requested based on actual lodging costs, documentation showing the daily lodging rate and total estimated lodging expense is required.
- An employee may only have one travel advance issued and outstanding.
- Lost or stolen advances are considered a personal loss and must be repaid by the employee to whom it was distributed.

The request for an employee travel advance can be prepared and submitted at any time prior to the departure date; however, the check will not be issued earlier than five (5) days before the departure date, and must be cleared within ten (10) working days upon return from travel. If circumstances require additional time to clear an advance, the Travel Office should be notified.

Upon completion of the trip, the advance amount must be included on the **Travel Expense Report** and deducted from the total amount to be reimbursed to the employee. Advances not repaid within ninety (90) days after completion of a trip, either by submitting a Travel Expense Report with the advance deducted from the travel reimbursement or by repaying the advance with personal fund, will be deducted from an employee's NMSU pay. Travel expense reimbursements submitted after 90 days (from return of travel) are considered taxable and will be reported to the Payroll office for tax collection.

ASNMSU Senate Legislation:



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[Sub-Bill 47](#)

[Sub-Bill 49](#)

Opinion Rendered:

It is important to underline that ASNMSU does not hold autonomous authority over tax determinations for reimbursements. This authority rests with NMSU's Business and Finance departments, in alignment with NMSU Business Procedure Manual (BPM) and IRS regulations. ASNMSU's obligation, thereof, is to follow these policies to ensure reimbursement Bills 47 and 49 are in compliance with ASNMSU Financial Manual, NMSU Business Procedure Manual, and IRS law. In evaluating relevant institutional provisions, **NMSU BPM Chapter 5C.10** and **5C.20.10**, reimbursements for convention travel under Bills 47 and 49 classify as taxable since they will be processed beyond the 90-day timeframe.

Furthermore, any taxes on reimbursements for appropriations of travel past the 90 days, set forth in **7-3-3-E-B**, shall be the responsibility of the party requesting the reimbursement. While the logistics of taxation is on a case-by-case basis. As per the guidance provided by the Fiscal Assistant Senior, the 30% tax rate applied to late reimbursements is an NMSU-specific policy, designed to comply with IRS accountable plan rules - **IRS Code 62(C) (G-1) (H-2)**. **IRS Code 62(C)** provides context on reimbursement arrangements and **(G-1), (H-2)** guidelines revolving reasonable reimbursement periods. While the IRS does not mandate a specific tax rate, NMSU's 30% rate ensures compliance with institutional standards. For any clarifications on this rate, further consultation with NMSU's Business and Financial Services offices is recommended.

Conclusion

In summary, the Attorney General's Office agrees that passing Bills 47 and 49 as it stands would be in accordance with ASNMSU bylaws and Financial Procedures Manual; however, this will result in a 30% taxation of the reimbursement outlined in **NMSU BPM Chapter 5C** and referenced by the Fiscal Assistant Senior. Furthermore, the Attorney General's Office strongly recommends that the individual(s)/organization receiving the reimbursement be informed of the taxation and that they be asked if they are still seeking reimbursement with the inclusion of a 30% tax before proceeding. The Attorney General's Office also recommends that ASNMSU push for the 90-day limit well in advance, as this will help future reimbursements avoid a tax penalty associated with late submission and ensure compliance with both NMSU and IRS guidelines.



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Should you have any further questions or require additional clarification, feel free to reach out. Thank you for your attention to this matter.

Best regards,

Ruben Morales - he / him / his

ASNMSU Deputy Intern Attorney General

Email: asnmsu_dag@nmsu.edu

Devon L. Harrison - he / him / his

ASNMSU Attorney General

Email: asnmsuag@nmsu.edu

Jeannette Jaure - She / her / hers

ASNMSU Deputy Intern Attorney General

Email: asnmsu_dag@nmsu.edu

