

AGENDA ITEM

Item IV.C State Bar Management of Business Expense Accounts Policy

DATE: March 9, 2015

TO: Members, Planning and Budget Committee

FROM: Staff

SUBJECT: State Bar Management of Business Expense Accounts Policy

EXECUTIVE SUMMARY

This item provides a background on the existing State Bar Business Expense Account and Business Expense Account and practices in other jurisdictions. Currently, the State Bar Travel and Business-related Expense Policy (Administrative Advisory No. 15 - 01, Section VII (Attachment 1)) allows for a Business Expense Account. The amount is currently determined by the Executive Director within the budgeting process and is funded from non-mandatory fee revenues. The policy allows only senior executives to authorize expenditures after determining that there is a business purpose and must be approved in advance of the event or expenditure. The policy contains several caveats, including that no reimbursement will be made against the Business Expense Account unless there is a sufficient amount budgeted in the account to cover the expense; expenses for business meals will not be authorized for meetings where State Bar business is only nominally discussed or meetings with potential or existing vendors; and reimbursements will not be allowed under this section for attendance at entertainment or sporting events.

BACKGROUND

The first instance of the Business-related Expense Policy first appeared in the 2001 the State Bar Travel and Business-related Expense Policy and was very general.

“Senior Managers may budget for "Business Expenses" (account code #4212). The amount in this account is to be limited and approved by the Executive Director and Chief Financial Officer. This account is to be used at the Senior Managers' discretion in the course of their duties to cover applicable business expenses for themselves and others. Reasonable expenses charged to this account and approved by the appropriate managers are exempt from this State Bar Travel and Business Expense Policy its Catered Meals Guidelines. Please note that no reimbursement will be made against the Business Expense account unless there is a sufficient amount budgeted in the account to cover the expenses.”

In 2009, language requiring funding of the account from non-mandatory fee revenue was added, “The amount in this account is determined by the Executive Director annually during the budget planning process and is to be funded with non-mandatory fee revenues.”

In 2013, the language in the travel policy related to the business expense account became more specific and addressed issues that had been identified through regular analysis of business expense account usage.

VII. BUSINESS EXPENSE ACCOUNT

- “D. Business Expenses that may be covered under this section include meals during which discussion of State Bar business occurs and there is a business need to keep participants together. Expenses for business meals will not be authorized for meetings where State Bar business is only nominally discussed or meetings with potential or existing vendors.
- E. Business Expenses may also include costs for a meal or nominal gifts intended to recognize nonemployee volunteers for work-related accomplishments on behalf of the State Bar.
- F. Reimbursements will not be allowed under this section for attendance at entertainment or sporting events.”

The expenditures attributed to this account have included: Board dinners and receptions; Supreme Court meetings; New Legislators / Chief Justice receptions; meetings with legislators and legislative staff; meetings with local, minority and specialty bar associations; Committee on Group Insurance programs; Town Hall and State Bar Consumer Outreach; and External Relations and Public Outreach.

The most commonly used fund for business account expenses is the Legal Education and Development Fund that encompasses the following three (3) cost centers: Committee on Group Insurance, Committee on Professional Liability Insurance and CalBar Connect Affinity Program.

These programs generate non-dues revenue based on contractual agreements with the vendors to offer unique insurance programs and affinity products to members.

Historically, the Business Expense Account was limited to the Executive Director, Deputy Executive Director, and Senior Executives, who number less than 10. The budget limitation for each individual Business Expense Account was approximately \$1200 a year maximum.

Volunteers are allowed a Miscellaneous Expense: any additional expenses (e.g., telephone, photocopying, postage, material-moving gratuities) while on travel status,

But Business expenses are for senior State Bar staff only. Volunteers are entitled to only their own meal per diem and they may not purchase meals for others and claim them as business expense. Volunteers are not allowed to make purchases or render services for the State Bar. All purchases or services are initiated by State Bar employees through Procurement.

GUIDING STATUTES

California Policy Regarding Expense Reimbursement

It is the policy of the state of California that employers cannot expect employees to carry the cost of doing business. These costs include mileage, client/customer entertainment and gifts, cell phone expenses, certain uniform expenses, and so on. As stated in Labor Code, section 2802, employers must reimburse employees for all reasonable and necessary expenses:

Labor Code, section 2802, subdivision (a): “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code, section 2802 also allows employees to collect interest (Labor Code, section 2802, subdivision (b)), and entitles employees to recover their litigation costs and attorneys’ fees. (Labor Code, section 2802, subdivision (c)).

Internal Revenue Service - Business Entertainment Expenses

Entertainment expenses that are both ordinary and necessary in carrying on a trade or business may be deductible if they meet one of the two tests:

- The directly-related test, or
- The associated test

The employee must have records to prove the business purpose (under the applicable test), the amount of each expense, the date and place of the entertainment, and the business relationship of the persons entertained.

Generally, only 50% of business-related meal and entertainment expenses are allowed as a deduction.

If you are an employee whose deductible business entertainment expenses are fully substantiated and reimbursed under an accountable plan, the employer should not include the reimbursement in your wages and you should not deduct the expenses.

California Attorney General Opinions

85 Ops. Cal. Atty. Gen. 210 (2002) [city officials may not be reimbursed for their costs of purchasing meals for third parties at meetings to discuss city business as these are not actual and necessary expenses]; however, see 88 Ops. Cal. Atty. Gen. 213 (2005) [reimbursing physician traveling to Sri Lanka and providing emergency medical care to tsunami victims permitted if hospital district reasonably determines that the performance of such services will directly assist the district in accomplishing its authorized public responsibilities]; 87 Ops. Cal. Atty. Gen. 164 (2004) [city council may reimburse a council member for actual and necessary expenses incurred in attending the Governor's inauguration if limited to the actual event and the council member performed official duties while at the inauguration].

OTHER BAR JURISDICTIONS

Carol Madeja, the State Bar's Managing Director of Bar Relations, had an information request sent to all of the unified state bar executive directors by the ABA's Division for Bar Services (DBS). We did not receive any response.

A review of 36 unified bar associations' websites did not locate any publicly posted travel and expense policies or business expense account policies except for the Oregon Bar Association and Virginia Bar Association and the Washington State Bar in pertinent part below. Generally, these policies required that business expenses not authorized in travel policies (exceptions) should be authorized by their CEO, CFO or their designees and require detailed reporting on the nature of the expense. Virginia's policy on the use of State Bar funds is explicit regarding prohibiting alcohol and spouse expenses. Washington State asks that employees and volunteers help save costs, but does not explicitly address business expenses, but does state that expenses incurred by spouses, domestic partners or guests, except as otherwise provided by WSBA Fiscal Policy, will not be reimbursed.

Oregon State Bar Expense Reimbursement Policy

"3.c. (3) Meals purchased for members of the bar or other persons in the course of official bar business shall be reimbursed at actual cost with submission of detailed receipts, the names of attendees and a description of the business purpose of the event."

"3.d. (2) Gift and gift card purchases must be accompanied by detailed receipts indicating the business purpose of the gift, and the name of gift recipient(s)."

Virginia – Use of State Bar Funds

Alcohol and Spouse Expenses

“Senate Joint Resolution 263 (1995) directed the Joint Legislative Audit and Review Commission (JLARC) to conduct an analysis of the Virginia State Bar. The review began in the spring of 1995 and was concluded with a report to the commission on December 11, 1995. One recommendation stated that the Virginia State Bar should discontinue the practice of paying for expenses from its Administration and Finance Account which are inconsistent with the intent of the Supreme Court of Virginia in establishing and authorizing the fund. In June 1996, Council amended its policy to prohibit the use of State Bar funds for spousal travel expenses and purchase of alcohol.”

Washington State Bar Association Expense Policy

GENERAL PRINCIPLE

“WSBA depends upon and values the time and talent of its employees and volunteers. WSBA will reimburse necessary, appropriately documented, out-of-pocket expenses incurred in connection with WSBA business or meetings, as set forth below. As a steward of member funds, WSBA asks for employees and volunteers to help save costs. WSBA will not reimburse expenses that are reimbursed from another source. WSBA will also not reimburse expenses incurred by spouses, domestic partners or guests, except as otherwise provided by WSBA Fiscal Policy.”

CALIFORNIA ENTITIES

An internet search for business expense account policies for California governmental and quasi-governmental entities produced the following.

California State University’s CSU Travel Procedures and Regulations do not refer to a business expense, but do permit “exceptions” with written approval due to extenuating circumstances. However, §III.D states that travelers normally shall not be reimbursed for expenses paid on behalf of other persons

II.E. EXCEPTIONS

“Exceptions to the CSU Travel policy and/or these procedures may be authorized in writing by the Executive Vice Chancellor/Chief Financial Officer, campus president, or their designees. Any delegation of such authority by the Executive Vice Chancellor or President must be made in writing. Exceptions may be granted due to extenuating circumstances. Any request for an exception must document the circumstances and need for the exception. When an exception has been approved, expenses will only be reimbursed to the extent of actual costs incurred, provided such costs are deemed to be ordinary, reasonable, not extravagant, and necessary under the circumstances.”

III.D. PAYMENT OF EXPENSES ON BEHALF OF OTHERS

“University travelers normally shall not be reimbursed for expenses paid on behalf of other persons.”

Judicial Council

Business Meal Expense Policy No. FIN 8.05 - Policies and Procedures Guidelines

Trial Court Financial Policies and Procedures Manual, 7th Edition (“FIN”) acknowledges that it is necessary for trial court judges and employees to occasionally conduct official court business during a meal. Thus, the FIN Manual, Policy No. FIN 8.05, defines the rules and limits that courts must observe when arranging or claiming reimbursement for meals associated with official court business. Specifically, to be reimbursable, these business meals must have the written advance approval of the presiding judge (PJ) or, if delegated in writing, the Court Executive Officer (CEO) or another judge. FIN 8.05, 6.2, states the following:

“All business meal expenditures must be supported by an original receipt, reflecting the actual costs incurred and a completed-approved business-related meal expense form, memo, or e-mail authorizing the expenditure in advance. The business-related meal expense form, memo, or e-mail will include the following information:

- a. Date of the business meal(s).
- b. Scheduled start and end time of the meeting.
- c. Statement explaining the business purpose of the meeting.
- d. Category and duration of business meal. Example: Breakfast 8:00- 8:30 (30 min).
- e. Location/place of the business meal.
- f. Copy of the formal agenda, if applicable.
- g. List of expected attendees, their titles, and affiliations.

Business meal expenses not approved in advance by the Presiding Justice or his or her written delegate will be considered a personal expense and will not be reimbursed or paid. In addition, business meal expenses are not authorized for informal meetings or meetings with existing or potential vendors.”

What most of the expense policies reviewed do share in common with the State Bar’s business and expense policy are that reasonable expenses charged to this account and approved by the appropriate manager are exempt from the regular travel and business-related expense policies; a requirement that expenses be authorized and that a determination be made in each instance that there is a business purpose to permit the business meal expenditure; expenses must be approved in advance or after due to

extenuating circumstances; business expenses may also include costs for a meal or nominal gifts intended to recognize nonemployee volunteers for work-related accomplishments for the entity; and prohibitions for reimbursements for attendance at entertainment or sporting events.