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Date: April 27, 2020

To: Mendocino County Board of Supervisors

From: Lloyd Weer, Auditor-Controller

Re: April 28, 2020 Agenda Item 5c) Changes to Policy 18 Travel and Meal Policy

I hereby, respectfully request that the Board of Supervisors not approve further changes to Policy 18 and refer the policy to the Board's General Government Committee. I am concerned that the Board and the other departments/offices requesting or recommending the proposed changes may not be aware of the implications of those proposed changes.

2.4 Travel Requests and exemptions - I would like to make clear, that at no point have I or my staff required that a department/office submit a Travel Request to the Auditor-Controller for approval. My interpretation is that Policy 18, section 2.4 requires that a department/office prepare a Travel Request.

One purpose of the department/office's preparation and submittal of an approved Travel Request (approved by department/office designee, or CEO if over \$1,000) to the Auditor-Controller with any travel related expenditure is to meet the requirements of the Internal Revenue Service to allow the expenditure(s) to be characterized as non-taxable to the employee. The absence of the substantiation of the various elements required would result in the cost of the hotel, the meal per diems, mileage or use of a county vehicle and other costs, etc. be considered a taxable benefit paid or provided to the employee and therefore subject to withholding taxes and reporting as earnings to the Internal Revenue Service..

26 Code of Federal Regulations, Internal Revenue, Treasury Regulation Section 1.274 requires that costs paid to or for an employee's travel be taxable income unless substantiated as deductible expenditure for the employer. Each element of an expenditure or use must be substantiated by adequate records or sufficient evidence

corroborating his/her own statement and must substantiate business purpose and/or business use of property.

The elements to be provided with respect to expenditure for travel away from home are:

Amount: The amount of each separate expenditure for traveling away from home, such as cost of transportation or lodging, except that the daily cost of the traveler's own breakfast, lunch, and dinner and of expenditures incidental to such travel may be aggregated, if set forth in reasonable categories, such as for meals, for gasoline and oil, and for taxi fares;

Time: Dates of departure and return for each trip away from home, and number of days away from home spent on business;

Place: Destinations or locality of travel, described by name of city or town or other similar designation; and

Business purpose: Business reason for travel or nature of the business benefit derived or expected to be derived as a result of travel.

Those requirements are not the Auditor-Controller's requirements, but those required by the Internal Revenue Service. If departments/offices are to be exempted by the Board of Supervisors from preparing a Travel Request, the Auditor-Controller will still be required to request nearly all of the same information as would be on a Travel Request or be required to subject all payments to and for an employee's benefit relating to travel to payroll taxes and wage reporting to the IRS. There will need to be a new Travel Reimbursement Request Form which has a section that includes the information required to substantiate the previously mentioned elements.

In a review of Travel Policies available online for the following Counties, a Travel Request/Authorization is required prior to travel with few minor exceptions (except for the transportation of prisoners, wards or investigations): El Dorado, Monterey, San Joaquin (required with overnight or \$100+), Napa (required with overnight, except as regular, ongoing part of duties), Sonoma (exception department heads, appointed or elected, do not have to have prior approval, however all employees required to submit an authorization for travel and expense report form for all reimbursements). Any references to POST or STC training mentioned additional requirements for employees to make sure that reimbursement related paperwork was accurate and submitted timely to instructor and that department is required to seek reimbursement to the extent allowable.

2.8 Regarding advances for travel related costs; the Auditor-Controller currently considers individual, specific requests with department head justification, for advances when submitted according to Policy 18. The Auditor-Controller has recently made sure that all advances are not automatically processed and granted unless they come from a non-General Fund funding source and have a system in place for making sure that such advances are truly accounted for and returned if not fully allowed. Advances require very specific handling or they too would need to be considered as advanced wages and subject to payroll taxes and wage reporting according to the IRS.

26CFR 1.62-2 Reimbursements and other expense allowance arrangements (advances):

Advances must have an **accountable plan** or be treated as taxable wages. Travel advances made under an accountable plan are not treated as wages and are not subject to income and employment taxes when they're paid. **The advances must be (1) paid for travel expenses related to the employer's business, (2) substantiated by the employee, and (3) any excess returned in a reasonable period of time.**

If an employee does not substantiate expenses and/or timely return excess advances, the advance is includible in wages and subject to income and employment taxes no later than the first payroll period following the end of the reasonable period. If an employee substantiates expenses and returns excess advances after the employer has treated amounts as wages, the employer is not required to return any withholding or treat amounts as nontaxable.

Some Counties deduct the amount previously advanced from the employee's next pay check if they do not substantiate or timely report and return excess advances.

I have no issue with working with the Sheriff's Office or other departments to develop an accountable plan and process for their submittal of requests for advances in reasonable circumstances, but such advances should not be routine for small dollar amounts. That plan will require adequate documentation for the advance request and the submittal of expense reports to account for the actual costs after the costs have been incurred. Implementing such an accountable plan will require additional paperwork and/or work flow, resulting in additional staff time in both my office and the department/office's in order to be fully compliant. Unless the CEO's office plans to track such expenditures and accountability required substantiation of expenses, I request that the approval remain in my office so that if an employee does not follow the accountable plan, they are not allowed to receive additional advances. If the approval authority is changed to

the Chief Executive Officer or designee then the tracking and compliance should shift to the CEO's office as well.

6.1.1 It is unclear what the purpose is of adding a reference to 2.4.1 in this section. If the intent is to emphasize that a Travel Request is not required, it is already stated in 2.4.1. If the intent is to somehow add additional exemption for those departments/offices in 2.4.1 from providing the necessary records necessary to substantiate the reimbursement, that should be more clearly described. In addition, I remind the Board that if the required information is not provided as described above regarding the elements necessary to justify the expenditure and business purpose, my office will have no choice but to consider all travel related costs as taxable benefits to the employee. Therefore, it seems like there is no benefit to including the addition of 2.4.1 to 6.1.1.

Further information regarding travel expenditures, non-taxable reimbursement to employees and advances can be found in IRS Publication 5137 (Rev. 2-2020) and Code of Federal Regulations Treasury Sections 1.62-2 and 1.274-5.

In closing, in order to prevent further confusion and conflicting interpretations of the requirements necessary for processing travel related claims, I respectfully reiterate my request that no further exemptions or substantive changes be made to Policy 18 without careful consideration and review by the Board's General Government Committee.