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Dino Ioannides, *Executive Director*

Advisory Opinion 18-01 (Travel Expenses)

Summary: It would not be a violation of Article XXIX for the Senior Director of Taxation of the Department of Revenue to accept travel expenses from a private corporation to attend the corporation’s National Multistate Tax Symposium West and participate in a panel at that conference.

I. Background

Requester is the Senior Director of Taxation for the Department of Revenue (“DOR”). He has requested guidance regarding the offer of a private corporation, Deloitte,¹ to pay the costs of lodging, airfare, meals, transportation, and incidentals for him to attend the National Multistate Tax Symposium West (“Symposium”). The total expenses for Requester to attend the Symposium are estimated at \$975.00.² These costs would be reimbursed directly to the State of Colorado, not to Requester.

The offer from Deloitte to pay for a state employee to attend the Symposium was originally made to the Director of Tax Policy for the DOR. Deloitte offered to pay the Director of Tax Policy’s expenses in order for him to participate on a panel regarding different states’ approaches to tax reform following the 2017 Tax Reform Act. Because the Director of Tax Policy was unable to attend, he designated Requester to go in his place. According to the Director of Tax Policy, Requester possessed the requisite knowledge regarding Colorado’s model of taxation to participate in the panel. Also according to the Director of Tax Policy, Colorado is one of only four states whose tax scheme closely tracks that of the Internal Revenue Service, having a significantly different model than that of the other states whose representatives would be participating in the panel.

The Symposium’s published description of the panel reads:

A panel of state tax industry executives will share their thoughts on the 2017 Tax

¹ “Deloitte” refers to one or more of Deloitte Touche Tohmatsu Limited, its network of member firms, and their related entities.

² This amount does not include the waived registration fee, which was \$795.00 prior to March 30, 2018, and \$895.00 thereafter.

Reform Act and what it means for businesses navigating this new frontier. Hear what they have to say about the states' responses to the federal tax changes and the unique challenges and opportunities they anticipate going forward from both tax compliance and planning perspectives.

II. Jurisdiction

Requester is a "government employee" subject to the Commission's jurisdiction. Colo. Const. Art. XXIX, § 2(1).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. art. XXIX, § 5(5).

III. Applicable Law

Section 3(2) of Article XXIX of the Colorado Constitution provides,

No ... government employee, either directly or indirectly as the beneficiary of a gift or thing of value ... shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars [currently adjusted to \$59] in any calendar year, including but not limited to, ... travel ... without the person receiving lawful consideration of equal or greater value in return from the ... government employee who solicited, accepted, or received the gift or other thing of value.

IV. Discussion

The purpose of Article XXIX of the Colorado Constitution is to restrict gifts to public employees and officials acting in their official capacities. Section 3(2) of Article XXIX ("the gift ban") prohibits only gifts to covered individuals. Reimbursement of travel expenses to covered individuals constitutes a prohibited gift unless such reimbursement does not inure to the benefit of the covered individual but rather to the governmental entity, department, agency, or institution that employs the covered individual. *See* Position Statement 12-01 at 5. The Commission employs a five-factor test in determining whether a gift is to a covered individual or to the state. The Commission considers: (1) whether the offer is to a specific individual or to a designee of the state agency; (2) whether the offer of reimbursement is *ex officio*; (3) whether the event is related to the official duties of the covered individual; (4) whether there is an existing or potential conflict of interest or appearance of impropriety; and (5) whether the primary purpose of the travel is primarily educational or business-related. *See* Position Statement 12-01.

Under the first factor, the Commission finds that the offer was made to a designee of the Department of Revenue. The invitation was initially made to the Director of Tax Policy, who was unable to attend but determined that Requester had the requisite knowledge and expertise to

go in his stead.³ According to the Director of Tax Policy, Deloitte was not concerned over which individual would attend. The fact that the offer from Deloitte was to a designee of a department head rather than to Requester individually indicates an institutional benefit.

Under the second factor, the Commission finds that the offer of reimbursement was *ex officio*, or made by virtue of Requester's specific position or area of responsibility/expertise. Requester was not personally invited to the Symposium. Rather, he was the individual chosen by the Director of Tax Policy to attend based on his expertise. Thus, the offer is clearly *ex officio*.

Under the third factor, the Commission finds that the event is related to the official duties of Requester. There is a nexus between the official functions and expertise of Requester and the subject on which he has been invited to speak. Requester was selected as a designee of DOR based on his knowledge regarding Colorado's approach to the 2017 Tax Reform Act. That nexus demonstrates that the invitation was institutional in nature.

Under the fourth factor, the Commission finds that there is no existing or potential conflict of interest, or an appearance of impropriety. To DOR's knowledge, Deloitte does not currently have financial or regulatory interests pending before DOR that could be affected by Requester. Further, Requester is not currently in a position to take direct official action with regard to Deloitte.

Under the fifth factor, the Commission finds that the purpose of the Symposium is primarily educational in nature, rather than primarily entertainment-related. Requester has provided the agenda for the Symposium, which besides meals and early-morning exercise opportunities,⁴ is clearly focused on state implications of tax reform—a topic germane to Requester's job duties. Further, the Symposium has been approved for 12 continuing education credits, indicating that it is educational in nature.

These factors weigh in favor of finding that Deloitte's offer to pay Requester's travel expenses inures to the benefit of the state and is not a gift to Requester under Section 3(2) of Article XXIX. Requester may attend the Symposium, and the state may accept reimbursement of the costs of his attendance from Deloitte.

V. Conclusion

It would not be a violation of Article XXIX for Deloitte to reimburse the state for travel expenses under the circumstances set forth in this request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages

³ In fact, the Director of Tax Policy asked both Requester and the Executive Director whether they were available to attend the Symposium. Only the Requester was available.

⁴ It does not appear that the meals are separately billed from the costs of attending the Symposium. In the past, the Commission has found that separately billed entertainment events not included in the conference program constitute a gift. *See* Advisory Opinion 13-03.

individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

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Dated: May 7, 2018

Commissioner Gary Reiff participated in the decision made at the Commission's April 9, 2018, meeting and voted that the travel described in this request would not constitute a violation, but he did not participate in adopting the written opinion.