

**TRIBAL COUNCIL
TRAVEL EXPENSE POLICY
Effective: 11-15-2011**

Ref. No.: LP 01-09

This policy implements Legislative Act #17-09 approved by the Tribal Council on June 15, 2009; amended by Rules Committee on November 15, 2011.

Accountable Plan:

Reimbursements paid to Tribal Council members (TCM) under an accountable plan are not considered wages and are not reportable on the W-2 and are not subject to any employment taxes. (However, see NOTE in discussion of per diem below.) TCMs are considered a special class of employee.

An accountable plan requires TCMs to meet the following three rules:

1. They must have paid or incurred deductible expenses while performing services as a TCM.
2. They must adequately account for these expenses within a reasonable period of time.
3. They must return any amounts in excess of expenses within a reasonable period of time.

Amounts paid under an accountable plan are generally:

1. not wages (however, see NOTE in discussion of per diem below)
2. should not be included on the TCM's W-2;
3. are not subject to income tax withholding, social security, Medicare taxes and FUTA.

Definitions:

1. **While performing services as tribal council members:** The TCM must substantiate the time, place and business purpose of their travel.
2. **Adequately account:** TCMs must adequately account for their travel, meals and other expenses incurred during their travel. They must provide documentary evidence. This evidence should include items such as receipts, along with either a statement of expenses, an account book, a day planner or similar record in which the TCM entered each expense at or near the time the expense was incurred.

3. **A reasonable period of time:** A reasonable period of time depends on the facts and circumstances. Generally, it is considered reasonable if the TCM receives an advance within 30 days of the time they incur the expense, adequately account for the expenses within 30 days after the expenses were paid or incurred, and return any amounts in excess of expenses within 60 days after the expense was paid or incurred.
4. **Excess reimbursement or allowance:** Any amount paid to a TCM that is more than the business-related expenses for which the TCM adequately accounted. The TCM must return any excess reimbursement or other expense allowance within a reasonable amount of time.
5. **Official Travel:** Official travel of the Cherokee Nation Tribal Council includes but is not limited to Committee and full Council meetings, Cherokee National Holiday, Joint Council of the Cherokee Nation and Eastern Band of Cherokee Indians, Presidential Inauguration events and At Large Community Meetings for At Large Council members. If a Council member needs to determine if a trip is 'official travel,' the travel should be brought before Executive & Finance and voted upon.
6. **Elective Travel:** Elective travel is all other travel not designated as official Cherokee Nation business as defined above.

Additional Information:

1. If the expenses covered by an accountable plan are not substantiated or amounts in excess of expenses are not returned within a reasonable period of time, the amount is treated as paid under a non-accountable plan (which is taxable). This amount should be included on the TCM's W-2 and is subject to income tax withholding and payment of social security and Medicare taxes for the first payroll period following the end of the reasonable period.
2. TCMs can be reimbursed in one of two ways: actual expenses or per diem.

Actual expenses: The TCM is required to account for every travel expense incurred, including: actual transportation expense (air, taxi, bus, shuttle, etc.), lodging expense, each meal expense, every incidental expense, and any other business travel expense that is ordinary and necessary. TCM must provide documentation as described above under the definition of "adequately account for." They must substantiate time, place and business purpose of the travel.

Per Diem: Per Diem is a daily allowance. The federal government has established per diem rates for travel. The rate has two components: lodging expense and meal/incidental expense (M&IE). Federal Travel

Regulations define “incidental expenses” as fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards and stewardesses and others on ships, transportation between places of lodging or business and places where meals are taken, and the mailing cost associated with filing travel vouchers. The federal per diem rate can be found at www.gsa.gov.

TCMs are not required to break down individual meal costs, tips, and other incidental expenses defined above, and provide documentation. However, they must substantiate the time, place and business purpose of the travel. A common method of reimbursing employees for travel using per diem rates is to:

- a. Reimburse the TCM by paying them the federal M&IE rate of the location they travel to, and
- b. Reimburse TCM for actual lodging expenses incurred up to the limit set by TC upon submission of the lodging receipt.
- c. If TCM incurs **other travel expenses** that are ordinary and necessary but do not fall under the category of lodging of M&IE (e.g., air tickets, taxis to and from airport, car rentals, gas for rental car, parking, etc.), reimburse them for these expenses but only after they have “adequately accounted” for those additional expenses.

Note: The federal per diem rates for M&IE are available for a full day of travel from 12:01 a.m. to 12:00 midnight. Federal Travel regulations allow $\frac{3}{4}$ of the applicable federal M&IE for each partial day during which the employee is traveling away from home in connection with their business-related travel.

3. If TCM performs requested services for another branch of government, the expenses of travel to cover those services are to be charged to the accounting unit for the respective branch of government. All requests for services must be submitted in writing to Tribal Council staff for consideration at time of travel/trip approval.
4. In addition to the reimbursement authorized by law, Council of the Cherokee Nation members shall be entitled to a travel allowance in lieu of mileage in the amount of Seven Hundred Dollars (\$700.00) per month. This travel allowance is to allow Tribal Council members to attend meetings and conduct Tribal business within the boundaries of Cherokee Nation; for At-Large Councilors, within 40 miles one way of their home.

Tribal Council members may choose not to take said travel allowance and charge for miles driven at the rate applicable to Cherokee Nation employees.

5. Mileage form shall be submitted to the Tribal Council staff and said reports shall be a public record as defined under the Cherokee Nation Freedom of Information Act.
6. The mileage rate shall be consistent with the rate allowed by the United States Government.
7. Council of the Cherokee Nation members attending meetings outside of the jurisdiction of the Cherokee Nation shall be entitled for reimbursement of actual expenses.
8. Any documents relating to travel expenses are considered public records as defined under the Cherokee Nation Freedom of Information Act. All personal information such as credit card numbers, social security numbers and date of birth should be removed before being made public or provided to the public.
9. In addition to the above provisions, At-Large Councilors may charge mileage and expenses for attending meetings within the jurisdiction of the Cherokee Nation. At-Large Councilors shall not exceed \$7,500 each for travel expenses to At-Large Community Meetings. This amount does not include official travel or elective travel as defined in #13 herein.
10. An annual review of this policy will be held in May of each year.
11. Documentation to receive travel cost reimbursement should be submitted by Tribal Council members at least on an annual basis.
12. Elective Council travel expenses are limited to \$7,500 per Tribal Council member per fiscal year. If a Council member wishes to exceed the cap amount of \$7,500 they must obtain approval and/or denial from the Speaker. If it is the Speaker who wishes to exceed the cap amount they must obtain approval and/or denial from the Chair of Executive & Finance Committee. The approval and/or denials must be reported in the next Executive & Finance Committee. This \$7,500 cap doesn't include such things as Joint Council meetings, inaugurations, membership fees, NCAI travel or travel to At-Large community meetings. If an Administrative department requests travel of a Council member the department must pay the expenses.
13. Any Funds allocated to an individual Council Member for elective travel that goes unexpended for the fiscal year shall be utilized by that Council Member for community assistance in the next fiscal year and automatically carried over.

Approved as to form:

Meredith A. Frailey
Meredith A. Frailey, Speaker
Council of the Cherokee Nation

[This policy was adopted by the Rules Committee of the Tribal Council on November 15th, 2011.]