

FOOTNOTES

Taxation: this information is provided for discussion purposes only. A legislator should consult with their personal taxation specialist for the appropriate option for their purposes.

The Internal Revenue Service requires an employee (legislator) to account for items of expense reimbursed by an employer in order to avoid the employee having to take the amounts as income on the employee's income tax return. By adopting an accountable plan, legislators may be reimbursed for certain expenses incurred in performing legislative duties regarding providing services for constituents.

The employer may elect to treat taxable fringe benefits as paid in a pay period, or on a quarterly, semiannual, or annual basis, but no less frequently than annually. IRS Ann. 85-113 The employer may elect to add taxable fringe benefits to employee regular wages and withhold on the total, or may withhold on the benefit at the supplemental wage rate. There may be additional state taxes.
Reg. §31.3402(g)-1; Reg. §31.3501(a)-1T.

The primary reimbursement amount provided up-front is considered taxable and reported on the W-2 form as gross income for tax purposes, including but not limited to federal tax, Social Security, Medicare taxes, and other employment taxes. This relates to information provided regarding legislators "tax home." The rules will be different for legislators who live in or within 50 miles of Helena and will depend on where the constituent services take place.

QUESTIONS?

CALL THE LSD FINANCIAL OFFICE:

Angie Carter
406.444.4380

or

JENNIFER SIMMONS
406.444.9542

[HTTP://LEG.MT.GOV/
INFORMATION-LEGISLATORS/
COMPENSATION/CONSTITUENT-SERVICES/](http://leg.mt.gov/information-legislators/compensation/constituent-services/)

**LEGISLATOR
STIPEND AND
REIMBURSEMENT
FOR CONSTITUENT
SERVICES**

A PUBLICATION OF THE
MONTANA LEGISLATIVE SERVICES DIVISION
PO BOX 201706, HELENA, MT 59620-1706

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BACKGROUND

5-2-204, MCA provides for a stipend for legislators and allows reimbursement of constituent services expenses not paid from a constituent services account or otherwise reimbursed. The statute provides a primary \$3,000 stipend for each legislator and a secondary amount of between \$1,000 and \$4,000 depending on the square mileage of a legislator's district, for districts over 100 square miles.

PRIMARY STIPEND

The primary stipend may be used for providing constituent services, which include, but are not limited to:

- Unreimbursed expenses for mileage, per diem (meals), or lodging
- Telecommunications or phone, internet, computer hardware and software
- Postage
- Education-related expenses

Legislators will receive the full primary stipend of \$3,000 after LSD receives the opt in form indicating how the legislator would like it disbursed.

Legislative Services Division will issue payment to each legislator as soon as the opt in form is received for the primary stipend, minus taxes.

The payment is treated as taxable income, however, the legislator may be able to claim certain expenses as deductions for income tax purposes. In general, taxable fringe benefits are subject to withholding when they are made available. In accordance with federal law, Legislative Services Division will treat this taxable fringe benefit as paid in the pay period it was issued and will withhold on the benefit at the supplemental wage rate. There may be additional state taxes.

SECONDARY AMOUNT

For the secondary amount, the law specifies that legislators must apply for reimbursement to the Legislative Services Division by submitting written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, which apply to meals, lodging, and transportation for otherwise unreimbursed expenses related to the legislator's expenses incurred for providing constituent services. The secondary amount is a variable amount that is determined by square mileage of district and requires the Legislative Services Division to inform legislators by June 1, 2021, of the amount authorized pursuant to 5-2-204(1), MCA. In mid-June, Legislative Services Division will send legislators eligible for the secondary amount a packet including the amount for which the legislator is eligible and reimbursement forms.

REQUIREMENTS FOR SECONDARY AMOUNT

For the secondary amount, the legislator may submit a claim form for reimbursement at any time. Depending on the type of claim, certain reimbursements may be taxable, for instance, reimbursed meals for meetings that do not require an overnight stay.

RULES FOR REIMBURSEMENT (SECONDARY AMOUNT)

- Leadership approval is not necessary. The Legislative Services Division is responsible for review for type of expense, taxable status, and amount available.
 - A legislator must use the authorized form for unreimbursed expenses for mileage, per diem, lodging, or education-related expenses for the secondary amount.
 - Legislators may not claim salary.
 - Receipts are required for lodging and airfare.
 - On any reimbursement form the legislator must indicate that these expenses were not reimbursed by any other legislative or state fund, organization, or a constituent services account provided for in 13-37-402, MCA.
 - Legislative Services will provide a quarterly report to legislators on the status and use of their account.
 - Accounts expire to coincide with the calendar year prior to the next session, ending December 31, 2022.
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