

To: House Committee on Elections
From: Jocelyn Gunter, Director, Office of Accounts and Reports
Date: February 10, 2020
Re: Neutral Testimony on House Bill (HB) 2561

Chairman Sutton and members of the committee,

Thank you for the opportunity to provide testimony regarding HB 2561. The Department of Administration has a neutral position on HB 2561, but is providing information to the committee regarding the potential employee tax and agency budget impacts of the bill.

The language in HB 2561 amends K.S.A. 46-235 to authorize legislative assistants and committee assistants to accept one gift not to exceed \$100 per session from an individual legislator or legislative committee member. In authorizing the receipt by an employee of a gift based on the employee's position, this legislation appears to authorize a gift that would be considered a taxable fringe benefit to the employee per IRS guidelines.

IRS Publication 15-B (2020) – Employer's Tax Guide to Fringe Benefits specifies the following:

- A fringe benefit is a form of pay for the performance of services.
- Any fringe benefit you provide is taxable and ***must be included in the recipient's pay unless the law specifically excludes it. [emphasis added]***
- Any tangible personal property given to an employee as an award is only excludable under an IRS qualified plan for either length of service or safety achievement.
- In addition, the exclusion for length of service or safety achievement does not apply to awards of cash, cash equivalents, gift cards, gift coupons, or gift certificates. The exclusion also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items.

Source: <https://www.irs.gov/publications/p15b>

IRS Publication 5137 - IRS Office of Federal, State, and Local Governments Fringe Benefit Guide further states:

- Cash awards to employees are always taxable. Generally, the value of an award or prize given by an employer is taxable to an employee as wages, included on Form W-2, and subject to Federal income tax withholding, social security and Medicare. IRC 74; IRC 3121(a)(20)
- Awards other than for safety or for length-of-service are always nonqualified awards, unless they are qualifying non-cash or non-cash equivalent *de minimis* fringe benefits.
- A *de minimis* fringe benefit may be excludable from wages if it is nominal value and provided infrequently. Examples of excludable *de minimis* fringe benefits include nominal gifts for birthday/holiday or flowers, plaques or coffee mugs for a special occasion.
- There is no set dollar amount in the law for nominal prizes and awards, however, the IRS gave advice in ILM200108042 that a benefit of \$100 did not qualify as *de minimis*.

Source: <https://www.irs.gov/pub/irs-pdf/p5137.pdf>

In guidance to government entities on employer and pay related issues the IRS also states the following:

“In general, a de minimis benefit is one for which, considering its value and the frequency with which it is provided, is so small as to make accounting for it unreasonable or impractical.”

Source: <https://www.irs.gov/government-entities/federal-state-local-governments/de-minimis-fringe-benefits>

As the language of HB 2561 specifies the receipt of the gift can only occur once per session, it does not appear that the value or frequency of the gift would make accounting for the gift unreasonable or impractical.

Based on the IRS guidelines, passage of HB 2561 as drafted will require reporting through State of Kansas payroll processes of taxable fringe benefit income to the employee for the value of the gift resulting in the following impacts:

- Employee: Subject to - Federal income tax withholding, Social Security, Medicare, and KPERS
- Employer (agency): Budgetarily responsible for - Social Security, Medicare, Unemployment Compensation Insurance, Worker’s Compensation Insurance, State Leave Payment Reserve Fund, and KPERS

Thank you for the opportunity to provide testimony for House Bill 2561. The Office of Accounts and Reports appreciates your time and consideration. We are happy to answer any questions at the appropriate time.

Respectfully,

Jocelyn Gunter, Director

Office of Accounts and Reports