
February 4, 2019

TO: All State Representatives

FROM: Joe McEniry

RE: 2018 Tax Year State Representatives' Employee Business Expense Deduction and Tax Home Election

I. 2018 Federal Tax Home Election for State Representatives Away From Home

A. Background

Internal Revenue Code §162(h) relates to travel expenses of state legislators and allows legislators whose district homes are more than 50 miles from the State Capitol Building a special tax treatment of their per diem payments for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a legislator, by allowing such legislators to receive the payments on a tax-free basis. If a legislator's district home is 50 or fewer miles from the State Capitol Building, the legislator is not eligible for the special tax treatment of their per diem amounts for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a state legislator.

The maximum per diem which is excluded from income for legislators pursuant to Internal Revenue Code §162(h) is determined by the per diem rate for federal employees in Des Moines, as determined by the General Services Administration, for the tax year in question. Pursuant to Iowa Code §2.10(1), if a legislator resides in Polk County the legislator's per diem is equal to three-fourths of the per diem of the non-Polk County, legislative members. For tax year 2018, the applicable federal per diem rates were as follows:

January 1, 2018 – September 30, 2018: \$168.00 per day

Ratio:

\$109.00 - Lodging
\$54.00 - Meals
\$5.00 - Incidentals

October 1, 2018 – December 31, 2018: \$169.00 per day

Ratio:

\$108.00 - Lodging
\$56.00 - Meals
\$5.00 - Incidentals

New federal per diem rates issued by the General Services Administration take effect on October 1 of each year. The rates for Iowa increased on October 1, 2018.

B. Federal Regulations Applicable to Legislator Employee Business Expense Deductions

Prior to the enactment of the federal Tax Cut and Jobs Act in December of 2017, legislators had options for receiving a tax benefit related to their travel expenses. The Tax Cut and Jobs Act suspended a legislator's ability to take travel expenses as "miscellaneous itemized deductions" on their personal federal return beginning in the 2018 tax year through the 2025 tax year. You may or may not be impacted by this change: please review your previous federal returns to determine if you deducted your travel expenses and consult your tax preparer about your best course of action. The Tax Cut and Jobs Act did not suspend the special tax treatment of a legislator's per diem payments for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a state legislator, when the legislator elects to utilize the provisions of Internal Revenue Code §162(h).

If a legislator elects to utilize the provisions of Internal Revenue Code §162(h), the legislator is deemed to be away from home in the pursuit of a trade or business on each legislative day.

Federal regulations relating to travel expense deductions for state legislators include specific definitions for what constitutes a "legislative day," a "legislative session," and a "committee of the legislature."

"Legislative Day" means:

...any day on which the taxpayer is a state legislator and (1) the legislature is in session; (2) the legislature is not in session for a period that is not longer than four consecutive days, without extension for Saturdays, Sundays, or holidays; (3) the taxpayer's attendance at a meeting of a committee of the legislature is formally recorded; or (4) the taxpayer's attendance at any session of the legislature that only a limited number of members are expected to attend (such as a pro forma session), on any day not described in part (1) or (2) of this section is formally recorded.

"Legislative Session" means:

The legislature of which the legislator is a member is in session if, at any time during that day, the members of the legislature are expected to attend and participate as an assembled body of the legislature.

"Committee of the Legislature" means:

A committee of the legislature is any group that includes one or more legislators and that is charged with conducting business of the legislature. Committees of the legislature include but are not limited to committees to which the legislature refers bills for consideration, committees that the legislature has authorized to conduct inquiries into matters of public concern, and committees charged with the internal administration of the legislature. For purposes of this section, groups that are not considered committees of the legislature include but are not limited to groups that promote particular issues, raise campaign funds, or are caucuses of members of a political party.

C. 2018 Employee Business Expense Exclusions

1. Legislative Days – Expenses of Office Per Diem Received

Pursuant to Iowa Code §2.10, legislators are paid a per diem based on the maximum amount generally allowable to employees of the executive branch of the federal government for per diem while away from home overnight at the seat of government. As noted above, in 2018 the per diem amount was \$168.00 per day through September 30, 2018.

The per diem payments provided to you by the state (expenses of office) are not includable in gross income because it is considered a reimbursement for employee business expense, if you reside more than 50 miles from the State Capitol Building, and you elect to utilize the provisions of Internal Revenue Code §162(h). This per diem is excludable from your gross income for each "legislative day." For 2018, the House of Representatives convened on January 8, 2018, and adjourned May 5, 2018, spanning 118 calendar days. Pursuant to the limitations contained in Iowa Code §2.10, you were paid per diem for 100 calendar days, which appear to meet the definitions of a "legislative day" and of a "legislative session." This amount, which is \$16,800, is not included in your gross income because it is "deemed substantiated" as a reimbursed business expense pursuant to Internal Revenue Code §162(h). If you live 50 or fewer miles from the State Capitol Building, the per diem amount is includable in your gross income.

2. Legislative Days – Interim Per Diem Received

Pursuant to Iowa Code §2.10(5), you are entitled to receive interim per diem payments as well as necessary travel and actual expenses if your presence is recorded at a meeting for which per diem or expenses are authorized by law for members of the General Assembly who serve on statutory boards, commissions, or councils; for standing or interim committee or subcommittee meetings; or when on authorized legislative business when the general assembly is not in session. This information is provided to you by the Chief Clerk's Office. The interim per diem payments which you received are included as taxable wages on your W-2 form, and are not considered reimbursements for employee business expenses, due to the statutory language which authorizes them, even if you take the election under Internal Revenue Code §162(h).

II. 2018 Iowa Employee Business Expense Deduction for State Representatives

Iowa's tax reform bill enacted during the 2018 Legislative Session (SF 2417) did not suspend taxpayers' ability to take "miscellaneous itemized deductions" as a deduction on their personal Iowa return for travel expenses in the 2018 tax year. Thus, legislators have the ability to take "miscellaneous itemized deductions" as a deduction on their personal Iowa return for travel expenses in the 2018 tax year. See Part I, Section A of this memorandum for per diem deduction amounts applicable for Des Moines. Please consult your tax preparer about whether it would be beneficial for you to take your travel expenses as a "miscellaneous itemized deduction" on your Iowa return. Iowa does couple with the new federal tax law changes beginning in the 2019 tax year and your ability to take "miscellaneous itemized deductions" on your personal Iowa return will also be suspended beginning in the 2019 tax year.

If you do not itemize for state tax purposes, Iowa Code §422.7(10) allows a member of the general assembly to nonetheless deduct the total per diem amount allowed as determined under Internal Revenue Code §162(h) for those electing members who live more than 50 miles from the State Capitol Building, or \$50 per day for those members who live 50 or fewer miles from the State Capitol Building.

III. Miscellaneous Employee Business Expense Deductions

Please note that in 2018 you received constituency expenses in the amount of \$300.00 per month. This constituency expense payment is included in taxable wages on your W-2 form and is also deductible as an employee business expense on your Iowa return provided that you can substantiate the expenditures with receipts and a daily log listing the time, place, purpose, and amount of each expense claimed.

You also received payments for mileage and taxable meals. If these amounts are direct reimbursement for expenses which you have substantiated, they are deductible as employee business expenses on your Iowa return.

IV. Statement of Election of Tax Home Form

For legislators whose district home is more than 50 miles from the State Capitol Building, attached is a form for a "Statement of Election of Tax Home Pursuant to Internal Revenue Code §162(h)." If this form is completed and attached to your income tax return, you should be in compliance with 26 C.F.R. §1.162-24, which requires any state legislator who makes a tax home election under Internal Revenue Code §162(h) for the taxable year to attach such a Statement of Election to the income tax return.

Additionally, if you have not already done so, please provide the House Finance Office with a copy of your completed form so that the House Finance Office knows to exclude your per diem as taxable wages on your W-2.

V. Legislator W-2 Forms

Wendy Noce, from Centralized Payroll at the Iowa Department of Administrative Services, has provided an explanation of the information contained on legislators' W-2 Wage and Tax Statement for 2018, which is attached.

If you or your tax preparer have any questions regarding this memorandum, please feel free to contact me.

VI. Disclaimer

The National Conference of State Legislators (NCSL) and the Legislative Services Agency do not provide tax advice on how individual legislators should file their tax returns. The purpose of this memorandum is to describe but not apply the law to particular fact situations and to make you and your tax preparer aware of tax provisions which may apply to Iowa legislators. You and your tax preparer should study the provisions and determine how they apply to your individual situation. NCSL will provide background information on Internal Revenue Code §162(h) and the new federal regulations upon request. NCSL can be reached at john.mahoney@ncsl.org.

CC: Iowa House: Representatives
Chief Clerk
House Finance Office

**STATEMENT OF ELECTION OF TAX HOME
UNDER INTERNAL REVENUE CODE §162(h)**

TAXABLE YEAR: 2018

TAXPAYER'S NAME _____

TAXPAYER IDENTIFICATION NUMBER _____

STATE AND LEGISLATIVE DISTRICT REPRESENTED _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS (HOUSE OF REPRESENTATIVES): _____

2018 FEDERAL PER DIEM RATE FOR STATE CAPITOL:

\$168.00 (through September 30, 2018)

\$169.00 (beginning on October 1, 2018)

**DISTANCE IN MILES BETWEEN TAXPAYER'S RESIDENCE WITHIN LEGISLATIVE
DISTRICT REPRESENTED AND CAPITOL BUILDING OF THE
STATE:** _____



W-2 Information – Calendar Year 2018

The information below is being provided to assist in understanding information on the W-2 (Wage and Tax Statement) document.

The amounts to be added and subtracted in the following calculations can be found on an employee's last pay warrant of the year, in the year-to-date columns.

Box 1 Wages, tips, other comp.

- + Gross pay
- + Constituent pay
- + Expense of office (if living within a 50 mile radius of the Capitol)
- + Taxable travel and other taxable fringe benefits
- + Other certain employee business expense reimbursements
- Retirement deducted from employee's wages (shown in box 14)
- Pretax health, dental and life insurance premiums paid by employee
- Pretax Annuities / Deferred Comp (shown in box 12 of the W-2, code E or G)
- Pretax flexible spending for dependent care benefits (shown in box 10 of the W-2)
- Pretax flexible spending for medical expenses (unlike dependent care, this is not reported elsewhere on the W-2)

Box 2 Federal income tax withheld

Determined by federal tax tables and the information provided by the employee on the federal form W-4 concerning marital status and withholding allowances.

Box 3 Social security wages (up to \$128,400 in 2018)

- + Gross Pay
- + Taxable travel and other taxable fringe benefits
- Pretax health, dental and life premiums paid by employee
- Pretax flexible spending plans for dependent care and/or medical expenses

Box 4 Social Security tax withheld (OASDI)

Social security wages (box 3) x 6.20%

Box 5 Medicare wages and tips

Social security wages; no ceiling

Box 6 Medicare tax withheld

Medicare wages and tips (box 5) x 1.45%.

Box 7 Social Security tips (not applicable)

Box 8 Allocated tips (not applicable)

Box 9 Blank

- Box 10** **Dependent care benefits**
The total amount deducted for participating employee's dependent care flexible spending account.
- Box 11** **Nonqualified plans**
Amount of distributions to an employee from a nonqualified deferred compensation plan or nongovernmental section 457(b) plan.
- Box 12a-12d** Codes used may be applicable to some, but not all, employees:
E – Pretax Section 403(b) contributions
G – Pretax Section 457(b) contributions (deferred compensation)
DD – Total value of employer-sponsored group health plan coverage. Includes both employer and employee share.
EE – Post-tax Section 457(b) contributions (ROTH deferred compensation)
- Box 13** "Retirement plan" box will have an X if the employee was an eligible participant in a State of Iowa retirement plan at any time during the calendar year. "Third-party sick pay" is not applicable to state employees.
- Box 14** **Other**
This is an optional field and DAS uses it to show an employee's deductions for their State retirement plan if their retirement plan is IPERS, Judicial, POR (Peace Officers Retirement), or TIAA CREF.
- Box 15** **State** – The state for which an employee's wages are reported.
- Box 16** **State wages, tips, etc.**
State taxable wages; same as Federal taxable wages (box 1).
- Box 17** **State income tax**
State income tax withheld; determined by state tax tables and the information provided by the employee on their state form W-4 concerning marital status and withholding allowances.
- Box 18, 19
& 20** **Other state wages, tips, etc., and state income tax**
These boxes will be populated if the employee had wages to be reported in more than one state for the calendar year.



U.S. General Services Administration

FY 2018 Per Diem Rates for ZIP 50319

Meals & Incidentals (M&IE) Breakdown

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Des Moines	Polk	\$59	\$13	\$15	\$26	\$5	\$44.25



U.S. General Services Administration

FY 2018 Per Diem Rates for ZIP 50319

Max lodging by month (excluding taxes.)

Primary Destination	County	2017 Oct	Nov	Dec	2018 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Des Moines	Polk	\$109	\$109	\$109	\$109	\$109	\$109	\$109	\$109	\$109	\$109	\$109	\$109



U.S. General Services Administration

FY 2019 Per Diem Rates for ZIP 50319

Meals & Incidentals (M&IE) Breakdown

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Des Moines	Polk	\$61	\$14	\$16	\$26	\$5	\$45.75



U.S. General Services Administration

FY 2019 Per Diem Rates for ZIP 50319

Max lodging by month (excluding taxes.)

Primary Destination	County	2018 Oct	Nov	Dec	2019 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Des Moines	Polk	\$108	\$108	\$108	\$108	\$108	\$108	\$108	\$108	\$108	\$108	\$108	\$108