



LEGISLATIVE
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February 7, 2011

TO: All State Representatives

FROM: Ann M. Ver Heul

RE: 2010 Tax Year State Representatives' Business Expense Deductions Pursuant to Tax Home Provision

I. 2010 Tax Year Federal Business Expense Deductions for State Representatives

Internal Revenue Code Section 162(h), relating to travel expenses of state legislators, allows state legislators whose district homes are more than 50 miles from the state capitol a per diem deduction on their federal returns for business expenses incurred while at the capitol.

The maximum per diem which is allowed as a deduction for legislators pursuant to Internal Revenue Code Section 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. See attached Legislator Tax Home memorandum from the National Conference of State Legislatures (NCSL). For tax year 2010, the applicable federal per diem rates were as follows:

January 1, 2010 – September 30, 2010: \$137.00 per day
Ratio: \$86.00 - Lodging
\$51.00 - Meals

October 1, 2010 – December 31, 2010: \$134.00 per day
Ratio: \$83.00 - Lodging
\$51.00 - Meals

Please note: New federal per diem rates issued by the General Services Administration now take effect on October 1 of each year. The rates for Iowa changed on October 1, 2010.

A. 2010 Business Expense Exclusions and Deductions

1. Expenses of Office Per Diem Exclusion. 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 at the seat of government. As noted above, in 2010 the per diem amount was \$137.00 per day through September 30, 2010.

The actual per diem provided to you by the State (expenses of office) is not includable in gross income because it is considered a reimbursement for business expense. This per diem is excludable from your gross income for each day the House of Representatives was in session (including periods of four consecutive days or less when the legislature was in recess). For

2010, the House of Representatives was in session for 79 calendar days. This amount, which is \$10,823, is not included in your gross income because it is “deemed substantiated” as a reimbursed business expense pursuant to Internal Revenue Code Section 162(h).

2. Other Per Diem Deductions

a. If you itemize deductions, you are entitled to a deduction for each day that your presence was recorded at a committee meeting during the interim. This information is provided to you by the Chief Clerk’s Office and will indicate the number of days your presence was recorded at a committee meeting during the interim. The interim per diem payments which you received are treated as taxable wages, not reimbursement for business expenses, on your W-2 form due to the statutory language which authorizes them.

b. The deductions described in paragraph “a” are treated as unreimbursed business expenses for federal tax purposes in the amounts of \$137.00 or \$134.00 per day and must be allocated between “lodging and other travel expenses” and “meals” in accordance with the ratio for such expenses under the federal per diem reimbursement rules for travel in the United States. Since the unreimbursed amount is \$137.00 per day for the period from January 1, 2010, through September 30, 2010, and \$134.00 per day for the period from October 1, 2010, through December 31, 2010, respectively, the following allocation is applicable:

| Unreimbursed Business Expenses | Lodging | Meals |
|--------------------------------|---------|---------|
| \$137.00 | \$86.00 | \$51.00 |
| \$134.00 | \$83.00 | \$51.00 |

(1) Of the amount allocated to lodging and other travel expenses (\$86.00 or \$83.00), the amount is fully deductible by legislators who itemize, along with all other miscellaneous itemized deductions, subject to the fact that it, along with all other miscellaneous itemized deductions, must meet a floor of 2 percent of the taxpayer’s adjusted gross income.

(2) For state legislators, the amount allowable for meals is the federal per diem allocation (\$51.00) less \$2.00 per legislative day. Of this amount (\$49.00), 50 percent or \$24.50 per legislative day is deductible by legislators who itemize, as an employee business expense, subject to the fact that it, along with all other miscellaneous itemized deductions, must also meet a floor of 2 percent of the taxpayer’s adjusted gross income.

Once again, these unreimbursed business expenses do not require substantiation.

B. Attached to this memo is a form for a “Statement of Election of Tax Home Pursuant to Internal Revenue Code Section 162(h).” If this form is completed and attached to your income tax return, you should be in compliance with 26 C.F.R. § 301.9100-4T(a), which requires any state legislator who makes a tax home election under Internal Revenue Code Section 162(h) for the taxable year to attach such a Statement of Election to the income tax return.

C. Neither NCSL nor this memo provides tax advice on how individual legislators should file their tax returns. The purpose of this memo is simply to make you and your tax preparer aware of tax provisions which may apply to Iowa legislators. NCSL will provide background information on Internal Revenue Code Section 162(h) and Section 975 of the Taxpayer Relief Act of 1997 upon request. NCSL can be reached at 303-856-1431.

II. 2010 Tax Year State Business Expense Deduction for State Legislators

Iowa Code section 422.7(10) provides that state legislators who live more than 50 miles from the state capitol may claim the same deductions on their Iowa income tax returns for expenses incurred for meals and lodging as are allowed for federal income tax purposes.

State legislators who live 50 miles or less from the state capitol may claim deductions at a rate of \$50.00 per "legislative day." However, state legislators may choose to itemize deductions for expenses incurred for meals and lodging. Based on the language of Iowa Code section 422.7(10), it appears that the deduction of \$50.00 per day is available for each day the legislature was in session, including periods of four consecutive days or less when the legislature was in recess, and for each day the legislator's presence was reported at a committee meeting during the interim as is true under the federal provision.

III. Miscellaneous Business Expense Deductions

Please note that in 2010 you received constituent pay in the amount of \$200.00 per month for the months of January-July 2010, and \$300.00 per month for the months of August-December 2010. This constituent pay is included in taxable wages on your W-2 form and is also deductible as a business expense 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 already substantiated, they are also deductible as business expenses.

IV. Legislator W-2 Forms

Jean McPherson, 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 2010, which is attached.

If you or your tax preparer have any questions about the information contained in my memo, please feel free to contact me. My telephone number is 515-281-3837. My e-mail address is ann.ver.heul@legis.state.ia.us.

CC: Iowa House: Representatives and Former Representatives
Chief Clerk
House Finance Clerk

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

TAXABLE YEAR: 2010

TAXPAYER'S NAME _____

SOCIAL SECURITY NUMBER _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS (HOUSE OF REPRESENTATIVES): 79

FEDERAL PER DIEM RATE FOR STATE CAPITOL:

January 1, 2010 - September 30, 2010 \$137.00

October 1, 2010 - December 31, 2010 \$134.00

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



DATE: January 21, 2011
TO: Ann Ver Heul, Legislative Services Agency
FROM: Jean McPherson, DAS-SAE-Centralized Payroll
RE: W-2 Information for Legislators – Calendar Year 2010

This memo is provided to assist in helping legislators better understand the information contained on their W-2s. Please feel free to share this information with them. No changes were made to the format of this year's W-2 (Wage and Tax Statement 2010), and all the same fields are being used in the same manner as last year.

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

Box 1 ***Wages, tips, other comp.***

- + Gross pay (includes interim per diem payments)
- + 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)
- Pre-tax health, dental and life insurance premiums paid by employee
- Annuities / Deferred Comp (shown in box 12 of the W-2)
- 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 their federal form W-4 concerning marital status and withholding allowances.

Box 3 ***Social security wages (up to \$106,800 in 2010)***

- + Gross Pay
- + Taxable travel and other taxable fringe benefits
- Pre-tax 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 **Advance EIC payment**
The amount paid to an employee who qualified for advance earned income credit.

Box 10 **Dependent care benefits**
The total amount deducted for participating employee's flexible spending account – dependent care only.

Box 11 **Nonqualified plans**
Amount of distributions to an employee from a nonqualified deferred compensation plan or 457 plan.

Box 12a-12d Codes used are applicable to some, but not all, employees:
 C - Value of group-term life insurance covered over \$50,000 (imputed income)
 E - Section 403(b) contributions
 G - Section 457(b) contributions (deferred compensation)
 P - Excludable reimbursed moving expenses

Box 13 "Statutory employee" box will have an X in it if the employee is a statutory employee. "Retirement plan" box will have an X in it if the employee was a participant in a State retirement plan. "Third-party sick pay" is not applicable to State employees.

Box 14 Employee's deductions for their State retirement plan if their retirement plan is IPERS, Judicial, POR (Peace Officers Retirement), or TIAA CREF.

Box 16 **State wages, tips, etc.**
State taxable wages.

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.

Boxes 18, 19 and 20 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.

You may contact me at 515-281-3976, or Michelle Wendel at 515-281-8120, if you have any questions about this information.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home Advisory
(reviewed December 2010)

The National Conference of State Legislatures does not provide tax advice or opinions to state legislatures or to state legislators. This overview is for purposes of general guidance only.

SUMMARY

State legislators who live more than 50 miles from the state capitol may choose to claim their district residence as their "tax home." In doing so, legislators may claim the expenses they incur while conducting official legislative business as a tax deduction on their federal income tax return. This deduction is known as the "legislators tax home deduction." It was created as part of the 1981 Economic Recovery Tax Act (Public Law 97-34) and is Section 162(h) in the IRS Code.

*****IMPORTANT UPDATE: New IRS legislator tax home regulations become effective for the 2011 tax year. See Internal Revenue Bulletin 2010-17 (www.irs.gov/irb/2010-17_IRB/ar12.html) for details or contact NCSL for more information.**

LEGISLATOR TAX HOME

How are the "Tax Home" Rates Determined?

State legislators who reside more than 50 miles "from the capitol building of the State" are eligible to claim the tax home deduction for living expenses. The allowable amount of the tax home deduction is the greater of the federal or state per diem rates for the state capital city, as long as the state rate does not exceed 110 percent of the federal rate. The federal rates are the same as those allowed to executive branch employees in the Federal Government. Each year, the U.S. General Services Administration (GSA) assesses the current federal per diem rates, makes adjustments where necessary, and prints the new federal per diem rates in the Federal Register. The Department of Defense sets the rates for Alaska and Hawaii. Contact NCSL to obtain the current GSA per diem rate schedule.

Calculating the Tax Home Deduction:

Category A

If a legislator is reimbursed an amount equal to the per diem amount allowable under 162(h) and the reimbursement is reported as income, the amount may be subtracted under Section 62(2)(A) of the Internal Revenue Code to arrive at adjusted gross income (AGI). This is termed an "above the line" deduction.

Category B

If a legislator is reimbursed less than the per diem amount allowable as a deduction under 162(h), the amount actually reimbursed is subtracted "above the line" to determine AGI. The difference between the allowable amount and the actual reimbursed amount is treated as a miscellaneous itemized deduction on a Schedule A and is subject to two rules. First, the excess is allocated to lodging and meals according to the ratio of meals and lodging under the federal per diem reimbursement rules applicable to the state capital, and only 50% of the amount allocated to meals is deductible (26 USC 274(n)(1)(A)). Second, miscellaneous itemized deductions are only deductible if they exceed 2% of adjusted gross income.

Once the daily deduction is determined, a state legislator may multiply this rate by the number of "legislative days" that the legislator conducted legislative business during the year. This final calculation is the total allowable deduction for a given year. In Section 162(h)(2), a legislative day is defined as any day during such year on which:

- a) the legislature was in session (including any day in which the legislature was not in session for a period of 4 days or less)
- b) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

The IRS Code does not define "legislative session" or "committee." [*see IRS Bulletin 2010-17 for changes to the above definitions that apply to the 2011 tax year*]

LEGISLATOR TAX GUIDES: Some state CPA societies publish an annual tax guide for state legislators that provides more detail on these and other tax provisions. See your state chapter to find out if one is available. *NCSL does not provide tax advice on how individual legislators should file their returns. Legislators are advised to consult with a tax specialist when applying the tax home provisions.*



[Legislatures & Elections](#) >> [Legislators & Legislative Staff Data](#) >> **Domestic Maximum Per Diem Rates 2010**

U.S. General Services Administration Domestic Maximum Per Diem Rate EFFECTIVE October 1, 2010

| STATE | | LODGING | M&IE* | TOTAL |
|----------------------|-------------|---------|-------|-------|
| Alabama | | 77 | 46 | 123 |
| Alaska** | | | | |
| Arizona | 10/01-12/31 | 106 | 71 | 177 |
| | 1/01-5/31 | 126 | 71 | 197 |
| | 6/1-8/31 | 81 | 71 | 152 |
| | 9/1-9/30 | 106 | 71 | 177 |
| Arkansas | | 88 | 61 | 149 |
| California | | 101 | 61 | 162 |
| Colorado | | 141 | 66 | 207 |
| Connecticut | | 106 | 56 | 162 |
| Delaware | 10/1-4/31 | 77 | 46 | 123 |
| | 5/1-9/30 | 92 | 46 | 138 |
| District of Columbia | 10/1-10/31 | 211 | 71 | 282 |
| | 11/01-2/28 | 181 | 71 | 252 |
| | 3/01-6/30 | 211 | 71 | 282 |
| | 7/01-8/31 | 157 | 71 | 228 |
| | 9/01-9/30 | 211 | 71 | 282 |
| Florida | | 87 | 46 | 133 |
| Georgia | | 132 | 56 | 188 |

| | | | | |
|----------------|-------------|-----|----|-----|
| Hawaii** | | | | |
| Idaho | | 77 | 46 | 123 |
| Illinois | | 82 | 56 | 138 |
| Indiana | | 91 | 61 | 152 |
| Iowa | | 83 | 51 | 134 |
| Kansas | | 77 | 46 | 123 |
| Kentucky | | 77 | 46 | 123 |
| Louisiana | | 96 | 56 | 152 |
| Maine | | 77 | 46 | 123 |
| Maryland | 10/1-10/31 | 114 | 61 | 175 |
| | 11/1-4/30 | 100 | 61 | 161 |
| | 5/1-9/30 | 114 | 61 | 175 |
| Massachusetts | 10/1-10/31 | 206 | 71 | 277 |
| | 11/1-3/31 | 154 | 71 | 225 |
| | 4/01-6/30 | 190 | 71 | 261 |
| | 7/01-8/31 | 171 | 71 | 242 |
| | 9/01-9/30 | 206 | 71 | 277 |
| Michigan | | 82 | 51 | 133 |
| Minnesota | | 120 | 71 | 191 |
| Mississippi | | 77 | 46 | 123 |
| Missouri | | 77 | 46 | 123 |
| Montana | | 81 | 56 | 137 |
| Nebraska | | 77 | 46 | 123 |
| Nevada | | 93 | 71 | 164 |
| New Hampshire | 10/1-5/31 | 82 | 51 | 133 |
| | 6/1-9/30 | 92 | 51 | 143 |
| New Jersey | | 126 | 61 | 187 |
| New Mexico | 10/01-10/31 | 100 | 71 | 171 |
| | 11/1-6/30 | 82 | 71 | 153 |
| | 7/1-9/30 | 100 | 71 | 171 |
| New York | | 104 | 61 | 165 |
| North Carolina | | 90 | 66 | 156 |

| | | | | |
|----------------|-----------|-----|----|-----|
| North Dakota | | 77 | 46 | 123 |
| Ohio | | 94 | 56 | 150 |
| Oklahoma | | 82 | 61 | 143 |
| Oregon | | 77 | 46 | 123 |
| Pennsylvania | 10/1-5/30 | 106 | 51 | 157 |
| | 6/1-8/31 | 130 | 51 | 181 |
| | 9/1-9/30 | 106 | 51 | 157 |
| Rhode Island | | 122 | 71 | 193 |
| South Carolina | | 85 | 51 | 136 |
| South Dakota | | 77 | 46 | 123 |
| Tennessee | | 110 | 66 | 176 |
| Texas | | 104 | 71 | 175 |
| Utah | | 95 | 61 | 156 |
| Vermont | | 100 | 61 | 161 |
| Virginia | | 114 | 66 | 180 |
| Washington | | 86 | 61 | 147 |
| West Virginia | | 95 | 51 | 146 |
| Wisconsin | | 88 | 56 | 144 |
| Wyoming | | 77 | 46 | 123 |

*Meals and Incidental Expenses.

** Alaska and Hawaii Rates set by Department of Defense. DOD rates are available [here](#).

See CFR 162 (F)(4) for treatment of reimbursed expenses.

Note: Source of information for GSA 2010 per diem rates is available [here](#).

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