



February 14, 2018

TO: All State Senators

FROM: Mike Mertens

RE: 2017 Tax Year State Senators' Business Expense Deductions Pursuant to Tax Home Provision

I. 2017 Federal Expense Deductions for State Senators

A. Background

Internal Revenue Code §162(h) relates to travel expenses of state legislators and allows state legislators whose district homes are more than 50 miles from the State Capitol a per diem deduction on their federal returns for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a state legislator, in the amount of the applicable federal per diem rate.

The maximum per diem which is allowed as a deduction 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. For tax year 2017, the applicable federal per diem rates were as follows:

January 1, 2017 – September 30, 2017: \$166.00 per day
Ratio: \$107.00 - Lodging
\$59.00 - Meals and Incidental Expenses

October 1, 2017 – December 31, 2017: \$168.00 per day
Ratio: \$109.00 - Lodging
\$59.00 - Meals and Incidental Expenses

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, 2017.

B. Federal Regulations Applicable to Legislator Business Expense Deductions

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. 2017 Business Expense Exclusions and Deductions

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 2017 the per diem amount was \$166.00 per day through September 30, 2017.

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 “legislative day.” For 2017, the Senate convened on January 9, 2017, and adjourned April 22, 2017, spanning 104 calendar days. Pursuant to the limitations contained in Iowa Code §2.10, and 2017 Iowa Acts, ch.163, §19 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 \$16,600, is not included in your gross income because it is “deemed substantiated” as a reimbursed business expense pursuant to Internal Revenue Code §162(h).

2. Legislative Days – Other Per Diem Deductions

a. Other 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 when you attend 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. If the meeting meets the federal definition of “committee of the legislature” and you itemize deductions, you are entitled to a deduction in computing taxable income for each day that your presence was recorded at such a meeting. This information is provided to you by the Senate Finance Clerk. The interim per diem payments which you received are included as taxable wages on your W-2 form, and are not considered reimbursements for business expenses, due to the statutory language which authorizes them.

b. Allocation of Per Diem Allowance for Tax Purposes

The deductions described in paragraph “a” are treated as unreimbursed business expenses for federal tax purposes in the amount of \$166.00 per day for expenses incurred prior to October 1, 2017, and \$168.00 per day for expenses incurred on or after that date and must be allocated between “lodging and other travel expenses” and “meals and incidental expenses” 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 either \$166.00 per day or \$168.00 per day during 2017, the following allocation is applicable:

Unreimbursed Business Expenses	Lodging	Meals and Incidental Expenses
\$166.00	\$107.00	\$59.00
\$168.00	\$109.00	\$59.00

(1) Of the amount allowable for lodging (\$107.00 or \$109.00), 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 and incidental expenses is the federal per diem allocation (\$59.00) with \$5.00 per legislative day allocated to incidental expenses. Of the amount allocated to meals (\$54.00), 50 percent (\$27.00) 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.

(3) The amount allocated to incidental expenses for each legislative day (\$5.00) is also deductible 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.

D. 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.

II. 2017 Tax Year State Business Expense Deduction for State Legislators

Iowa Code §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 travel expenses 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 travel expenses.

III. Miscellaneous Business Expense Deductions

Please note that in 2017 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 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 substantiated, they are deductible as business expenses.

IV. Legislator W-2 Forms

Michelle Wendel, 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 2017, which is attached.

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

V. 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 the law 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. The federal regulations were new for the 2011 tax year and as far as I know have not yet been interpreted so it is not clear how they will be applied in specific situations. 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 angela.andrews@ncsl.org.

CC: Iowa Senate: Senators
Secretary of the Senate
Senate Finance Clerk

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

TAXABLE YEAR: 2017

TAXPAYER'S NAME _____

TAXPAYER IDENTIFICATION NUMBER _____

STATE AND LEGISLATIVE DISTRICT REPRESENTED _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS (SENATE): _____

2017 FEDERAL PER DIEM RATE FOR STATE CAPITOL:

\$166.00 (through September 30, 2017)

\$168.00 (beginning on October 1, 2017)

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



January 11, 2018
W-2 Information – Calendar Year 2017

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
- + 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 \$127,200 in 2017)

- + 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)
P – Excludable reimbursed moving expenses
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.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home Advisory

(January 2018)

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 "legislator 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 Internal Revenue Service Code.

State Legislator Travel Fact Sheet (Source: Internal Revenue Service)

Section 162(a)(2) of the Internal Revenue Code allows a deduction for the ordinary and necessary expenses incurred in a trade or business, including travel expenses while away from the individual's tax home.

Generally, the taxpayer's tax home is the principal place of activity for the business. However, Section 162(h) provides a special election for state legislators who attend legislative sessions away from the area of their residence. This election allows a state legislator to designate his or her personal residence as his or her home with respect to the trade or business of being a legislator. This means that when the legislator is at the state capital, he or she will be traveling away from home and incur deductible expenses.

The election is only available to legislators whose place of residence is more than 50 miles from the state capitol.

By making the election, the legislator is deemed to have expended for living expenses an amount determined by multiplying the number of legislative days of the taxpayer during the taxable year by the greater of:

1. The amount generally allowable for those days to employees of the legislator's state for per diem while away from home, to the extent the amount does not exceed 110 percent of the Federal employee per diem; or
2. The Federal employee per diem during those days for the legislator's state capital.

A "legislative day" includes any day the legislature is in session. This includes any day when the members are expected to attend, regardless of whether the electing legislator actually does attend. A legislative day also includes any day the legislature is not in session but the physical presence of the electing legislator is formally recorded at a meeting of a committee of the legislature

The legislature is considered "in session" when it is not in session for a period of 4 days or less.

"Living expenses" include expenses for lodging, meals, laundry, and other incidental expenses, but does not include expenses for travel fares, local transportation, or telephone calls.

No deduction is allowed for any expenses to the extent that the legislator receives reimbursement for them.

A legislator makes the election by attaching a statement to the legislator income tax return (or amended return) for the taxable year for which the election is effective. The information required on this statement is stated in the proposed regulations.

The IRS issued [Treasury Decision 9481](#) on April 7, 2010, to incorporate these rules into final regulation 1.162-24.

**U.S General Services Administration
Domestic Maximum Per Diem Rates**

EFFECTIVE October 1, 2016

STATE		LODGING	M&IE*	TOTAL
Alabama		91	51	142
Alaska**				
Arizona	10/1-12/31	118	59	177
	1/1-3/31	169	59	228
	4/1-5/31	130	59	189
	6/1-8/31	91	59	150
	9/1-9/30	118	59	177
Arkansas		94	59	153
California		119	64	183
Colorado	10/1-11/30	178	69	247
	12/1-1-31	149	69	218
	2/1-9/30	178	69	247
Connecticut		124	59	183
Delaware	10/1-4/30	91	54	145
	5/1-9/30	105	54	159
District of Columbia	10/1-10/31	231	69	300
	11/1-2/28	182	69	251
	3/1-6/30	242	69	311
	7/1-8/31	172	69	241
	9/01-9/30	231	69	300
Florida	10/1-12/31	98	54	152
	1/1-4/30	117	54	171
	5/1-9/30	98	54	152
Georgia	10/1-12/31	140	69	209
	1/1-4/30	148	69	217
	5/1-9/30	140	69	209
Hawaii**				
Idaho		91	51	142
Illinois		91	51	142
Indiana	10/1-1/31	107	54	161
	2/1-4/30	121	54	175
	5/1-9/30	107	54	161
Iowa		107	59	166
Kansas		91	51	142
Kentucky		91	51	142

Louisiana		97	59	156
Maine		91	51	142
Maryland	10/1-10/31	126	69	195
	11/1-4/30	103	69	172
	5/1-9/30	126	69	195
Massachusetts	10/1-10/31	296	69	365
	11/1-3/31	204	69	273
	4/1-6/30	275	69	344
	7/1-8/31	262	69	331
	9/1-9/30	296	69	365
Michigan		100	59	159
Minnesota		145	64	209
Mississippi		91	51	142
Missouri		91	51	142
Montana		95	64	159
Nebraska		91	51	142
Nevada		91	51	142
New Hampshire		102	59	161
New Jersey		127	59	186
New Mexico		100	64	164
New York		116	59	175
North Carolina		111	59	170
North Dakota		91	51	142
Ohio		109	59	168
Oklahoma		115	59	174
Oregon		91	51	142
Pennsylvania		110	69	179
Rhode Island		147	59	206
South Carolina		101	59	160
South Dakota		91	51	142
Tennessee	10/1-6/30	161	59	220
	7/1-8/30	151	59	210
	9/1-9/30	161	59	220
Texas	10/1-12/31	141	59	200
	1/1 – 3/31	158	59	217
	4/1-9/30	141	59	200
Utah	10/1-12/31	115	59	174
	1/1-3/31	121	59	180
	4/1-9/30	115	59	174

Vermont		115	74	189
Virginia	10/1-10/31	143	64	207
	11/1-8/31	132	64	196
	9/1-9/30	143	64	207
Washington		103	69	172
West Virginia		107	54	161
Wisconsin		115	59	174
Wyoming		91	51	142

***Meals and Incidental Expenses.**

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

Note: Source of information for GSA 2017 per diem rates is available [here](#).

**U.S General Services Administration
Domestic Maximum Per Diem Rates**

EFFECTIVE October 1, 2017

State		Lodging	M&IE*	Total
Alabama		93	51	144
Alaska**				0
Arizona	10/1-12/31	124	59	183
	1/1-3/31	174	59	233
	4/1-5/31	133	59	192
	6/1-8/31	93	59	152
	9/1-9/30	124	59	183
Arkansas		96	59	155
California		128	64	192
Colorado		180	69	249
Connecticut		125	59	184
Delaware	10/1-4/30	93	54	147
	5/1-9/30	110	54	164
Florida	10/1-12/31	98	54	152
	1/1-4/30	116	54	170
	5/1-9/30	98	54	152
Georgia		101	59	160
Hawaii**				0
Idaho		93	51	144
Illinois		93	51	144
Indiana		119	54	173
Iowa		109	59	168
Kansas		93	51	144
Kentucky	10/1-10/31	109	54	163
	11/1-3/31	101	54	155
	4/1-9/30	109	54	163
Louisiana		105	59	164
Maine		93	51	144
Maryland		93	51	144
Massachusetts	10/1-11/30	287	69	356
	12/1-2/28	169	69	238
	3/1-8/31	267	69	336
	9/1-9/30	287	69	356
Michigan		103	59	162
Minnesota		149	64	213
Mississippi		93	51	144
Missouri		93	51	144
Montana		99	64	163
Nebraska		93	51	144
Nevada		93	51	144
New Hampshire		102	59	161
New Jersey		129	59	188
New Mexico	10/1-12/31	119	64	183

	1/1-2/28	97	64	161
	3/1-9/30	119	64	183
New York		115	59	174
North Carolina		115	59	174
North Dakota		93	51	144
Ohio		119	59	178
Oklahoma		95	59	154
Oregon		93	51	144
Pennsylvania		114	69	183
Rhode Island		151	59	210
South Carolina		105	59	164
South Dakota		93	51	144
Tennessee	10/1-6/30	170	59	229
	7/1-8/31	162	59	221
	9/1-9/30	170	59	229
Texas	10/1-12/31	146	59	205
	1/1-3/31	165	59	224
	4/1-9/30	146	59	205
Utah	10/1-12/31	117	59	176
	1/1-8/31	124	59	183
	9/1-9/30	117	59	176
Vermont		125	74	199
Virginia	10/1-10/31	146	64	210
	11/1-8/31	139	64	203
	9/1-9/30	146	64	210
Washington	10/1-10/31	112	69	181
	11/1-8/31	128	69	197
	9/1-9/30	112	69	181
West Virginia		110	54	164
Wisconsin	10/1-10/31	122	59	181
	11/1-1/31	107	59	166
	2/1-9/30	122	59	181
Wyoming		93	51	144

*** Meals and Incidental Expenses.**

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

Note: Source of information for GSA 2017 per diem rates is available [here](#).