



February 2, 2010

TO: All State Senators

FROM: Ann M. Ver Heul

RE: 2009 Tax Year State Senators' Business Expense Deductions Pursuant to Tax Home Provision

I. 2009 Tax Year Federal Business Expense Deductions for State Senators

Internal Revenue Code Sec. 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 Sec. 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 2009, the applicable federal per diem rates were as follows:

January 1, 2009 – September 30, 2009: \$130.00 per day
Ratio: \$86.00 - Lodging
\$44.00 - Meals

October 1, 2009 – December 31, 2009: \$137.00 per day
Ratio: \$86.00 - 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, 2009.

A. 2009 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 2009 the per diem amount was \$130.00 per day through September 30, 2009.

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 Senate was in session (including periods of four consecutive days or less when the legislature was in recess). For 2009, the Senate was in

session for 105 calendar days. However, all senators were paid expenses of office per diem for only 100 calendar days. This amount, which is \$13,000, is not included in your gross income because it is "deemed substantiated" as a reimbursed business expense pursuant to Internal Revenue Code Sec. 162(h).

2. Other Per Diem Deductions

a. If you itemize deductions, you are entitled to a deduction for each day that the legislature was in session (including periods of four consecutive days or less when the legislature was in recess) for which you did not receive expenses of office. In 2009, the Senate was in session for five calendar days in April during the regular session for which senators did not receive expenses of office. If you itemize deductions, you are entitled to a deduction for five days as an unreimbursed business expense.

b. If you itemize deductions, you are also 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 Senate Finance Clerk 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 (\$130.00 per day or \$137.00 per day) are treated as taxable wages, not reimbursement for business expenses, on your W-2 form due to the statutory language which authorizes them.

c. The deductions described in paragraphs "a" and "b" are treated as unreimbursed business expenses for federal tax purposes in the amounts of \$130.00 or \$137.00 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 \$130.00 per day for the period from January 1, 2009, through September 30, 2009, and \$137.00 per day for the period from October 1, 2009, through December 31, 2009, respectively, the following allocation is applicable:

Unreimbursed Amount	Lodging	Meals
\$130.00	\$86.00	\$44.00
\$137.00	\$86.00	\$51.00

(1) Of the amount allocated to lodging and other travel expenses (\$86.00), 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 (\$44.00 or \$51.00) less \$2.00 per legislative day. Of this amount (\$42.00 or \$49.00), 50 percent or \$21.00 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 amounts 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 Sec. 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 Sec. 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 Sec. 162(h) and Section 975 of the Taxpayer Act of 1997 upon request. NCSL can be reached at 303/364-7700.

II. 2009 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 2009 you received constituent pay in the amount of \$300.00 per month. 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 2009, 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 Senate: Senators and Former Senators
Secretary of the Senate
Senate Finance Clerk

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

TAXABLE YEAR: 2009

TAXPAYER'S NAME _____

SOCIAL SECURITY NUMBER _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS (SENATE): 105

FEDERAL PER DIEM RATE FOR STATE CAPITOL:

January 1, 2009 - September 30, 2009 \$130.00

October 1, 2009 - December 31, 2009 \$137.00

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



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home

(reviewed October 2009)

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. State legislators who wish to take these deductions should consider consulting a tax expert to ensure compliance with the federal tax provisions.

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.

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."

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.

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

EFFECTIVE October 1, 2009

STATE		LODGING	M&IE*	TOTAL
Alabama		78	51	129
Alaska**				
Arizona	10/01-12/31	120	71	191
	1/01-5/31	140	71	211
	6/01-8/31	89	71	160
	9/01-9/30	120	71	191
Arkansas		88	61	149
California		109	61	170
Colorado		158	66	224
Connecticut		112	56	168
Delaware	10/1-4/30	77	46	123
	5/1-9/30	96	46	142
District of Columbia	10/01-10/31	229	71	300
	11/01-2/28	207	71	278
	3/01-6/30	226	71	297
	7/01-8/31	170	71	241
	9/01-9/30	229	71	300
Florida		90	46	136
Georgia		140	56	196
Hawaii**				
Idaho		85	51	136
Illinois		83	56	139
Indiana		94	61	155
Iowa		86	51	137
Kansas		70	46	116
Kentucky		70	46	116
Louisiana		103	56	159
Maine	10/01-6/30	91	56	147
	7/01-9/30	115	56	171
Maryland		120	61	181
Massachusetts	10/1-10/31	240	71	311
	11/1-3/31	168	71	239
	4/01-6/30	231	71	302
	7/01-8/31	205	71	276
	9/01-9/30	240	71	311
Michigan		84	51	135

Minnesota		137	71	208
Mississippi		70	46	116
Missouri		78	51	129
Montana		81	56	137
Nebraska		70	46	116
Nevada		100	61	161
New Hampshire	10/1-10/31	99	51	150
	11/1-5/31	84	51	135
	6/1-9/30	99	51	150
New Jersey		140	61	201
New Mexico	10/01-05/31	88	71	159
	06/01-08/31	109	71	180
	09/01-09/30	88	71	159
New York		110	61	171
North Carolina		92	66	158
North Dakota		70	46	116
Ohio		101	56	157
Oklahoma		84	66	150
Oregon		70	46	116
Pennsylvania		103	51	154
Rhode Island		139	71	210
South Carolina		93	51	144
South Dakota		70	46	116
Tennessee		119	66	185
Texas	10/01-10/31	121	71	192
	11/01-08/31	115	71	186
	09/01-09/30	121	71	192
Utah		106	61	167
Vermont		101	61	162
Virginia		125	66	191
Washington		89	61	150
West Virginia		101	51	152
Wisconsin		93	56	149
Wyoming		70	46	116

***Meals and Incidental Expenses.**

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

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

Note: Source of information for GSA 2008 per diem rates is available [here](#).



DATE: January 21, 2010
TO: Ann Ver Heul, Legislative Services Agency
FROM: Jean McPherson, DAS-SAE-Centralized Payroll
RE: W-2 Information for Legislators – Calendar Year 2009

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 2009), 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 2009)*

- + 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** **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.**
- 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.

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