



---

**February 3, 2014**

**TO: All State Representatives**

**FROM: Ann M. Ver Heul**

**RE: 2013 Tax Year State Representatives' Business Expense Deductions Pursuant to Tax Home Provision**

---

**I. 2013 Federal Expense Deductions for State Representatives**

**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 2013, the applicable federal per diem rates were as follows:

January 1, 2013 – September 30, 2013: \$135.00 per day  
Ratio: \$84.00 - Lodging  
\$51.00 - Meals and Incidental Expenses

October 1, 2013 – December 31, 2013: \$144.00 per day  
Ratio: \$93.00 - Lodging  
\$51.00 - 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, 2013.

**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. 2013 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 2013 the per diem amount was \$135.00 per day through September 30, 2013.

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 2013, the House of Representatives convened on January 14, 2013, and adjourned May 23, 2013, spanning 130 calendar days. Pursuant to the limitations contained in Iowa Code §2.10, you were paid per diem for 110 calendar days, which appear to meet the definitions of a “legislative day” and of a “legislative session.” The 110th calendar day for which you were paid per diem was May 3, 2013. This amount, which is \$14,850, 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. Expenses of Office Per Diem Not Received**

If you itemize deductions, you may be entitled to a deduction for each “legislative day” for which you did not receive expenses of office per diem. In 2013, the regular session spanned 130 calendar days. For the last 20 of those days, representatives did not receive expenses of office per diem. If you itemize deductions, you may be entitled to a deduction for some or all of those days as an unreimbursed travel expense, depending on whether the day meets the definition of a “legislative day” for federal tax purposes. For instance:

- It would seem that all legislators are entitled to a deduction for those days on which the body met the definition of a “legislative session,” which is a day members of the legislature are expected to attend and participate as an assembled body of the legislature.
- It would seem that legislators who were present on days which were essentially “pro forma,” that is, when the chamber gavelled in and out but did not conduct business, are entitled to a deduction for those days if the legislator was formally recorded as being present on that day. You, as the taxpayer, and the House of Representatives would be responsible for this formal recording.
- It appears that the “pro forma” days when a chamber gavelled in and out but did not conduct business with expected participation by all members do not satisfy the definition of “legislative session.” However, such a “pro forma” day could be considered one of the days in a period of four consecutive days or less when the legislature is actually not in session but that still is considered regular session days.
- Groups of legislators who met for the purpose of negotiating bills or other legislative actions on days when the legislature was not in session might be considered a “committee of the legislature” such that those meeting days could be considered “legislative days,” allowing those legislators to take a deduction for those meeting days if their presence was formally recorded at the meeting. You, as the taxpayer, and the House of Representatives would be responsible for this formal recording.
- It appears that if you incurred travel expenses for travel away from home (including living expenses) for a day that does not meet the definition of a “legislative day,” you may be able to deduct those expenses if they are otherwise deductible, and if the expenses are substantiated. For example, if you participated in meetings such as negotiating bills or other legislative actions but there was no formal recording of the participants, you might still be entitled to deduct your travel expenses associated with that meeting, so long as you can substantiate the expenses with the usual documentation required for other business travel expenses.

**b. 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 from taxable income for each day that your presence was recorded at such a meeting. 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 business expenses, due to the statutory language which authorizes them.

**c. Allocation of Per Diem Allowance for Tax Purposes**

The deductions described in paragraphs “a” and “b” are treated as unreimbursed business expenses for federal tax purposes in the amount of \$135.00 per day for expenses incurred prior to October 1, 2013, and \$144.00 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 \$135.00 per day or \$144.00 per day during 2013, the following allocation is applicable:

Unreimbursed Business Expenses	Lodging	Meals and Incidental Expenses
\$135.00	\$84.00	\$51.00
\$144.00	\$93.00	\$51.00

(1) Of the amount allowable for lodging (\$84.00 or \$93.00), 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 (\$51.00) with \$5.00 per legislative day allocated to incidental expenses. Of the amount allocated to meals (\$46.00), 50 percent or \$23.00 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. 2013 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 2013 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 2013, which is attached.

If you or your tax preparer have any questions regarding this memorandum, please feel free to contact me by e-mail. My e-mail address is [ann.ver.heul@legis.iowa.gov](mailto:ann.ver.heul@legis.iowa.gov).

#### **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 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 [morgan.cullen@ncsl.org](mailto:morgan.cullen@ncsl.org).

**CC: Iowa House:** Representatives  
Chief Clerk  
House Finance Clerk

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

**TAXABLE YEAR: 2013**

**TAXPAYER'S NAME** \_\_\_\_\_

**TAXPAYER IDENTIFICATION NUMBER** \_\_\_\_\_

**STATE AND LEGISLATIVE DISTRICT REPRESENTED** \_\_\_\_\_

**ADDRESS (within legislative district represented):** \_\_\_\_\_

\_\_\_\_\_

**NUMBER OF LEGISLATIVE DAYS (HOUSE OF REPRESENTATIVES):** \_\_\_\_\_

**2013 FEDERAL PER DIEM RATE FOR STATE CAPITOL:**

**\$135.00 (through September 30, 2013)**

**\$144.00 (beginning on October 1, 2013)**

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