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**February 8, 2016**

**TO: All State Senators**

**FROM: Ann M. Ver Heul**

**RE: 2015 Tax Year State Senators' Business Expense Deductions Pursuant to Tax Home Provision**

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**I. 2015 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 2015, the applicable federal per diem rates were as follows:

January 1, 2015 – September 30, 2015: \$148.00 per day  
Ratio: \$97.00 - Lodging  
\$51.00 - Meals and Incidental Expenses

October 1, 2015 – December 31, 2015: \$160.00 per day  
Ratio: \$101.00 - 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, 2015.

**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. 2015 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 2015 the per diem amount was \$148.00 per day through September 30, 2015.

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 2015, the Senate convened on January 12, 2015, and adjourned June 5, 2015, spanning 145 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 1, 2015. This amount, which is \$16,280, 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 2015, the regular session spanned 145 calendar days. For the last 35 of those days, senators 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 Senate 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 not in session but that still is considered a regular session day.
- 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 Senate 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 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.

**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 \$148.00 per day for expenses incurred prior to October 1, 2015, and \$160.00 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 \$148.00 per day or \$160.00 per day during 2015, the following allocation is applicable:

Unreimbursed Business Expenses	Lodging	Meals and Incidental Expenses
\$148.00	\$ 97.00	\$51.00
\$160.00	\$101.00	\$59.00

(1) Of the amount allowable for lodging (\$97.00 or \$101.00), 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 or \$59.00) with \$5.00 per legislative day allocated to incidental expenses. Of the amount allocated to meals (\$46.00 or \$54.00), 50 percent or (\$23.00 or \$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. 2015 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 2015 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 2015, 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 [kae.warnock@ncsl.org](mailto:kae.warnock@ncsl.org).

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

1601RR

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

**TAXABLE YEAR: 2015**

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

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

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

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

\_\_\_\_\_

**NUMBER OF LEGISLATIVE DAYS (SENATE):** \_\_\_\_\_

**2015 FEDERAL PER DIEM RATE FOR STATE CAPITOL:**

**\$148.00 (through September 30, 2015)**

**\$160.00 (beginning on October 1, 2015)**

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



DATE: January 13, 2016  
TO: Ann Ver Heul, Legislative Services Agency  
FROM: Michelle Wendel, Centralized Payroll Program Manager  
RE: W-2 Information for Legislators – Calendar Year 2015

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. All 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)
- 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 federal form W-4 concerning marital status and withholding allowances.

**Box 3** *Social security wages (up to \$118,500 in 2015)*

- + 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 457 plan.

**Box 12a-12d** Codes used are applicable to some, but not all, employees:

E - Section 403(b) contributions

G - 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** "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 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.

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





NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

## Legislator Tax Home Advisory

(January 2016)

***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: United States 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 IRS issued [Treasury Decision 9481](#) on April 26, 2010, to incorporate these rules into final regulation 1.162-24.

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

EFFECTIVE October 1, 2015

<b>STATE</b>		<b>LODGING</b>	<b>M&amp;IE*</b>	<b>TOTAL</b>
Alabama		89	51	140
Alaska**				
Arizona	10/1-12/31	113	59	172
	1/1-3/31	161	59	220
	4/1-5/31	120	59	179
	6/1-8/31	89	59	148
	9/1-9/30	113	59	172
Arkansas		91	59	150
California		112	64	176
Colorado		172	69	241
Connecticut		117	59	176
Delaware	10/1-4/30	89	54	143
	5/1-9/30	104	54	158
District of Columbia	10/1-10/31	222	69	291
	11/1-2/28	179	69	248
	3/1-6/30	226	69	295
	7/1-8/31	174	69	243
	9/01-9/30	222	69	291
Florida	10/1-12/31	98	54	152
Georgia		138	69	207
Hawaii**				
Idaho		89	51	140
Illinois		89	51	140
Indiana		107	54	161
Iowa		101	59	160
Kansas		89	51	140
Kentucky		89	51	140
Louisiana		98	59	157
Maine		89	51	140
Maryland	10/1-10/31	121	69	190
	11/1-4/30	101	69	170
	5/1-9/30	121	69	190
Massachusetts	10/1-10/31	275	69	344
	11/1-3/31	198	69	267
	4/1-6/30	247	69	316
	7/1-8/31	233	69	302
	9/1-9/30	275	69	344
Michigan		96	59	155
Minnesota		140	64	204

Mississippi		89	51	140
Missouri		89	51	140
Montana		92	64	156
Nebraska		89	51	140
Nevada		89	51	140
New Hampshire		94	59	153
New Jersey		128	59	187
New Mexico		99	64	163
New York		115	59	174
North Carolina		104	59	163
North Dakota		89	51	140
Ohio		109	59	168
Oklahoma		98	59	157
Oregon		89	51	140
Pennsylvania		106	69	175
Rhode Island		138	59	197
South Carolina		99	59	158
South Dakota		89	51	140
Tennessee	10/1-6/30	145	59	204
Texas	10/1-12/31	135	59	194
	1/1 – 3/31	159	59	218
	4/1-9/30	135	59	194
Utah	10/1-12/31	108	59	167
	1/1-3/31	123	59	182
	4/1-9/30	108	59	167
Vermont		115	74	189
Virginia		121	64	185
Washington		99	69	168
West Virginia		107	54	161
Wisconsin	10/1-10/31	127	59	186
	11/1-8/31	105	59	164
	9/1-9/30	127	59	186
Wyoming		89	51	140

**\*Meals and Incidental Expenses.**

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

**Note: Source of information for GSA 2016 per diem rates is available [here](#).**