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DATE: February 6, 2008

TO: All Legislators

FROM: Ann M. Ver Heul

**RE: 2007 Tax Year Legislators' Business Expense
 Deductions Pursuant to Tax Home Provision**

**I. 2007 Tax Year Federal Business Expense Deductions for
 State Legislators**

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. For tax year 2007, the applicable federal per diem rates were as follows:

January 1, 2007 – September 30, 2007: \$118.00 per day
 Ratio: \$74.00 - Lodging
 \$44.00 - Meals

October 1, 2007 – December 31, 2007: \$124.00 per day
 Ratio: \$80.00 - Lodging
 \$44.00 - 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, 2007. It is possible that there may be a rate change later this year for part of 2008.

**A. 2007 Business Expense Exclusions and Deductions —
 NEW PROVISIONS EFFECTIVE**

1. Expenses of Office Per Diem Exclusion.
 Beginning in 2007 with the 82nd General Assembly, legislators were 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. Prior

DIVISIONS

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ADMINISTRATIVE SERVICES
 TIMOTHY C. FALLER

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to 2007, legislators were paid a per diem of \$86.00. As noted above, in 2007 the per diem amount was \$118.00 per day through September 30, 2007.

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 legislature was in session (including periods of four consecutive days or less when the legislature was in recess). For 2007, the legislature was in session for 111 calendar days. However, pursuant to Iowa Code section 2.10 all legislators were paid expenses of office per diem for only 110 calendar days. This amount, which is \$12,980, 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 2007, the legislature was in session for 1 calendar day in April during the regular session for which legislators did not receive expenses of office. If you itemize deductions, you are entitled to a deduction for that day 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 Chief Clerk's Office or 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 (\$118.00 per day or \$124.00 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 \$118.00 or \$124.00 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 \$118.00 per day for the period from January 1, 2007, through September 30, 2007, and \$124.00 per day for the period from October 1, 2007, through December 31, 2007, the following allocation is applicable:

Unreimbursed Amount	Lodging	Meals
\$118.00	\$74.00	\$44.00
\$124.00	\$80.00	\$44.00

(1) Of the amount allocated to lodging and other travel expenses (\$74.00 or \$80.00), 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) less \$2.00 per legislative day. Of this amount (\$42.00), 50 percent or \$21.00 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.

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 the proposed tax regulation 26 C.F.R. Sec. 1.162-24, 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. In past years, I have provided you with some information concerning the Federal Taxpayer Relief Act of 1997. It appeared that Section 975 of the Act, which amended 26 U.S.C. Sec. 62, might provide an above-the-line deduction for travel expenses of state legislators while they are at the state capitol if they were paid in whole or in part on a "fee basis".

According to NCSL, the IRS has been inconsistent in its interpretation of Section 975 and the definition of "fee basis." That is, some legislators have been allowed above-the-line deductions pursuant to Section 975 and some such deductions have been disallowed.

However, an IRS Chief Counsel's Office Advice Memorandum issued in 1999 and a subsequent IRS information letter published in 2002 indicate that state legislators are not compensated on a "fee basis" and thus are not allowed to deduct their unreimbursed employee business expenses above-the-line on their federal tax returns. These expenses can only be considered as miscellaneous itemized deductions and are subject to the 2 percent floor. A copy of an NCSL memorandum concerning this issue is attached.

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. 2007 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 2007 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 2007.

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

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

0719RR

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

TAXABLE YEAR: 2007

TAXPAYER'S NAME _____

SOCIAL SECURITY NUMBER _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS: 111

FEDERAL PER DIEM RATE FOR STATE CAPITOL:

January 1, 2007 - September 30, 2007 \$118.00

October 1, 2007 - December 31, 2007 \$124.00

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



Iowa Department of
Administrative Services

Chester J. Culver, Governor
Patty Judge, Lt. Governor

State Accounting Enterprise

Mollie K. Anderson, Director
Calvin R. McKelvogue, Chief Operating Officer

DATE: January 23, 2008
TO: Ann Ver Heul, Legislative Services Agency
FROM: Jean McPherson, DAS-SAE-Centralized Payroll
RE: W-2 Information for Legislators – Calendar Year 2007

This memo is provided to assist you in helping legislators better understand the information contained on their W-2s. Please feel free to share this information with them if they have questions about what appears on their W-2. There was one change made to the format of this year's W-2 (Wage and Tax Statement 2007). The SSN was moved to the top of the form, and the control number was moved to just above the name field. The control number identifies your department number. The same fields and their calculations are being used in the same manner as in years past.

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
- + 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 \$97,500 in 2007)

- + Gross Pay
- + Taxable Travel
- 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 if you have any questions about this information.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home (reviewed January 2008)

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, 2007

STATE		LODGING	M&IE*	TOTAL
Alabama		75	39	114
Alaska**				
Arizona	1/1 - 3/31	156	59	215
	4/1 - 5/31	122	59	181
	6/1 - 9/30	102	59	161
	10/1 - 12/31	102	59	161
Arkansas		82	54	136
California		111	59	170
Colorado		140	49	189
Connecticut		103	49	152
Delaware	10/1 - 5/31	81	44	125
	6/1 - 9/30	94	44	138
District of Columbia	10/1 - 6/30	201	64	265
	7/1 - 5/31	154	64	218
	6/1 - 8/31	201	64	265
Florida		89	44	133
Georgia	10/1 - 12/31	129	49	178
	1/1 - 3/31	139	49	188
	4/1 - 9/30	129	49	178
Hawaii**				
Idaho		85	49	134
Illinois		80	49	129
Indiana		97	44	141
Iowa		80	44	124
Kansas		70	39	109
Kentucky		70	39	109
Louisiana		99	44	143
Maine		70	39	109
Maryland		123	64	187
Massachusetts	10/1 - 10/31	220	64	284
	11/1 - 8/31	186	64	250
	9/1 - 9/30	220	64	284
Michigan		78	39	117
Minnesota		121	64	185
Michigan		70	39	109
Missouri		70	64	109
Montana		73	39	117
Missouri		70	39	109
Nevada		91	44	155
New Hampshire	10/1 - 10/31	90	44	134
	11/1 - 4/30	76	44	120
	5/1 - 9/30	90	44	134

New Jersey		137	44	181
New Mexico	10/1 - 10/31	91	59	150
	11/1 - 8/31	85	59	144
	9/1 - 9/30	91	59	150
New York		105	49	154
North Carolina		88	54	142
North Dakota		70	39	109
Ohio		101	49	150
Oklahoma		81	49	130
Oregon		70	39	109
Pennsylvania		89	44	133
Rhode Island		146	54	200
South Carolina		87	44	131
South Dakota		70	39	109
Tennessee		107	54	161
Texas		97	54	151
Utah	10/1 - 12/31	94	54	148
	1/1 - 3/31	107	54	161
	4/1 - 9/30	94	54	148
Washington		83	49	137
Virginia		115	44	169
Wisconsin		80	54	129
Wyoming		91	39	135
Wisconsin		89	54	143
Wyoming		70	39	109

*Meals and Incidental Expenses.

** Alaska and Hawaii Rates set by Department of Defense. See <http://perdiem.hqda.pentagon.mil/perdiem/perdiemrates.html>

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

Note: Source of information for GSA 2007 per diem rates is

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC