



February 8, 2024

TO: All State Representatives

FROM: Joe McEniry

**RE: 2023 Tax Year State Representatives' Employee Business Expense Deduction
and Tax Home Election**

I. 2023 Federal Tax Home Election for State Representatives Away from Home

A. Background

Internal Revenue Code §162(h) relates to travel expenses of state legislators and allows legislators whose district homes are more than 50 miles from the State Capitol Building a special tax treatment of their per diem payments for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a legislator, by allowing such legislators to receive the payments on a tax-free basis. If a legislator's district home is 50 or fewer miles from the State Capitol Building, the legislator is not eligible for the special tax treatment of their per diem amounts for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a state legislator.

The maximum per diem which is excluded from income 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. Pursuant to Iowa Code §2.10(1), if a legislator resides in Polk County, the legislator's per diem is equal to three-fourths of the per diem of the non-Polk County legislative members. For tax year 2023, the applicable federal per diem rates were as follows:

January 1, 2023 – September 30, 2023: \$175.00 per day

Ratio:

\$111.00 - Lodging
\$59.00 - Meals
\$5.00 - Incidentals

October 1, 2023 – December 31, 2023: \$178.00 per day

Ratio:

\$114.00 - Lodging
\$59.00 - Meals
\$5.00 - Incidentals

New federal per diem rates issued by the General Services Administration usually take effect on October 1 of each year.

B. Federal Regulations Applicable to Legislator Employee Business Expense Deductions

Prior to the enactment of the federal Tax Cut and Jobs Act in December 2017, legislators had options for receiving a tax benefit related to their travel expenses. The Tax Cut and Jobs Act suspended a legislator's ability to take travel expenses as "miscellaneous itemized deductions" on their personal federal return beginning in the 2018 tax year through the 2025 tax year. The Tax Cut and Jobs Act did not suspend the special tax treatment of a legislator's per diem payments for travel expenses incurred on each legislative day, while at the Capitol pursuing the business of being a state legislator, when the legislator elects to utilize the provisions of Internal Revenue Code §162(h).

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. 2023 Employee Business Expense Exclusions

1. Legislative Days – Expenses of Office Per Diem Received – Tax Home Election

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, the per diem amount paid to you was \$175.00 per day through September 30, 2023, and \$178.00 per day after September 30, 2023.

The per diem payments provided to you by the state (expenses of office) are not includable in gross income because it is considered a reimbursement for employee business expense, if you reside more than 50 miles from the State Capitol Building, and you elect to utilize the provisions of Internal Revenue Code §162(h). This per diem is excludable from your gross income for each “legislative day.” For 2023, the House of Representatives convened on January 9, 2023, and adjourned on May 4, 2023, spanning 116 days. Pursuant to the limitations contained in Iowa Code §2.10, you were paid a per diem for 110 days until April 28, 2023, which appear to meet the definition of a “legislative day” and of a “legislative session,” this amount, which is \$19,425, is not included in your gross income because it is deemed substantiated as a reimbursed business expense pursuant to Internal Revenue Code §162(h). If you live 50 or fewer miles from the State Capitol Building, the per diem amount is includable in your gross income.

2. Legislative Days – Interim 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 if your presence is recorded at 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. This information is provided to you by the Chief Clerk’s Office. The interim per diem payments which you received are included as gross income on your W-2 form, and are not considered reimbursements for employee business expenses, due to the statutory language which authorizes them, even if you take the election under Internal Revenue Code §162(h).

II. State Regulations Applicable to Legislator Employee Business Expense Deductions

Beginning in the 2019 tax year, the state of Iowa suspended a taxpayer’s ability to take “miscellaneous itemized deductions” as a deduction on the taxpayer’s personal Iowa return for travel expenses due to coupling with federal tax law that suspended such deductions.

Iowa Code §422.7(10) (2022) did allow a member of the General Assembly to deduct the per diem amount included in gross income as determined under Internal Revenue Code §162(h)(1)(B) for those members who live more than 50 miles from the State Capitol Building, or \$50.00 per legislative day for those members who live 50 or fewer miles from the State Capitol Building. This provision was repealed for tax years beginning on or after January 1, 2023, and is not available as a deduction. A member is not able to deduct a per diem amount that was excluded from gross income.

III. Constituency Expenses and Payments for Mileage and Taxable Meals

Please note that in 2023 you received constituency expenses in the amount of \$300.00 per month. This constituency expense payment is included in gross income on your W-2 form, and is not deductible as an employee expense on your Iowa return beginning in the 2019 tax year.

You also received payments for mileage and taxable meals. Beginning in the 2019 tax year, they are not deductible as employee business expenses on your Iowa return.

IV. Statement of Election of Tax Home Form

For legislators whose district home is more than 50 miles from the State Capitol Building, attached is a form for a “Statement of Election of Tax Home Under 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.

Additionally, if you have not already done so, please provide the House Finance Office with a copy of your completed form so that the House Finance Office knows to exclude your per diem (expense of office) from gross income on your W-2.

V. Legislator W-2 Forms

The Iowa Department of Administrative Services has provided an explanation of the information contained on legislators’ W-2 Wage and Tax Statement for 2023, which is attached.

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

VI. 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. 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 natalie.wood@ncsl.org.

CC: Iowa House: Representatives
Chief Clerk
House Finance Office

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

TAXABLE YEAR: 2023

TAXPAYER'S NAME _____

TAXPAYER IDENTIFICATION NUMBER _____

STATE AND LEGISLATIVE DISTRICT REPRESENTED _____

ADDRESS (within legislative district represented): _____

NUMBER OF LEGISLATIVE DAYS (HOUSE OF REPRESENTATIVES): _____

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

Official State of Iowa Website Here is how you know



W-2 Information

W-2 Wage and Tax Statement Document

State of Iowa Employees: The 2023 W-2 includes pay from pay periods December 23, 2022 (paid 1/13/23) through December 8, 2023 (paid 12/29/23).

Description of W-2 Fields for State of Iowa Employees

Wages, tips, other compensation

- + 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)

Federal income tax withheld

Determined by federal tax tables and the information provided by the employee on the federal form W-4.

Social security wages (up to \$160,200 in 2023)

- + 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

Social security tax withheld (OASDI)

Social security wages (box 3) x 6.20%

Medicare wages and tips

Social security wages; no ceiling

Medicare tax withheld

Medicare wages and tips (box 5) x 1.45%

Social Security tips (not applicable) *Blank*

Allocated tips (not applicable) *Blank*

Dependent care benefits

The total amount deducted for participating employee's dependent care flexible spending account.

Nonqualified plans

Amount of distributions to an employee from a nonqualified deferred compensation plan or nongovernmental section 457(b) plan.

Codes used are applicable to some, but not all, employees:

- E** Pretax Section 403(b) contributions
- G** Pretax Section 457(b) contributions (deferred compensation)

DD

Total value of employer-sponsored group health plan coverage. Includes both employer & employee share. Post-tax Section 457(b) contributions (ROTH deferred compensation)

EE

Retirement plan box will show 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 box is not applicable to state employees. *Blank*

Other

This is an optional field. Centralized Payroll uses it to show an employee's deductions for their State retirement plan if their retirement plan is IPERS, Judicial, POR (Peace Officers Retirement).

State

The state to which an employee's wages are reported.

State wages, tips, etc.

State taxable wages; same as Federal taxable wages (box 1).

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.

State wages, tips, etc. and State income tax

These boxes are populated if the employee had wages to be reported in more than one state for the calendar year.

Updated 10/11/2023