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**February 10, 2012**

**TO: All State Senators**

**FROM: Ann M. Ver Heul**

**RE: 2011 Tax Year State Senators' Business Expense Deductions Pursuant to Tax Home Provision**

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**I. 2011 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 2011, the applicable federal per diem rates were as follows:

January 1, 2011 – September 30, 2011: \$134.00 per day  
Ratio: \$83.00 - Lodging  
\$51.00 - Meals and Incidental Expenses

October 1, 2011 – December 31, 2011: \$135.00 per day  
Ratio: \$84.00 - 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 changed on October 1, 2011.

**B. New Federal Regulations Applicable to Legislator Business Expense Deductions Beginning With 2011 Tax Year**

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.

Effective beginning with the 2011 tax year, there are new federal regulations relating to these travel expense deductions for state legislators. These regulations include specific definitions for what constitutes a “legislative day,” a “legislative session,” and a “committee of the legislature.”

**“Legislative Day”** now 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”** now 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”** now 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. 2011 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 2011 the per diem amount was \$134.00 per day through September 30, 2011.

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 2011, the Senate convened on January 10, 2011, and adjourned June 30, 2011, spanning 172 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 April 29, 2011. This amount, which is \$14,740, 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 2011, the regular session spanned 172 calendar days. For the last 62 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 do not satisfy the definition of “legislative session” necessary to allow a deduction for periods of four days or less when the legislature is not in session.
- 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 amounts of \$134.00 or \$135.00 per day 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 \$134.00 per day for the period from January 1, 2011, through September 30, 2011, and \$135.00 per day for the period from October 1, 2011, through December 31, 2011, respectively, the following allocation is applicable:

Unreimbursed Business Expenses	Lodging	Meals and Incidental Expenses
\$134.00	\$83.00	\$51.00
\$135.00	\$84.00	\$51.00

(1) Of the amount allocated to lodging (\$83.00 or \$84.00), 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) less \$2.00 per legislative day. Of this amount (\$49.00), 50 percent 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 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. § 301.9100-4T(a), 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. 2011 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 2011 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**

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 2011, which is attached.

If you or your tax preparer have any questions regarding this memorandum, 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](mailto:ann.ver.heul@legis.state.ia.us).

## **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 new federal regulations have not yet been interpreted and 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 [susan.frederick@ncsl.org](mailto:susan.frederick@ncsl.org).

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

1200RR

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

**TAXABLE YEAR: 2011**

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

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

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

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

\_\_\_\_\_

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

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

January 1, 2011 - September 30, 2011 \$134.00

October 1, 2011 - December 31, 2011 \$135.00

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



## Legislator Tax Home Advisory

(reviewed January 2012)

*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.*

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### 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.

**\*\*\*IMPORTANT UPDATE: New IRS legislator tax home regulations are effective for the 2011 tax year. See Internal Revenue Bulletin 2010-17 ([www.irs.gov/irb/2010-17\\_IRB/ar12.html](http://www.irs.gov/irb/2010-17_IRB/ar12.html)) for details or contact NCSL for more information.**

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### 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. Under the new guidelines in Section 162(h)(2), a legislative day is now defined as any day during such year 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 4 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 [parts (1) or (2)] of this section, is formally recorded.

Under the new guidelines, specific definitions concerning "state legislator", "legislative session", and "committee" have now been implemented. [see *IRS Bulletin 2010-17* for changes that apply to the 2011 tax year].

**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, 2011

STATE		LODGING	M&IE+	TOTAL
Alabama		80	51	131
Alaska**				
Arizona	10/1-12/31	105	71	176
	1/1-5/31	128	71	199
	6/1-8/31	80	71	151
	9/1-9/30	105	71	176
Arkansas		86	61	147
California		99	61	160
Colorado		149	66	215
Connecticut		104	56	160
Delaware	10/1-4/30	77	46	123
	5/1 9/30	90	46	136
District of Columbia	10/01-10/31	226	71	297
	11/01-2/28	183	71	254
	3/01-6/30	224	71	295
	7/01-8/31	169	71	240
	9/01-9/30	226	71	297
Florida		85	46	131
Georgia		133	56	189
Hawaii**				
Idaho		77	46	123
Illinois		81	56	137
Indiana		91	61	152
Iowa		84	51	135
Kansas		77	46	123
Kentucky		77	46	123
Louisiana		93	56	149
Maine		77	46	123
Maryland	10/1-10/31	116	61	177
	11/1-4/30	101	61	162
	5/1-9/30	116	61	177
Massachusetts	10/1-10/31	221	71	292
	11/1-3/31	158	71	229
	4/01-6/30	201	71	272



	7/01-8/31	183	71	254
	9/01-9/30	221	71	292
Michigan		81	51	132
Minnesota		121	71	192
Mississippi		77	46	123
Missouri		79	51	130
Montana		83	56	139
Nebraska		77	46	123
Nevada		91	61	152
New Hampshire	10/1-5/31	81	51	132
	6/1-9/30	89	51	140
New Jersey		119	61	180
New Mexico	10/01-10/31	105	71	176
	11/1-5/31	83	71	154
	6/1-9/30	105	71	176
New York		104	61	165
North Carolina		91	66	157
North Dakota		77	46	123
Ohio		94	56	150
Oklahoma		81	66	147
Oregon		77	46	123
Pennsylvania	10/1-5/30	108	51	159
	6/1-8/31	134	51	185
	9/1-9/30	108	51	159
Rhode Island		121	71	192
South Carolina		85	51	136
South Dakota		77	46	123
Tennessee		107	66	173
Texas		108	71	179
Utah		96	61	157
Vermont		101	61	162
Virginia		112	66	178
Washington		88	61	149
West Virginia		97	51	148
Wisconsin		89	56	145
Wyoming		77	46	123

**\*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 2011 per diem rates is available [here](#).**



DATE: January 20, 2012  
TO: Ann Ver Heul, Legislative Services Agency  
FROM: Jean McPherson, DAS-SAE-Centralized Payroll  
RE: W-2 Information for Legislators – Calendar Year 2011

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. The only change to the format of the W-2 this year was the graying of Box 9, which was previously used to report Advanced Earned Income Credit. All other fields are being used in the same manner as in the previous 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 2011)*

- + Gross Pay
- + Taxable travel and other taxable fringe benefits
- Pre-tax 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 4.20%

*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 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.