



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home Advisory

(January 2015)

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)

[This IRS Fact Sheet also available at www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/State-Legislator-Travel-Fact-Sheet]

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 information required on this statement is stated in the proposed regulations.

The IRS issued [Treasury Decision 9481](#) on April 7, 2010, to incorporate these rules into final regulation 1.162-24.

For more information on rules for deducting travel expenses, see [Publication 463](#).

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

EFFECTIVE October 1, 2014

STATE		LODGING	M&IE*	TOTAL
Alabama		83	46	129
Alaska**				
Arizona	10/1-12/31	106	71	177
	1/1-3/31	141	71	212
	4/1-5/31	113	71	184
	6/1-8/31	83	71	154
	9/1-9/30	106	71	177
Arkansas		89	61	150
California		107	61	168
Colorado		163	66	229
Connecticut		116	56	172
Delaware	10/1-4/30	83	46	129
	5/1-9/30	101	46	147
District of Columbia	10/1-10/31	222	71	293
	11/1-2/28	177	71	248
	3/1-6/30	229	71	300
	7/1-8/31	162	71	233
	9/01-9/30	222	71	293
Florida	10/1-12/31	88	46	134
	1/1-4/30	104	46	150
	5/1-9/30	88	46	134
Georgia		135	56	191
Hawaii**				
Idaho		83	46	129
Illinois		89	56	145
Indiana		98	61	159
Iowa		97	51	148
Kansas		83	46	129
Kentucky		83	46	129
Louisiana		94	56	150
Maine		83	46	129
Maryland	10/1-10/31	121	61	182
	11/1-4/30	100	61	161
	5/1-9/30	121	61	182
Massachusetts	10/1-10/31	258	71	329
	11/1-3/31	179	71	250
	4/1-6/30	231	71	302
	7/1-8/31	210	71	281
	9/1-9/30	258	71	329

Michigan		91	51	142
Minnesota		135	71	206
Mississippi		83	46	129
Missouri		83	46	129
Montana		89	56	145
Nebraska		83	46	129
Nevada		87	61	148
New Hampshire		88	51	139
New Jersey		127	61	188
New Mexico		94	71	165
New York		111	61	172
North Carolina		98	66	164
North Dakota		83	46	129
Ohio		106	56	162
Oklahoma		94	66	160
Oregon		83	46	129
Pennsylvania		108	51	159
Rhode Island		131	71	202
South Carolina		94	51	145
South Dakota		83	46	129
Tennessee	10/1-6/30	132	66	198
	7/1-8/31	123	66	189
	9/1-9/30	132	66	198
Texas	10/1-11/30	126	71	197
	12/1-3/31	139	71	210
	4/1-9/30	126	71	197
Utah	10/1-12/31	106	61	167
	1/1-3/31	117	61	178
	4/1-9/30	106	61	167
Vermont		110	61	171
Virginia		113	66	179
Washington		98	61	159
West Virginia		105	51	156
Wisconsin	10/1-10/31	116	56	172
	11/1-8/31	97	56	153
	9/1-9/30	116	56	172
Wyoming		83	46	129

* Meals and Incidental Expenses.

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

Note: Source of information for GSA 2015 per diem rates is available [here](#).