



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home Advisory

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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: 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 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.