

TRAVEL EXPENSES OF STATE LEGISLATORS

Presented by the New Mexico Society of CPAs
December 14, 2012

§162(h) – State Legislators’ Travel Expenses Away from Home

- Taxpayers are permitted to deduct ordinary and necessary travel expenses while away from *home* in pursuit of a trade or business (e.g. the business of being a State Legislator).
- Generally, an individual’s place of business (e.g. the Capitol Building) is considered to be their home for tax purposes.
- Certain legislators may elect, under §162(h) to treat their place of residence within the legislative district represented by the legislator as their home for tax purposes. Upon making the §162(h) election, a qualifying legislator may deduct travel expenses while the Legislature is in session.

Legislators Eligible to Make the §162(h) Election

§162(h) applies to all legislators except those whose place of residence within the legislative district represented by the legislator is 50 or fewer miles from the Capitol Building. An individual becomes a state legislator for the purposes of §162(h) on the day in which he or she is sworn into office.

Amount of Travel Expenses Deductible

- An electing legislator under §162(h) is generally permitted to deduct living expenses computed by multiplying the number of *legislative days* by the Federal per diem amount for the state capital.
- Living expenses = lodging, meals, and incidental expenses ((1) fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries; (2) transportation between places of lodging or business and places where meals are taken; and (3) mailing costs associated with filing travel vouchers and payment of government-sponsored charge card billings.)
- The per diem amount for Santa Fe for December of 2012 is \$154 (lodging plus meals and incidental expenses). This amount changes each month. (Check www.gsa.gov)

- §162(h) applies only to the deductibility of living expenses on legislative days. Other expenses such as telephone and unreimbursed travel are subject to the normal rules for deductibility.

Definition of a Legislative Day

The term legislative day includes,

- any day that the legislature is in session (even if the particular legislator is not in attendance),
- any day that the legislature is not in session for a period that is not longer than 4 consecutive days,
- any day in which the legislator's attendance of a committee of the legislature is formally recorded,
- any day in which the legislator attends any session of the legislature that only a limited number of members are expected to attend (such as a pro forma session).

Legislative days do not include travel days prior to or following a legislative session or committee meeting.

Manner of Making the Election

The election under §162(h) must be made annually on a timely filed tax return of the legislator. The following page contains a sample election statement.

State Legislator's Election to Treat Residence as Tax Home

[Name]

[Street Address]

[City, State, ZIP]

[Social Security Number]

Form 1040, Tax Year Ending December 31, 2012

Taxpayer, a *[position title]*, elects to treat his residence, located at the address shown above, as his tax home pursuant to Code Sec. 162(h). His place of residence is within the *[legislative district]*, which is the legislative district that he represents. The residence is more than 50 miles from the capitol building of the State.