



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Legislator Tax Home Advisory

(January 2017)

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.

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

EFFECTIVE October 1, 2016

STATE		LODGING	M&IE*	TOTAL
Alabama		91	51	142
Alaska**				
Arizona	10/1-12/31	118	59	177
	1/1-3/31	169	59	228
	4/1-5/31	130	59	189
	6/1-8/31	91	59	150
	9/1-9/30	118	59	177
Arkansas		94	59	153
California		119	64	183
Colorado	10/1-11/30	178	69	247
	12/1-1-31	149	69	218
	2/1-9/30	178	69	247
Connecticut		124	59	183
Delaware	10/1-4/30	91	54	145
	5/1-9/30	105	54	159
District of Columbia	10/1-10/31	231	69	300
	11/1-2/28	182	69	251
	3/1-6/30	242	69	311
	7/1-8/31	172	69	241
	9/01-9/30	231	69	300
Florida	10/1-12/31	98	54	152
	1/1-4/30	117	54	171
	5/1-9/30	98	54	152
Georgia	10/1-12/31	140	69	209
	1/1-4/30	148	69	217
	5/1-9/30	140	69	209
Hawaii**				
Idaho		91	51	142
Illinois		91	51	142
Indiana	10/1-1/31	107	54	161
	2/1-4/30	121	54	175
	5/1-9/30	107	54	161
Iowa		107	59	166
Kansas		91	51	142
Kentucky		91	51	142

Louisiana		97	59	156
Maine		91	51	142
Maryland	10/1-10/31	126	69	195
	11/1-4/30	103	69	172
	5/1-9/30	126	69	195
Massachusetts	10/1-10/31	296	69	365
	11/1-3/31	204	69	273
	4/1-6/30	275	69	344
	7/1-8/31	262	69	331
	9/1-9/30	296	69	365
Michigan		100	59	159
Minnesota		145	64	209
Mississippi		91	51	142
Missouri		91	51	142
Montana		95	64	159
Nebraska		91	51	142
Nevada		91	51	142
New Hampshire		102	59	161
New Jersey		127	59	186
New Mexico		100	64	164
New York		116	59	175
North Carolina		111	59	170
North Dakota		91	51	142
Ohio		109	59	168
Oklahoma		115	59	174
Oregon		91	51	142
Pennsylvania		110	69	179
Rhode Island		147	59	206
South Carolina		101	59	160
South Dakota		91	51	142
Tennessee	10/1-6/30	161	59	220
	7/1-8/30	151	59	210
	9/1-9/30	161	59	220
Texas	10/1-12/31	141	59	200
	1/1 - 3/31	158	59	217
	4/1-9/30	141	59	200
Utah	10/1-12/31	115	59	174
	1/1-3/31	121	59	180
	4/1-9/30	115	59	174

Vermont		115	74	189
Virginia	10/1-10/31	143	64	207
	11/1-8/31	132	64	196
	9/1-9/30	143	64	207
Washington		103	69	172
West Virginia		107	54	161
Wisconsin		115	59	174
Wyoming		91	51	142

***Meals and Incidental Expenses.**

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

Note: Source of information for GSA 2017 per diem rates is available [here](#).