



LEGISLATOR'S **taxguide**



Florida Institute of Certified Public Accountants

Table of Contents

Preface	3
Introduction	3
Special Election for Tax Home	5
Intradistrict Allowance	5
Business Expenses	6
Automobile and Travel Expenses	8
Living Expenses	13
Advertising Expenses	15
Entertainment and Meal Expenses	16
Telephone Expenses	16
Other Expenses	17
Campaign Contributions	18
Campaign Expenses	20
Record Keeping	21
Disallowance of Certain Entertainment Expenses	25
Politicians and Job Search Expenditures	26
Limitations on Employee Business Expenses	26
Allowable Expenditures Example	27
Endnotes	32

Forms Referenced:

- **Form 1040** - Schedule A&B - Itemized Deductions and Interest and Ordinary Dividends
- **Form 2106** - Employee Business Expenses
- **Form 941** - Employer's Quarterly Federal Tax Return
- **Form SS-4** - Application for Employer Identification Number
- **Form 940** - Employer's Annual Federal Unemployment Tax Return
- **Form SS-8** - Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding
- **Form DR-1** - Application to Collect and/or Report Tax in Florida
- **Form UCT-6** - Florida Employer's Quarterly Report
- **Election to Treat Residence as Home for Tax Purposes**

Forms and instructions can be downloaded from these Web sites:

- Internal Revenue Service (IRS) www.irs.gov/formspubs/
- Department of Revenue (DOR) www.myflorida.com/dor/

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The Florida Institute of Certified Public Accountants hopes this “Legislator’s Tax Guide,” prepared specifically for members of the Florida Legislature, assists you in preparing your various income tax returns.

Although this guide is an excellent reference tool, it is not meant to be used as the sole basis for your final decisions regarding your particular tax situation. This guide addresses topics generally. Your situation may vary from the guidelines and examples detailed within this guide. As a result, we suggest that any decisions made regarding your unique situation be made after consulting with your Certified Public Accountant.

Preface: The CPA Profession Today

Today's CPA occupies a central position in business management, whether it is in government, industry, education or in the traditional role of public accounting. Areas of practice include taxation and tax planning; estate, trust and retirement planning; auditing; budgeting; management advisory services; financial management and financial forecasting; and review and compilation of financial statements.

The highest professional standards and integrity in the practice of accountancy are maintained by holders of the CPA certificate issued by the State of Florida or by other states. To be licensed to practice in Florida, a CPA must:

- Have fulfilled a stringent 150 semester hours or 200 quarter hours college educational requirement;
- Have completed one-year work experience;
- Have passed a comprehensive four part examination covering auditing and attestation, financial accounting and reporting, regulation (tax, ethics and business law), and the business environment;
- Obtain a minimum of 80 hours of continuing professional education every two years, including 4 hours of ethics; and
- Abide by the profession's code of conduct.

The Florida Institute of CPAs includes more than 18,500 members and has 27 active chapters in six regions throughout the state. Members subscribe to the rules of professional conduct embodied in the Institute's bylaws and subject themselves to discipline thereunder.

Members of the FICPA Legislators Tax Guide Subcommittee include:

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Introduction

As a legislator, you may deduct on your federal income tax return expenses that are ordinary and necessary in performing your duties as an employee of the State of Florida. Any employee business expenses that are unreimbursed must be taken as an itemized deduction (Schedule A) and are subject to a two-percent-of-adjusted-gross-income floor. Form 2106 is used for reporting these expenses.

An above-the-line deduction is allowed for expenses “paid or incurred with respect to services performed by an official as an employee of the state or a political subdivision thereof in a position compensated in whole or in part on a fee basis.” In a “District Litigation Bulletin,” however, the IRS Chief of Employee Benefits and Exempt Organizations has concluded that state legislators may not deduct their unreimbursed employee business expenses “above the line.” The bulletin concluded that Congress intended the provisions of IRC §62(a)(2)(C), allowing the deduction of unreimbursed business expenses “above the line,” be applied to “fee basis” public officials only, not to all public officials or employees. Because legislators are paid from the general government fund, the memo concluded that they don’t qualify as “fee basis” public officials and, as such, cannot take advantage of deducting unreimbursed business expenses above the line.¹ You may wish to consult your CPA to determine how this IRS position may affect you.

The importance of record keeping is emphasized throughout this tax guide, because the burden of proving the appropriateness and extent of deductibility is on you, the taxpayer. Therefore, it is imperative you keep sufficiently detailed records.

Failure to adequately support a deduction can result in its disallowance by the Internal Revenue Service.

This guide is not intended to cover all tax matters that may relate to your tax return. For example, personal items, such as, medical expenses, interest and charitable contributions, or tax matters unrelated to your position as an elected official, are not covered. A question-and answer format is used to provide specific answers to income tax questions that relate to your unique position as a member of the Legislature.

Basic to determining the deductibility of certain travel expenses while away from home is the determination of what is considered “home” for tax purposes. “Home,” to the IRS, is not necessarily synonymous with domicile or residence. The “tax home” must be determined in light of all facts and circumstances relative to a particular taxpayer. If, for example, your duties as a state legislator require your presence in Tallahassee during most of the year, or your income as a legislator is your main source of income, then Tallahassee, as your principal place of employment, would probably be determined to be your “home” for travel expense purposes. A taxpayer’s tax home does not necessarily shift from his or her place of business merely because he or she is married and lives at his or her spouse’s tax home. It is possible for a married couple filing a joint return to have separate tax homes.

If Tallahassee is determined to be your tax home, then your living expenses while in Tallahassee would not be deductible. If this is the case, you may be able to deduct travel expenses incurred on overnight business trips to the area you represent, even though you maintain your family residence there.

Special Election for Tax Home

IRC Section 162(h) provides a set of special rules affecting a state legislator's travel expenses. State legislators may elect to use their residences in their legislative districts as their "tax homes." This election is not available if the legislator lives within 50 miles of the Capitol. Once made, the election can be revoked only with IRS consent. State legislators who normally reside in the Tallahassee area cannot deduct their commuting expenses to the Capitol.

The answers in this tax guide generally assume that Tallahassee is not the legislator's tax home. Thus, the answers will not apply to legislators who normally reside and work in the Tallahassee area, including those whose tax homes are in Tallahassee.

You may wish to consult with your CPA to assess your situation and to determine whether the election should be made and how to treat these expenses in your particular case.

Intradistrict Allowance

What is the federal income tax treatment of the monthly basic intradistrict allowance for state legislators that is designed to compensate them for appropriate expenses incurred in connection with the operation of their legislative district office?

The Florida House and Senate have adopted intradistrict allowance plans that meet the substantiation requirements for an accountable plan.

Under these plans, detailed records must be kept by each legislator of all expenses paid from the intradistrict fund. Travel receipts must be filed with the quarterly reports, and all other records concerning the expenditures must be kept on file at the legislator's district office.

At the end of each quarter, each legislator will receive a statement declaring the amount of funds sent to that legislator for that quarter's reporting period. Each member then will be required to file a quarterly report within 90 days after the end of the quarter substantiating expenditures of the funds received in the accountable quarter. Members will be required to repay all funds not expended as of that quarter's report date.

Members not submitting the required report within the time frames indicated will be subject to IRS rules concerning non-accountable plans. These rules require the State of Florida, as employer, to withhold federal income tax, Social Security and Medicare taxes.

If the legislator chooses to receive less than the maximum amount per month, the difference between the amount actually received and the monthly allowance will not be considered constructively received by him or her.

The activities of state legislators that arise in the performance of their duties constitute a trade or business for federal income tax purposes. Accordingly, any expenses relating to activities that are ordinary and necessary, in light of the legislative duties, will qualify as deductible expenses. The legislator will be allowed an itemized deduction, subject to the two-percent-of-adjusted-gross-income floor, for unreimbursed expenses provided they are incurred in connection with carrying on a trade or business. As previously indicated, the Internal Revenue Code provides an "above-the-line" deduction for officials of a state or local government (or political subdivision thereof), provided the official is compensated in whole or in part on a "fee basis." You should consult your CPA to determine whether you qualify for this provision.

Business Expenses

May I deduct any costs of an office in my home as a business expense?

Generally, no. In most instances, the deduction for a home office will prove to be difficult to substantiate. You must be able to show the office is used exclusively and on a regular basis as: (1) your principal place of business within your legislative district; or (2) a place where you meet for legislative business as a normal and regular activity. An occasional or incidental use of your home for legislative business does not meet the regular basis test for deduction purposes. Your office must be used for the convenience of your employer (the State). Also, if you sell a home you previously claimed as an office, there is a potential taxable gain relating to the business portion of your home.²

You should check with your CPA for an analysis of your situation. The deduction for a home office is added to other miscellaneous deductions that are deductible to the extent the total amount of such expenses exceeds two percent of your adjusted gross income. Direct costs (telephone, supplies, etc.) incurred at your home office are deductible, as discussed in separate sections of this guide, in addition to the allocable home office portion of utilities, real estate tax, mortgage interest, depreciation, home repairs, maintenance, house insurance, rent, and casualty losses (Form 8829).

Instead of, or in addition to an office in my home, I maintain a rented office in my district for the purpose of serving my constituency. What expenses can I deduct on my tax return for the cost of maintaining this office?

If the office is being used exclusively for legislative purposes, all expenses related to that office (e.g., rent, utilities and depreciation on improvements and equipment) are 100 percent deductible to the extent you have not been reimbursed through the intradistrict allowance. Additionally, please note that campaign use of an office is not a reimbursable expense through the intradistrict allowance. If the office is used strictly for political purposes during campaign time (and possibly some office expenses are paid out of campaign contributions), then you should exclude those expenses from your personal tax return, since you have not incurred a deductible out-of-pocket expense.

May I deduct the wages of my staff and assistants other than those paid by the State of Florida?

Yes, salaries or wages you may incur are deductible expenses. If you hire someone to assist you in legislative matters and in handling constituent inquiries, such as a full- or part-time assistant, the compensation paid is deductible. If an individual is on your payroll, you must obtain a federal employer identification number (a copy of Form SS-4 can be accessed by following the links in the front of this guide), pay the proper payroll taxes and file the appropriate payroll returns. In addition to employer federal Medicare and OASDI payroll taxes, you may be liable for state and federal unemployment taxes. If you pay more than \$1,500 in wages in any calendar quarter, or have one employee for 20 weeks within a calendar year, you are liable for unemployment taxes (a copy of Florida Form UCT-6 and Federal Form 940 can be accessed by following the links in the front of this guide), and must obtain a state unemployment account by filing a Form DR-1.³ (A copy of the Form DR-1 can be accessed by following the links in the front of this guide.) You also may register online at www.myflorida.com/dor/eservices/apps/register. You should contact your CPA for advice. Your CPA's fee for these matters is a business expense and may be deducted on your tax return, subject to limitations. If you have student help or volunteer help working on legislative matters, and you incur no out-of-pocket expense, then of course, there is no tax deduction.

If I have a legislative assistant in my home district, but pay the assistant a token amount each month, am I required to go through the process of filing payroll tax returns and withholding payroll taxes?

In most situations, amounts paid for services are subject to payroll tax laws. However, there are some exceptions, such as in the case of an independent contractor. The IRS has issued guidelines for determining employee vs. independent contractor status. You should consult your CPA to evaluate each situation for you. The IRS will issue a determination as to whether a worker is an employee for purposes of federal employment taxes and income tax withholding. This determination is requested by completing a Form SS-8 and filing it with the IRS. (A copy of Form SS-8 can be accessed by following the links in the front of this guide.)

Automobile and Travel Expenses

A deduction for travel expenses is permitted, subject to limitations, to the extent they are ordinary, necessary and reasonable in the conduct of one's business;⁴ are directly attributable to the business; and are incurred "away from home."⁵ Therefore, if a proper election regarding the legislator's tax home is made, the costs of travel to and from Tallahassee, as well as ordinary and necessary costs for hotel or motel and meals while in Tallahassee on legislative business, are tax-deductible, subject to limitations. Expenses of a legislator's spouse or other family member are not deductible, unless it can be established that the presence of those individuals has a bona fide business purpose. The performance of incidental services does not satisfy this bona fide business purpose requirement.⁶

Legislators are considered employees of the state. The state reimburses each legislator for automobile and travel expenses during sessions of the Legislature, and during interim periods. All allowable automobile and travel expenses and reimbursements are reported on Form 2106, Employee Business Expenses. The excess of expenses over reimbursements are classified as miscellaneous itemized deductions on Schedule A – Itemized Deductions.⁷ Total miscellaneous itemized deductions are allowed only to the extent the total exceeds two percent of adjusted gross income.⁸

How do I claim expenses in excess of reimbursement for automobile travel on my tax return?

Allowable standard mileage rate expenses or allowable actual automobile expenses are reported on Form 2106, Employee Business Expenses. If you are an employee of someone else in addition to being a legislator, those employee business expenses should be listed on a separate Form 2106.

How much can I deduct for the auto mileage I incur traveling to and from Tallahassee?

Your deduction for automobile expenses can be in the form of the standard mileage rate per business mile, or you can itemize your actual automobile expenses.⁹ To itemize actual expenses, total the automobile expenses i.e., lease costs (subject to so-called luxury lease limitations) or depreciation for a vehicle you own, plus gas and oil, repair and maintenance, vehicle registration, and vehicle insurance) and apply your business percentage. The business percentage is computed by dividing your total business miles by total miles driven during the year. Parking fees and tolls relating to business may be deducted under either method.

Deducting actual automobile expenses requires additional record keeping of specific expenditures to document the deduction (date, place, purpose, paid receipt, etc.).¹⁰ Use of the optional standard mileage deduction requires less record keeping, since only business miles must be recorded. Please note that if you previously depreciated your vehicle using a method other than the straight-line method, you must use actual expenses.¹¹ If you lease your vehicle, you must use either actual expenses or the optional mileage deduction for the entire lease term. You cannot change methods during the lease term.¹²

What is the standard mileage rate for 2011?

For miles driven in 2011, the standard mileage rate is 51 cents per mile for the months of January-June 2011 and 55.5 cents per mile for July-December 2011.¹³

If I use the standard mileage rate, is the basis of my vehicle affected?

Yes, you must reduce the basis of your vehicle, but not below zero, by the following amounts:¹⁴

Year	Cents per mile
2011	22¢
2010	23¢
2009	21¢
2008	21¢
2007	19¢
2006	17¢
2005	17¢
2004	16¢

What other mileage expenses can I deduct?

A member of the Legislature usually incurs a great deal of mileage expenses while in his or her home district. All travel to meetings where you speak, or that you believe are important to attend because of your elected position, is tax-deductible. A memorandum of this mileage should be recorded in a diary. This mileage can become substantial, particularly for those individuals in large districts. Legislators may be required to travel several miles from one town to another and attend civic functions, political functions or other meetings related to their legislative duties. You may deduct the cost of non-reimbursed travel between two places of business (Legislature or another business or occupation), provided such trips are necessary to conducting business at both locations. In addition, mileage incurred in making an investigation to ascertain facts that result in a legislative proposal and enactment is deductible.

What about mileage expenses incurred while going to meetings during a political campaign for my re-election? Although I am running for re-election, I still feel it is necessary to attend these meetings to explain to my constituents the activities of the Legislature, the legislation we currently are working on, and the disposition and explanation of legislation that has gone through committees and legislation we already have passed.

The Internal Revenue Code specifically states that all campaign expenses are not tax-deductible. (See Campaign Expenses on page 20.)¹⁵ Because of this, it is important for the legislator to distinguish between those expenses that directly are related to a campaign for re-election and those expenses that can be directly attributable to serving the legislator's constituency.

Legislators should maintain records to distinguish between travel expenses related to legislative matters attributable to the discharge of legislative duties and/or serving the legislator's constituency (deductible as miscellaneous itemized deductions subject to limitations); campaign travel expenses or personal expenses (non-deductible for tax purposes); and expenses related to another business owned by the legislator.

If I use another mode of transportation to get to Tallahassee, such as a bus or airplane, can I deduct these expenses in addition to my mileage expense?

These expenses are accounted for and reported to the state. Expenses not reimbursed by the state can be deducted on your personal return. If you use a bus, airplane or other means of transportation to Tallahassee, these expenses should be reported on Form 2106. You should report the amount of reimbursement you received for travel. Expenses incurred in excess of reimbursement will be deductible subject to the two percent floor.

On occasion, I ride with another legislator to Tallahassee. May I still claim a tax deduction for the mileage for that particular day, even though I did not drive my own car?

When you ride with someone else and do not directly incur any travel expense yourself, you may not claim any mileage expense for that day's travel. However, you may claim other expenses, such as meals and lodging, to the extent they exceed the state's reimbursement.

While away from home for the legislative session, I stay at a hotel in Tallahassee and am required to drive or take a taxi to the Capitol each day. May I deduct this as a business expense?

Yes, providing an election regarding your tax home is made. (See Special Election for Tax Home on page 5.) The place you reside in Tallahassee usually is not considered your tax home and, therefore, your drive to the Capitol is not considered commuting (assuming you do not live within 50 miles of Tallahassee).¹⁶ You may deduct the mileage you incur going from

your living quarters in Tallahassee to either the Capitol or any other location as a travel expense, as long as the purpose of the travel is directly related to the business of being a member of the Legislature. (For more information, see the Introduction on page 3.) Reasonable tips also are tax-deductible. The Legislature does not reimburse for vicinity mileage and commuter mileage expenses while the legislator is in Tallahassee.

If the state pays me certain allowances for travel and other expenses, are these allowances additional income to me?

Allowances intended to reimburse you for certain expenses incurred as a state legislator need not be included as income under the state's accountable plan. If you have additional expenses you wish to claim, the total of all allowable expenses must be reported and then reduced by the reimbursement. Travel expenses also include a reasonable amount for baggage, laundry and dry cleaning.

I have an office in my home district. Can I deduct mileage expense from my home to this office?

No. The mileage from your residence to your place of business is neither deductible nor reimbursable from the intradistrict allowance. It is considered a nondeductible commuting expense. However, if you have more than one place of business in your home district, travel between one place of business and another is deductible provided you are conducting business at both locations.¹⁷

The IRS allows me to deduct a standard mileage allowance per mile, or to itemize all of my automobile expenses and then deduct a portion of those expenses based on a percentage of business miles to the total miles traveled during the year. Which method results in the greater deduction for me?

To determine which method gives you the greater deduction, it would be necessary to itemize your actual automobile expenses and then compare them to your deduction using the standard mileage allowance. Many taxpayers find that itemizing actual expenses results in a larger deduction and justifies the additional record keeping, particularly with the available depreciation deduction. See the discussion under special rules for luxury automobiles on page 12.

If I don't use the standard mileage allowance method for computing automobile expenses, specifically what expenses can I deduct?

If you do not use the standard mileage allowance method, you may deduct the business percentage of actual expenses incurred, such as gas, oil, repairs, tires, registration fees, insurance and depreciation, or lease payments. (See the instructions for Part II of Form 2106 by following the link in the front of this guide.)¹⁸ Depreciation deductions have been increased by recent years' federal tax legislation. Also see the discussions on page 12 about special rules for luxury automobiles, trucks and SUVs. Please consult your CPA to determine the benefits available to you.

Are there expenses I can deduct for the use of my automobile in addition to the standard mileage allowance?

Yes. Unreimbursed parking fees and tolls incurred for business are deductible in addition to the standard mileage allowance.¹⁹

Since I receive allowances from the state for travel, meals and lodging while the legislature is in session, would it be best to just disregard the allowances entirely and assume they are completely offset by expenses and therefore not report anything?

Since you account to your employer (the state) for expenses incurred, you need not include the allowances in income unless you wish to claim additional expenses. If your itemized expenses exceed your allowances, you can claim a deduction subject to the two percent floor discussed on page 8. In addition, only 50 percent of meals and entertainment expenses are deductible.²⁰

If I itemize my automobile expenses one year, can I use the standard mileage rate deduction method the following year?

Yes, you may elect to use the standard mileage rate on a yearly basis.²¹ There no longer is a requirement that the standard mileage rate be elected in the first-year, except for leased vehicles. The standard mileage rate may be used in any year, but only if the car has not been depreciated under a method other than straight-line. You cannot have claimed additional first-year depreciation or have used ACRS or MACRS depreciation.²²

Are there special rules for luxury automobiles?

Yes, there are restrictions on cost recovery deductions (depreciation) for luxury automobiles (i.e., having a cost of approximately \$15,000 or more). These restrictions vary with the date the automobile was placed in service and the business use percentage.

What about SUVs, trucks, etc.?

The depreciation deduction limitations on luxury automobiles (above) do not apply to vehicles weighing more than 6,000 pounds, such as large SUVs, trucks, etc. These business vehicles may also be eligible for the expensing election for business equipment of up to \$500,000 if placed in service during 2011²³, but only up to \$25,000 for certain SUVs and certain trucks.²⁴

In lieu of, or in addition to, the immediate expensing of business equipment of up to \$500,000 for qualified items mentioned above, there is also a boost to bonus depreciation deductions for 2011. The 2010 Tax Relief Act boosts the previous 50% bonus depreciation deduction to 100% for qualified purchases made after September 8, 2010 and before January 1, 2012. To qualify under this provision, the items placed in service must be new, in addition to other requirements, as provided under IRC Section 168(k).

May I claim a deduction for leased car payments against my intradistrict allowance received?

Yes, but only for the amount allocated for state legislative business, not personal use. Adequate records must be maintained to support the business usage portion. Leased luxury automobiles are subject to specific income inclusion rules based on when the car was placed in service. Please consult your CPA.

Note: To avoid extensive record keeping, a state legislator is “deemed” to have spent his or her per-diem daily living allowance and is “deemed” to have been in attendance during legislative days.²⁵ As explained later, you may, through proper record keeping, justify higher expenditures by inclusion of the allowance and actual expenses on a Form 2106. This does not apply to legislators living within 50 miles of the Capitol.

Living Expenses

What expenses can I deduct for amounts paid living in a hotel, motel or apartment while attending legislative sessions in Tallahassee?

For hotels, motels and other similar commercial places for residing while in Tallahassee and away from your normal (tax) residence, you are allowed to deduct the actual amount paid for the room (including any taxes or service charges). If you are paying a fixed monthly rate to the motel or hotel, that amount would be allowed as a deduction as long as it is paid by you, and if it is for the purpose of providing a place to stay while you are away from home on business.²⁶

The deduction would be limited to the cost incurred in excess of the state reimbursement.

When I am in Tallahassee, away from home overnight, may I deduct a standard amount for meals and lodging as allowed by the IRS, which is \$160 per day (\$163 per day on or after October 1, 2011)²⁷ under the hi-low substantiation method?

Congress passed IRC Section 162(h), which states in effect that legislators are “deemed to have spent” up to the amount determined under the hi-low substantiation method while in session, and therefore do not have to keep actual records of expenses if they are \$160 (\$163) per day or less.

Currently, the Senate provides a subsistence payment per day in session, up to a maximum amount per session. House members also receive a subsistence payment, up to a maximum amount per session. Since the federal allowed amount is on a per-day basis, the legislator would not have any reporting of income or expenses unless he or she wishes to deduct actual amounts in excess of the standard allowance.

As to the treatment of the difference between the state subsistence payment and the IRS \$160 daily or (\$163) standard rate²⁷, the excess federal amount would have to be allocated between meals and lodging. The \$163 amount is broken down as \$111 for lodging and \$52 for meals and incidentals, while the \$160 amount is broken down as \$108 for lodging and \$52 for meals and incidentals²⁷. The meal portion then would be 50 percent deductible and 50 percent nondeductible.²⁸

May I deduct the expense of meals I have purchased for constituents who have come to Tallahassee and for other persons where it involved legislative business?

Yes. 50 percent of the cost of non-reimbursed meals you pay for is an allowable deduction. The meal expense is not deductible unless you establish that the expense is directly related to the active conduct of your legislative business in Tallahassee. In addition, no deduction is allowed unless business is discussed during or directly before or after the meal. Finally, no deduction is allowed for any meals if the expense is lavish or extravagant under the circumstances. Such entertainment expense must be supported as outlined in the Record Keeping section on page 21.²⁹

Because we are in Tallahassee for long periods of time, I find it necessary and desirable to have my spouse and children come to Tallahassee on occasion. May I deduct the cost of their travel to Tallahassee, their lodging costs and cost of their meals?

Generally, no. The Internal Revenue Code restricts the deductibility of travel expenses for a spouse, dependent or other individual accompanying a person on business travel unless: (1) the person is a bona fide employee of the person paying the expense; (2) the travel is for a bona fide business purpose; and (3) the expenses of the person would otherwise be deductible.³⁰

After some committee meetings that last until late at night, I go out and grab a sandwich or some refreshments. Is this a deductible business expense?

Yes, but consider the discussions above concerning deductibility of meal expenses. Fifty percent of the amount allocable for meals/refreshments is non-deductible, and the balance is subject to the two percent floor discussed on page 8.

Occasionally, I host a gathering of fellow legislators and other individuals connected with the Legislature. May I deduct the expense of this gathering as a business expense?

If the gathering can be shown to have a business purpose, 100 percent of the expenses (except meals and entertainment of 50 percent) would qualify as a business deduction. You should retain paid receipts for support, indicate the business purpose, and show who attended the function. Also, you can deduct only the expense amount exceeding reimbursement from the state. Legislative staff luncheons are not reimbursable through intradistrict allowance.

Advertising Expenses

Because I am a member of the Legislature, I often am called upon to pay for ads in trade journals, ad books or magazines published by various organizations in my district. May I deduct the cost of these ads?

Where these ads are paid for by you and are a necessary part of your business to maintain relations with your constituency and promote your name (which is necessary to an elected official so people are aware of who you are), this type of expenditure may be deducted as a business expense on Form 2106 (subject to the two percent floor discussed on page 8). If these ads appear during a re-election campaign period in which you are involved, these costs would be non-deductible campaign expenses. Ads appearing during your campaign should be paid for by campaign contributions.³¹

As a member of the Legislature, I am requested (and required, in effect, because of my position) to attend many dinners within my district. May I deduct the cost of these dinners?

While federal tax legislation restricts the deduction for business meals, they continue to be deductible if "directly related" to your business of being a legislator, or if associated with a business discussion. (See Limitations on Employee Business Expenses.) Any costs incurred to attend such dinners (i.e., travel expense or parking fees) also are deductible. As stated earlier, meals only are 50 percent deductible.

I buy calendars, pens or similar items with my address and phone number printed on them and pass them out to my constituency as a means of advertising that I am their legislator so they can contact me when needed. May I deduct such items?

Yes. Because this directly is related to the business purpose of adequately and properly serving your constituency, you may deduct the cost of these items on your tax return. (See Limitations on Employee Business Expenses.)³²

Entertainment and Meal Expenses

Occasionally, I am required to meet with constituents regarding a state problem. If I meet them for breakfast, lunch or dinner and pay for the meal, may I deduct this as a tax expense?

Yes, if the other requirements regarding deductible business meals are met. Remember to include in your expense diary who, why, where, when and how much. Receipts must be retained for any meeting exceeding \$75 in total cost. (See Limitations on Employee Business Expenses.) The deduction is limited to 50 percent of the meal cost.³³

Because of my position in the community, I occasionally will entertain other elected officials, such as city or county commissioners, mayors or congressmen, primarily to maintain communications with them and to explore each other's problems and determine common solutions. May I deduct this expense?

Yes, as long as it directly is related to your legislative position and you can show the business purpose for the entertainment or meeting. Again, it is necessary to keep an itemized record to indicate the date, place, who was there (title and occupation), and the purpose of the meeting, together with receipts for expenses in excess of a total of \$75 per meeting. If the entertainment directly precedes or follows substantial business discussion, the business-purpose requirement usually is satisfied. Generally, unless the officials you are entertaining are from out of town or other unusual circumstances exist, the entertainment would generally have to take place on the day of the business discussion. (See Limitations on Employee Business Expenses.)³⁴

Telephone Expenses

May I deduct the cost of my home telephone, since I use it to call and receive calls from constituents and for other state business?

The basic cost of the telephone, be it a private or party line, is an expense you would incur whether or not you were a member of the legislature. Therefore, the basic rate is personal and would not be a deductible expense.³⁵ The cost of non-reimbursed long distance calls that relate to state business is a deductible expense. If you have a separate telephone installed exclusively for the purpose of your legislative business, the entire cost of this telephone could be deducted as a business expense or as a depreciable capital expenditure. The same is true for a cellular phone, although any miscellaneous personal calls could not be deducted. Use of an answering service also is a deductible expense if it is non-reimbursed and directly related to your position as a member of the legislature.

Other Expenses

What other expenses may I deduct on my tax return?

There are many other expenses you might incur as a member of the legislature. Some of these expenses include the following, which are tax-deductible if not reimbursed by the state:

1. Stationery and postage relating to mail concerning your business as a member of the legislature.
2. Any other supplies, such as pens, pencils and paper clips, that are necessary to maintain your office and serve your constituency.
3. Dues to organizations you normally have not belonged to prior to being a member of the legislature, but now belong to as a matter of policy (i.e., dues to civic organizations). Since it is instrumental to your being a state legislator, these are deductible expenses. Certain club dues no longer are deductible. These include social, athletic, luncheon, sporting, airline and hotel clubs.³⁶ Specific business expenses, such as meals incurred at a club, are deductible only to the extent they otherwise satisfy the business expense rules.
4. Newspapers and magazines. The cost of obtaining additional publications because of your position as a state legislator, such as special weekly papers in your district and special publications relating to politics, the state, or related areas of government necessary for you to improve yourself as a legislator, are deductible expenses. If you incurred this expense on a normal basis for personal reasons, the costs would not be deductible expenses.
5. The cost of Christmas cards to district and community leaders. This is a form of advertising expense, again directly related to your business as a member of the legislature. To the extent that you buy special Christmas cards and mail them to people related to you in politics, this becomes a tax-deductible expense (cost of the cards, envelopes, postage and photographs, if your family photograph is included in the Christmas cards).
6. The cost of newsletters sent to constituents.³⁷

Campaign Contributions

During my recent campaign for office, I received contributions that exceeded my campaign expenses by \$3,500. How do I treat this excess on my tax return?

Political funds are not taxable to the political candidate by or for whom they are collected if they are used for expenses of a political campaign or some similar purpose. However, if the funds are used by a candidate for personal purposes, they are taxable in the year of the diversion, unless the recipient can show that an unrestricted gift for personal use was intended.³⁸

Political contributions are considered used for campaign purposes if they are: (1) used for generally recognized campaign expenses regardless of when incurred; (2) contributed to a committee of the candidate's party; or (3) used to reimburse the candidate for his or her out-of-pocket expenses paid during the current campaign or, if he or she is not currently campaigning, during the last previous campaign. Where political contributions are included as income, a deduction may be allowed if, for example, the funds are used for business purposes or contributed to charity.

The U.S. Treasury Department says the political candidate should keep detailed records for the candidate to account properly for receipt and disbursement of funds. If political funds are commingled with personal funds, which might make tracing impractical, they will be presumed diverted to personal use.

Any excess funds that are not expended generally will be treated as taxable income to the candidate unless the excess funds are distributed in one of the following manners: (1) held in a separate bank account for reasonable anticipation of being used for future campaigns; (2) distributed within a reasonable period of time to another political organization or a newsletter fund, an organization that qualifies as a publicly supported charity, or the general fund of the state or local government and (3) returned the funds to the contributors. Income from excess contributions set aside in a separate bank account for use in subsequent campaigns must be reported on a Form 1120-POL, "U.S. Income Tax Return for Certain Political Organizations," for the taxable year in which such income is so credited.³⁹

After my last campaign, part of my excess funds were transferred to a separate office account specifically permitted by F.S. 106.141(5).

- a. What is the relation between the separate office account and my Intradistrict Allowance Account?**
- b. What can the funds in this account be used for?**
- c. Is the transfer of these funds considered income to me?**
- d. What type of documentation or reporting do I need to file?**

-
- a. The separate office account established by F.S. 106.141(5) is to be maintained separately from any personal or other accounts including the Intradistrict Allowance Account. Excess campaign funds are not to be combined with the monthly allowance received to pay intradistrict expense.
 - b. The funds in this account can be used only for expenses in connection with the officeholder's public office that would be allowable under IRC Section 162(a).
 - c. The transfer of excess funds to the separate office account created by F.S. 106.141 (5) does not create income to the officeholder as long as the funds are used only for expenses incurred in running their public office. These are the only expenditures allowed by Florida statute.
 - d. The officeholder should file quarterly reports with the state Division of Elections until the separate office account is closed. These reports should contain the name and address of each person to whom any distribution of funds were made, together with the amount and the purpose, and the name and address of any person for whom the officeholder received any refund or reimbursement and the amount of such reimbursement. Also, since the F.S. 106.141(5) separate office account is considered a political organization, it may be subject to the tax imposed under IRC Section 527(b) and the filing of Form 1120-POL.⁴⁰

During the period of my last campaign, I received cash and securities from donors to use in my campaign. The cash earned interest while on deposit in a savings bank, cash dividends were paid on the securities, and a gain was realized on their sale. I maintained a complete set of books and records for these funds, which were held separate and distinct from my personal funds. I did not use any of these funds for anything other than campaign purposes.

- a. **What part of these funds is taxable for federal income tax purposes? What type of return should I file to report income from campaign funds, and when is such a return due?**
- b. **What expenditures are deductible in computing taxable income?**

- a. Campaign contributions, and proceeds from fund raising events, are deemed exempt function income and are not taxable to a political candidate by or for whom they are collected if they are used for expenses of a political campaign or some similar purpose. However, interest earned on bank deposits, the cash dividends received on contributed securities, and the gains realized on sales of contributed securities (net of any losses on such sales) must be reported as income on a "U.S. Income Tax Return for Political Organizations" form (Form 1120-POL), and any resultant tax paid. To interpret the special rules that apply in computing the gain or loss recognized on the sale of contributed securities, you may want to consult your CPA. Expenses incurred upon the sale of contributed securities are to be taken into account in determining gain realized on such sales. If the organization had political organization taxable income, Form 1120-POL must be filed. If the organization had gross receipts of \$25,000 or more, Form 990 must also be filed. These forms must be made available to the public upon request.⁴¹

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- b. Allowable deductions in computing taxable income include expenses directly connected with the production of taxable income. However, expenditures related to exempt function income, i.e., campaign contributions and proceeds from a political fundraising or entertainment event, are not deductible against taxable income.

How much may contributors to my campaign fund deduct when figuring their income taxes?

None. Also, the individual credit for political contributions was repealed by the Tax Reform Act of 1986.⁴²

Am I required to make any disclosures regarding the non-deductibility of campaign contributions?

Under 1987 tax legislation, each solicitation by a political organization is subject to new disclosure requirements, and must contain an express statement in a conspicuous and easily recognizable format that contributions or gifts to the organization are not deductible as charitable contributions.

The disclosure requirements do not apply to any organization whose gross receipts in any tax year normally do not exceed \$100,000. However, if necessary or appropriate to prevent the avoidance of the disclosure requirement through the use of multiple organizations, the IRS may treat any group of two or more organizations as one organization for purposes of the gross receipts test.

The disclosure requirements generally apply to any solicitation of contributions or gifts that are made in written form or by television, radio or telephone. Therefore, the disclosure requirements do not apply to an in-person verbal request for contributions. A telephone call or letter that is not part of a coordinated effort in soliciting 10 or fewer people is not considered solicitation. Failure to disclose that contributions are not deductible may result in a \$1,000-per-day penalty, up to a maximum of \$10,000 per calendar year.⁴³

Campaign Expenses

Are my campaign expenses deductible for tax purposes?

A candidate's campaign expenditures out of his or her own resources are not deductible as ordinary business expenses for income tax purposes.

IRC Section 162(e)(1) disallows all deductions for expenditures in any political campaign of a candidate for public office. Regardless of the election result, candidates cannot deduct their expenses for attending political conventions, contributions to the political party that sponsored their candidacy, expenses of their campaign travel, their own campaign advertising, the

expenses of successfully defending their position in a contested election, filing fees, or the cost of legal fees paid in litigation over redistricting. Nor may these expenses be amortized as capital expenditures over the term of the office.

Even though political office may be viewed as a stepping stone to some other business or profession, this is not enough to change the result. Thus, political campaign expenses are not deductible by a lawyer seeking election as a legislator in hopes that the exposure will build his or her professional practice. If a candidate feels his or her professional reputation was damaged during a political campaign, the candidate cannot deduct the cost of any defamation litigation for allegations published during the campaign.

Record Keeping

What kind of information do I need to substantiate my deduction for travel, entertainment and other business expenses?

Estimates generally are not acceptable. The legislator must “substantiate by adequate records or sufficient evidence corroborating his own statements.” Business expenses must be supported by receipts, canceled checks and books of record for any lodging expenditure and any other business expenditure of \$75 or more. In every case, the business nature of the expense must be evidenced in some fashion.⁴⁴

The elements for recording travel expenses are:

1. The amount spent daily for transportation, meals, lodging, etc. Such expenses may be aggregated in reasonable categories, such as gasoline and oil, taxis and meals;
2. The date of departure and return and the number of days spent on business;
3. The destination or locality of the travel designated by the name of a city, town or similar description; and
4. The business purpose of the trip or the business benefit derived or expected to be derived as a direct result of the travel.⁴⁵

In the event travel receipts are not available, travel expenses may be recorded using the federal per diem table.⁴⁶ This table contains meal and lodging allowances for most major localities in the State of Florida and is allowed by the IRS to take the place of individual receipts. However, to use the table, the legislator must be able to document (1) the location to which travel was taken, (2) the dates of travel, (3) the business purpose of trip which travel was conducted. It should be noted that there is a reduced allowance for the first day of the trip and the date of return to the legislator’s home and that the table only covers lodging and meals. Travel expenses such as gas, airline, or rental cars are not covered and still need to be documented with receipts if over \$75.

Entertainment expenses should be recorded as follows:

1. The amount and a description of each separate expenditure. (However, incidental items such as taxi fares and telephone calls may be aggregated on a daily basis.);
2. Date of the entertainment;
3. Time and place (name and address or location) the entertainment was provided, and designation of the type of entertainment, such as dinner or theater;
4. Business purpose of the activity, including a description of any business benefit derived or expected and the nature of any business discussion with the person entertained;
5. Description of the entertainment; and
6. The nature of business interests of the person or persons entertained, which may be indicated by name, title, occupation or other designation sufficient to establish the interest. (If the legislator entertains a relatively large group of persons, he or she need not record the names of each individual present if a class designation would suffice to indicate the nature of their business activities. However, members of the class must be readily identifiable. Thus, a designation such as all of the members of the Miami-Dade delegation would be sufficient. But if the group is too large and heterogeneous so that members could not be easily identified, the legislator is required to list each person entertained and the person's occupation.)

If the entertainment is "associated with" rather than "directly related to" the active conduct of the legislator's trade or business, the legislator also must record:

- a. The date and duration of the business discussion that preceded or followed the entertainment;
- b. The place where the business discussion was held;
- c. The nature of the discussion, its purpose, and the benefit derived or expected from the discussion; and
- d. The identity of the persons entertained who participated in the business discussion.

Entertainment Facilities:

Entertainment facilities for which a taxpayer generally cannot deduct expenses include yachts, hunting lodges, fishing camps, swimming pools, tennis courts, bowling alleys, cars, airplanes, apartments, hotel suites, or a home in a vacation resort.⁴⁷

Aggregation of Expenditures:

The taxpayer must record the above elements for each "separate expenditure."⁴⁸

Generally, a single payment for goods, services or facilities will be considered a separate expenditure. Thus, where the taxpayer entertains a guest at dinner and the theater, the payment for the meal and the payment for the tickets are deemed to constitute separate

expenditures, each of which must be individually recorded. If the taxpayer holds season or series tickets to an event, he or she must treat each ticket in the series as a separate item and record the use of each ticket.

However, concurrent or repetitious payments made during the course of a single event that are similar may be treated as a single expenditure. Thus, cocktails paid for separately during an evening's entertainment at one place may be treated as a single expenditure.⁴⁹

Certain kinds of expenses can be aggregated on a daily basis. For instance, at the option of the taxpayer, amounts expended for breakfast, lunch, or dinner may be aggregated. Reasonable tips may be aggregated with the expense of the services to which they relate. Other expenses that may be grouped include "gasoline and oil," "taxi" and "telephone bills."⁵⁰

Business Gifts:

If the legislator wishes to deduct the cost of business gifts, he or she must substantiate the following for the calendar year:

1. A description of the gift and cost, not to exceed \$25 per donee;⁵¹
2. The date the gift was made;
3. The business reason for or the benefit derived or expected as a result of the gift; and
4. The relationship of the recipient to the legislator, including name, title or other designations sufficient to establish such relationship. It is not necessary to record the recipient's name in certain situations if the business nature of the gift is clear and it is apparent the taxpayer is not attempting to avoid the \$25-per-donee limitation.

Thus, if the legislator purchases a large number of inexpensive tickets to a local high school basketball game and distributes one or two of them to each of a large number of constituents, he or she need not record the names of the recipients. However, the legislator still must substantiate the cost, date, description and business purpose of the gift.⁵²

Adequate Records Consist of:

1. Diaries or account books. It is required that the elements of an expenditure be recorded "at or near the time" when the expense was incurred. Such records are believed to have "a high degree of credibility not present with respect to a statement prepared subsequent thereto when generally there is a lack of accurate recall." Thus, although no special form of records must be maintained, it is clear the IRS contemplates that the legislator will keep a diary or account book where entries can be made on a daily basis.

The degree of specificity of entries in a diary or account book will vary with the facts and circumstances of each expenditure. Where documentary evidence is required, it is not necessary to make a diary entry that duplicates information contained in the receipts if

the receipt and diary complement each other in an orderly fashion. Again, where the business purpose of an expenditure is evident from surrounding facts and circumstances, a written statement of such business purpose is not required.

Confidential or highly sensitive information need not be recorded in a diary or account book. However, the legislator should be ready to submit a contemporaneous record of the expenditure to the IRS district director during an audit if he or she is to obtain a deduction for the expenditure.

2. **Documentary evidence.** A diary or account book standing alone is not sufficient substantiation in all circumstances. The legislator must be prepared to produce documentary evidence (i.e., receipts, paid bills, bank statements, and credit card statements) in order to deduct lodging expenses incurred while traveling away from home and other business expenses in excess of \$75. Documentary evidence supporting an expenditure for transportation in excess of \$75 will not be required if such evidence is not readily available. These expenses easily can be authenticated by fare schedules and mileage rates.

Usually, a receipt will suffice if it contains enough information to establish the amount, date, place and character of an expense. Thus, a hotel receipt must include the name, to serve as adequate substantiation of a business travel expense. Similarly, a restaurant receipt must indicate the name and location of the restaurant, the date, and the charge for food, beverages and other items.

A canceled check ordinarily will not constitute adequate documentary evidence because it does not show in detail the specific items composing the total expenditure. Thus, if a legislator makes a long distance telephone call to his or her home (a personal expense), a hotel receipt usually would indicate this fact while a canceled check would not. However, a canceled check, in connection with the payee's bill, typically will be sufficient to substantiate the business nature of an expenditure. The detail required is important, because it is the basis upon which an allocation between personal and business expenses can be made. Moreover, if expenses incurred with respect to certain persons (i.e., spouses) are not deductible, it is essential that evidence of the cost incurred with respect to them be available. Otherwise, they will be deemed to bear a proportionate share of the total charge.⁵³

Retention of Records:

The legislator must retain his or her records and related documentary evidence in support of travel, entertainment and gift deductions during the period that his or her tax return is subject to audit. Normally, this period is three years from the date of filing the tax return on which the taxpayer claimed the deduction. However, the period of limitations is longer if the taxpayer consents to an extension, or if there has been a substantial omission from the gross income. Moreover, there is no statute of limitations in cases of fraud.⁵⁴

Disallowance of Certain Entertainment Expenses⁵⁵

There are strict rules that apply to deductible business expenses for entertainment. Deductions of expenditures for entertainment, amusement or recreation are limited to those that are “directly related” to expenses associated with business or income-producing activities. In addition, certain entertainment expenses that precede or follow a business discussion may be deductible.

Costs relating to facilities used in connection with entertainment or recreation generally are nondeductible. These nondeductible facilities are yachts, hunting lodges, fishing camps, swimming pools, tennis courts and bowling alleys. In addition, no deduction is allowed for amounts paid or incurred for membership in any club organized for “business, pleasure, recreation or other social purpose.” The purpose, and not the name, determines whether the club is organized for these purposes. Examples of clubs falling into this class include country club, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals for business discussions.

The inclusion of “business” in the list of disallowed purposes creates a confusingly broad category. However, the regulations grant some relief by specifically excluding from the disallowance:

- 1) “Civic or public service organizations” (such as Kiwanis, Lions, or Rotary);
- 2) Professional organizations (such as bar associations and medical associations); and
- 3) The following organizations which are similar to professional organizations: business leagues, trade associations, chambers of commerce, boards of trade, and real estate boards.

Even if the dues are disallowed, expenses (other than dues) incurred at clubs, such as meals, may be deductible if they satisfy the criteria for entertainment expenses (see the first paragraph, above).

Politicians and Job Search Expenditures

In some instances job search expenses can be considered an unreimbursed business expense deductible on Schedule A as a miscellaneous itemized deduction subject to a two-percent-of-adjusted-gross-income floor (see Limitations on Employee Business Expenses and Allowable Expenditures Example below).

In general, job search expenses are deductible when they are incurred to find a new job in your present occupation. At first look, job search expenses for a new political appointment or office might appear to qualify for this deduction. However, the Internal Revenue Code and various IRS publications disallow it.⁵⁶ IRC section 162(e) denies deductions for “participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office.”⁵⁷ And one IRS publication specifically states, “You cannot deduct campaign expenses of a candidate for any office, even if the candidate is running for reelection to the office. These include qualification and registration fees for primary elections.”

Limitations on Employee Business Expenses

Most of the deductible expenses described in this guide are deductible as employee business expenses, as discussed in the introduction (page 3). After applying individual expense limitations, such as the 50% limit on meals and entertainment (page 16), these expenses are included as “miscellaneous itemized deductions.” The employee business expenses are then added to any other specified “miscellaneous itemized deductions,” and the total is deductible only to the extent it exceeds 2% of Adjusted Gross Income.

Expenses reimbursed under a so-called “accountable plan” are not deducted, but the good news is the reimbursement is not included as income.⁵⁸

Allowable Expenditures Example

Rebecca Law is a member of the “Birthday” Party and was elected in a special election on Nov. 3, 2011. Her 2011 Adjusted Gross Income is \$90,000. She lives in Riviera Beach and maintains an office at home, which occupies 20 percent of the square footage of the house.

The member’s official headquarters is located in West Palm Beach, where the state-employed staff performs its duties in an office that rents for \$900 per month and is devoted exclusively to legislative business. In addition to the state staff, Ms. Law pays a part-time receptionist \$10 an hour to help during the busiest part of the day (50 hours total during the year), and pays a cleaning service \$50 per month to clean the office. These expenses are reimbursable by the Legislature beginning on the date she takes office.

In addition to serving in elected office, Ms. Law sells commercial insurance as an independent contractor for a firm in Palm Beach Gardens. Approximately 66 percent of the member’s time is spent (and income is generated) by the insurance business. Ms. Law has a vehicle that is used for state business and the insurance business. The total mileage for the year was 15,000 of which 10,000 miles were insurance related and not reimbursed, and 3,000 miles were for official state travel. All official state travel occurred after election. Four hundred of the state miles were reimbursed by the legislature to the member for driving to special session at 44.5 cents per mile; the remaining 2,600 miles were reimbursed from intradistrict funds at 55.5 cents per mile.

There are two chambers of commerce in Ms. Law’s district, and the member attends the monthly \$15 luncheon for each chamber each month, and pays annual membership dues to each of \$50.

On the way to one meeting, Rebecca received a \$50 speeding citation. Ms. Law then stayed at the Governor’s Inn for two nights in conjunction with the special session, and was reimbursed \$200 of the \$400 actually spent on lodging (\$300) and food (\$100) for the member. The United Way solicited a \$75 contribution for the homeless, and the “Birthday” Party asked for a \$100 quarter-page ad in its annual dinner program.

Allowable Expenditures Example

		Reimbursable (1)	Deductible as Miscellaneous Itemized Deductions (2)	Deductible as Charitable Contribution	Non-Deductible (3) (4)
Home Office	(4)				
District Office:					
Rent	(5)	1,710	-	-	90
Receptionist		500	-	-	-
Cleaning Service	(6)	95	-	-	5
Mileage (Legislative)	(7)	1,621	44	-	-
Mileage (Insurance)	(8)	-	5,325	-	-
Monthly Luncheon			30	-	30
Speeding Citation		-	-	-	50
Lodging		150	150	-	-
Meals		50	25	-	25
United Way Contribution		-	-	75	-
Advertising (Birthday Party)		-	-	-	100
Chamber of Commerce Dues		-	100	-	-
Total Misc Itemized Deductions			5,674		
Less 2% AGI	(9)		-1,800		
Net Misc Itemized Deductions			3,875		

(1) Reimbursable to the legislator under the Intradistrict Accountable Plan and by the legislature, limited by their monthly allotment.

(2) Deductible on the legislator's personal income tax return subject to IRC limitations.

(3) Not reimbursable to nor deductible by the legislator.

(4) Consult your CPA. See discussion at page 6.

(5) November \$900 x 27/30 =	\$ 810
December	900
	<u>\$1,710</u>

Rent paid for space prior to being elected would not be deductible or reimbursable.

(6) November \$50 x 27/30 =	\$45
December	50
	<u>\$95</u>

Cleaning fees paid for space prior to being elected would not be deductible nor reimbursable.

(7) Reimbursable Legislative Mileage
2,600 miles at \$.555 plus 400 miles at \$.445 = \$1,621.

Deductible Legislative Miles
3,000 miles at \$.555 = \$1,665
Less reimbursement 1,621
\$44

(8) Deductible Insurance Miles
January - June 1 = 4,167 @ \$.51 = \$2,125
July - December = 5,833 @ \$.555 = \$3,238
10,000 \$5,363

(9) Adjusted Gross Income \$90,000 x 2% = \$1,800 scaleback.

Summary

FACTORS TO BE PROVED IN SUBSTANTIATING ELEMENTS IN COLUMN 1

Elements to be substantiated (1)	For expenditures for travel away from home (2)	For expenditures for automobile travel and transportation (3)
Amount	Amount of each separate expenditure for transportation, lodging and meals. Permissible to aggregate incidental expenses in reasonable categories, such as taxis, daily meals, etc.	Cost of travel by automobile may be substantiated by using the standard mileage rate (see page 9). Under actual method, amount of operating expenses must be substantiated.
Time	Dates of departure and return for each trip, and number of days attributable to business activities.	Date of travel must be noted. One entry can be made for round trip.
Place	Destination by name of city or other appropriate designation.	Destination and number of miles must be substantiated.
Description	Not applicable.	Not applicable.
Business purpose	Business purpose of the trip or nature of business benefit derived or expected to be derived as a result of the travel.	Business purpose of the automobile trip must be noted in log.
Business relationship	Not applicable.	Not applicable.

With respect to a deduction for entertainment expenses (Column 4), if the deduction is claimed on the basis that it directly was related to the active conduct of your business, only the factors not enclosed in parentheses must be proved. If the deduction is claimed on the basis that it was associated with the active conduct of your business and directly was preceded or followed by a substantial and bona fide business discussion, the factors enclosed in parentheses, as well as those not in parentheses, must be proved.

For expenditures for entertainment	For expenditures for gifts
(4)	(5)
Amount of each separate expenditure. Incidental items, such as taxis, telephones, etc., may be aggregated on a daily basis.	Cost of gift (limited to \$25 per donee per year).
Date of entertainment or use of a facility for entertainment (duration of business discussion).	Date of gift.
Name and address or similar designation of place of entertainment or place of use of a facility in connection with entertainment; Type of entertainment if not otherwise apparent (place of business discussion).	Not applicable.
Not applicable.	Description of gift.
Business purpose or nature of business benefit derived or expected to be derived; Nature of business discussion or activity if entertainment is other than "business meals."	Business purpose for making the gift or nature of business-benefit derived or expected to be derived.
Occupations or other information such as names or other designations about persons entertained that establishes their business relationship to a taxpayer (Identification of person entertained who participated in business discussion).	Occupation or other information such as name or other designation about recipient that establishes business relationship to taxpayer.

Endnotes

- 1 CCA 199939001, 10/01/1999, IRC Sec(s) 62; 67
- 2 Reg. §1.121-1(e)
- 3 F.S. §443.036(19), 443.1215(1)(a)1 & 2
- 4 IRC §162(a)
- 5 IRC §162(a)(2)
- 6 Reg. §1.162-2(c)
- 7 Reg. §1.62-1T(e)(3)
- 8 IRC §67(a)
- 9 Reg. §1.274-5(j)(2)
- 10 IRC §274(d)
- 11 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec 4.05(3)
- 12 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec 4.05(2)
- 13 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.05(1); Notice 2010-88, 2010-51 IRB 882; Ann. 2011-40, 2011-29, IRB 56
- 14 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec 4.04; Notice 2010-88, 2010-51 IRB 882
- 15 IRC §162(e)(1)
- 16 IRC §162(h)(4)
- 17 Reg. §1.162-2
- 18 Reg. §1.162-1(a)
- 19 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.05(3)
- 20 IRC §274(n)
- 21 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.02
- 22 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.05(3)
- 23 IRC §179(b)(1)(B)
- 24 IRC §179(b)(5)(A)
- 25 IRC §162(h)(1)(B) and (C)
- 26 IRC §162(a)(2)
- 27 Rev. Proc. 2010-39, 2010-42 IRB 459, Sec. 5.02 (\$160 per day 10/2/10 - 9/30/11); Notice 2011-81, 2011-42 IRB 520 (\$163 per day after 9/30/11)
- 28 IRC §274(n)
- 29 IRC §162(a)(2), IRC §274(d)
- 30 IRC §274(m)(3)
- 31 IRC §162(e)(1)
- 32 IRC §162
- 33 IRC §162, Reg. § 1.274-5(c)(2)(iii)(A)(2)
- 34 Reg. §1.274-2(d)(3)(ii)
- 35 IRC §262(b)
- 36 IRC §274(a)(3)
- 37 IRC §162
- 38 Rev. Rul. 71-449, Rev. Proc 68-19, 1968-1, C.B. 810, Sec. 5
- 39 IRC §527, Publication 525
- 40 F.S. §106.141
- 41 IRC 6012(a)(6), IRC 6014(b)
- 42 IRC §162(e)(1)
- 43 IRC §6113; §6710
- 44 Reg. §1.274-5 (c)(2)(iii)
- 45 Reg. §1.274-5T(b)(2)
- 46 Rev. Proc. 2010-39, 2010-42 IRB 459, Sec. 5.02 (\$160 per day 10/2/10 - 9/30/11); Rev. Proc. 2011-47, 2011-42 IRB 520 and Notice 2011-81, 2011-42 IRB 520 (\$163 per day after 9/30/11)
- 47 Reg. §1.274-2(e)(2)(i)
- 48 Reg. §1.274-5T(b)(3)(i)
- 49 Reg. §1.274-5T(c)(6)
- 50 Reg. §1.274-5T(c)(6)(i)(B)
- 51 IRC §274(b)(1)
- 52 Reg. §1.274-5T(b)(5)
- 53 Reg. §1.274-5T(c)(2)
- 54 IRC §6501(a)-(c)
- 55 Reg. §1.274-2(a)(2)(iii)
- 56 IRC § 162(e), IRS Publication 529, and IRS Publication 17
- 57 IRS Publication 17
- 58 Reg. §1.62-2(c)(4)



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