



FICPA



2021
Florida Legislator's
TAX GUIDE

The Florida Institute of Certified Public Accountants has prepared this “Legislator’s Tax Guide” specifically for members of the Florida Legislature. We hope you find it helpful in preparing your federal income tax return.

Note that this guide offers only general coverage of certain topics. This guide does not cover personal itemized deductions or tax matters relating to any other professional, business or investment activities you may have. Your tax situation may vary from the general rules and principles found herein. As a result, this guide should not be used as the sole basis for final decisions regarding your particular tax situation. We advise consulting with your CPA before making decisions based on the information presented in this guide.

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Forms Referenced:

- **Form 1040** — U.S. Individual Income Tax Return
- **Form 1040 Schedule A** — Itemized Deductions
- **Form 1040 Schedule B** — 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 Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding
- **Form DR-1** — Florida Business Tax Application
- **Form RT-6** — Florida Employer’s Quarterly Report
- **Election to Treat Residence as Home for Tax Purposes**

Forms and instructions can be downloaded from these websites:

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



Note: This guide was prepared in December 2021 for the 2021 tax year. Copyright © 2021 by the Florida Institute of Certified Public Accountants.

PREFACE: THE CPA PROFESSION TODAY

Today's Certified Public Accountant (CPA) occupies a central position in business management, whether in government, industry, education, or the traditional role of public accounting. Areas of practice include, but are certainly not limited to, taxation and tax planning; estate, trust and retirement planning; auditing and other assurance services; financial management, budgeting, and forecasting; management advisory services; and compilation and review of financial statements.

CPAs are expected to maintain the highest professional standards and integrity in the practice of accountancy. To be licensed to practice in Florida, a CPA must:

- Have earned 150 semester hours or 225 quarter hours of qualifying college education;
- Have completed one year of qualifying work experience;
- Have passed a comprehensive, four-part examination covering auditing and attestation, financial accounting and reporting, regulation (tax and business law), and the business environment (management, business processes, economics, information technology, etc.);
- Obtain a minimum of 80 hours of continuing professional education every two years, including four hours of ethics; and
- Abide by the professions' code of conduct.

The Florida Institute of CPAs (FICPA) includes more than 19,500 members and has 23 active chapters in six regions throughout the state. Members subscribe to the rules of professional conduct embodied in the FICPA's bylaws and subject themselves to discipline thereunder.

Members of the FICPA Legislators Tax Guide Subcommittee include:

Marc Whitfield, CPA (Fort Myers) - Chair

Luke Richardson, CPA (Tampa)

Lauren Buzzelli Fuchs, CPA, CVA (Tallahassee)

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EXECUTIVE SUMMARY

The Tax Cuts and Jobs Act of 2017 suspended the deduction of miscellaneous itemized deductions subject to the two percent of adjusted gross income limitation for tax years beginning after December 31, 2017 and before January 1, 2026. This suspension includes unreimbursed employee business expenses you will likely incur in your role as a member of the Florida Legislature. Accordingly, this year's guide is relatively brief compared to prior years' editions.

Please reference the chart below comparing current and prior law treatment of certain unreimbursed employee business expenses.

Comparison of Unreimbursed Employee Business Expense Deductions under Prior and Current Law

ITEMS	PRIOR LAW	CURRENT LAW
Home and District Office Expenses	Allowed as a miscellaneous deduction on Form 2106	Suspended
Staff Expenses		
Automobile and Travel Expenses		
Living Expenses (Meals and Lodging)		
Advertising		
Entertainment and Business Meals		
Phone Expenses		

We encourage you to consult the 2019 guide for further information regarding various expenses which may be helpful if you have a separate trade or business in which you are not an employee (or if you have questions arising from a prior year tax return).

Also, state reimbursement plans are accountable plans. Reimbursements of expenses subject to an accountable plan are not included in taxable income. For this reason, you should carefully evaluate whether expenses incurred in your position as an elected official qualify for reimbursement under a state reimbursement plan.

Finally, intradistrict allowances, campaign contributions, and campaign expenses can have tax consequences. These are discussed at the conclusion of this guide.

INTRODUCTION

Historically, members of the Florida Legislature have been permitted to deduct on their federal income tax returns expenses considered to be ordinary and necessary in performing duties as an employee of the State of Florida. Any such expenses that were unreimbursed could be claimed as an itemized deduction on Schedule A (subject to limitations). Form 2106 was used for reporting these expenses.

In a significant departure from prior law, the Tax Cuts and Jobs Act of 2017 suspended deductions for miscellaneous itemized deductions subject to the two percent of adjusted gross income limitation—including unreimbursed employee business expenses—for tax years beginning after December 31, 2017, and before January 1, 2026. Under current law, Form 2106 is applicable only to Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and employees with impairment-related work expenses.

This guide is not intended to address all tax issues that may relate to your federal income tax return. For example, personal items (e.g., medical expenses, interest, and charitable contributions) and other tax matters unrelated to your position as an elected official are not discussed.

HOME AND DISTRICT OFFICE EXPENSES

Costs of maintaining an office in a legislator's home or an office in the legislator's district are not currently deductible.

STAFF EXPENSES

Wages of staff and assistants other than those paid by the State of Florida are not currently deductible.

For individuals to whom payments are made for services, you may have certain federal and state payroll tax compliance obligations. In general, you must first obtain a federal employer identification number (EIN) using Form SS-4 and a state reemployment account by filing a Form DR-1. You will then withhold and pay the proper payroll taxes and file the appropriate payroll returns.

In addition to employer federal Medicare and social security payroll taxes, you may be liable for federal unemployment and state reemployment taxes. If you pay \$1,500 or more in wages in any calendar quarter or have one or more employees for a day (or portion of a day) during any 20 weeks within a calendar year, reference Form 940 for federal unemployment taxes and Florida Form RT-6 for state reemployment taxes.

Consider consulting your CPA for further guidance.

AUTOMOBILE AND TRAVEL EXPENSES

In prior years, certain automobile and travel expenses attributable to your role as a legislator were deductible. These costs are not currently deductible.

LIVING EXPENSES

In prior years, certain living expenses (including meals and lodging) attributable to your role as a legislator were deductible. These costs are not currently deductible.

ADVERTISING EXPENSES

In prior years, certain advertising expenses attributable to your role as a legislator were deductible. These costs are not currently deductible.

ENTERTAINMENT AND BUSINESS MEAL EXPENSES

In prior years, certain advertising expenses attributable to your role as a legislator were deductible. These costs are not currently deductible.

PHONE EXPENSES

In prior years, certain phone expenses attributable to your role as a legislator were deductible. These costs are not currently deductible.

INTRADISTRICT ALLOWANCE

The Florida House and Senate have adopted an intradistrict allowance plan designed to reimburse legislators for appropriate expenses incurred in connection with the operation of their legislative district office. These plans meet the substantiation requirements for an accountable plan. Reimbursements paid pursuant to an accountable plan are not included in income.

Under these plans, legislators must keep detailed records of all expenses paid from the intradistrict fund. Travel receipts must be filed with monthly reports (discussed below), and all other records must be kept on file at the legislator's district office.

At the end of each month, legislators will receive a statement declaring the amount of funds sent for that month's reporting period. Legislators must file a monthly report within a specified period of time after the end of the month substantiating expenditures of the funds received in the accountable month. Funds not expended as of that month's report date must be repaid.

Members who fail to submit a timely report are subject to IRS rules concerning nonaccountable plans. These rules require the State of Florida, as employer, to withhold federal income tax and Social Security and Medicare taxes. As employees, legislators may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

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

CAMPAIGN CONTRIBUTIONS

Campaign contributions generally are not taxable to the political candidate by or for whom they are collected if the funds are used for expenses of a political campaign or some similar purpose. However, if the funds are used by a candidate for personal purposes, then they are taxable in the year of the diversion unless the recipient can show that an unrestricted gift for personal use was intended. Political contributions generally 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 the candidate's out-of-pocket expenses paid during the current campaign or, if the candidate is not currently campaigning, during a previous campaign. Political candidates should keep detailed records to properly account for receipt and disbursement of campaign contributions. If political funds are commingled with personal funds, tracing may not be possible and political funds will be presumed diverted to personal use.

Any excess campaign contributions not expended generally will be treated as taxable income to the candidate unless the excess funds are: (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; or (3) returned to the contributors. If campaign contributions exceeding campaign expenses are transferred to a separate office account pursuant to F.S. 106.141, the account may be subject to tax imposed under IRC § 527(b).

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 credited. Campaign contributions and proceeds from fundraising events are deemed exempt function income and are not taxable to a political candidate by or for whom they are collected if the funds are used for expenses of a political campaign or some similar purpose. However, interest earned on bank deposits, cash dividends received on contributed securities, and gains realized on sales of contributed securities (net of any losses on such sales) must be reported as income on a Form 1120-POL. To ensure compliance with 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.

In general, political organizations with gross receipts over certain thresholds may have filing requirements for Form 990 ("Return of Organization Exempt from Income Tax") or Form 990-EZ ("Short Form Return of Organization Exempt from Income Tax"). Consult with your CPA regarding your filing requirements for the reportable tax year.

CAMPAIGN EXPENSES

Campaign expenditures paid out of the candidate's own resources are not deductible.



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