



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This letter responds to your request for information dated June 16, 2010. You asked this office for information concerning rules that apply to travel expenses of state legislators who make an election for a taxable year under § 162(h) of the Internal Revenue Code and § 1.162-24 of the Income Tax Regulations.

If a taxpayer makes this election, two special rules apply for the taxpayer's travel expenses. First, the taxpayer's place of residence within the taxpayer's legislative district is treated as the taxpayer's tax home for the entire taxable year. Second, the taxpayer may deduct deemed living expenses on each legislative day during the year. See § 1.162-24(a).

A legislative day is any day the legislature is in session, and any day the legislature is not in session for a period of up to four consecutive days. A legislative day also is any day on which a taxpayer's attendance is formally recorded either at a *pro forma* session or at a meeting of a committee of the legislature. See § 1.162-24(b). A committee of the legislature is any group that includes at least one legislator and that is charged with conducting business of the legislature. See § 1.162-24(d)(4).

For a day to qualify as a legislative day based on a taxpayer's attendance at a meeting, the taxpayer must attend "a meeting of a committee of the legislature." See § 1.162-24(b)(3); see also § 162(h)(2)(B). This means that the taxpayer must attend a committee meeting, not merely any meeting that pertains to the business of the legislature. Therefore, if a taxpayer performs duties outside of a committee meeting—such as discussing agendas or other business with committee staff or attending executive branch functions as a representative of the committee—the performance of these duties is not sufficient to meet the definition of a legislative day.

If a taxpayer performs these duties on a day that does not otherwise qualify as a legislative day, the taxpayer may not deduct deemed travel expenses on that day.

However, the taxpayer's residence is still treated as the taxpayer's tax home on that day, and the taxpayer may deduct actual travel expenses for that day under the general rules that apply to travel expenses. See § 1.162-24(f)(2). For more details on these general rules, see Publication 463, Travel, Entertainment, Gift, and Car Expenses, available at [www.irs.gov](http://www.irs.gov).

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See § 2.04 of Rev. Proc. 2011-1, 2011-1 IRB 1, 7. If you have any additional questions, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Thomas D. Moffitt  
Branch Chief, Branch 2  
(Income Tax & Accounting)