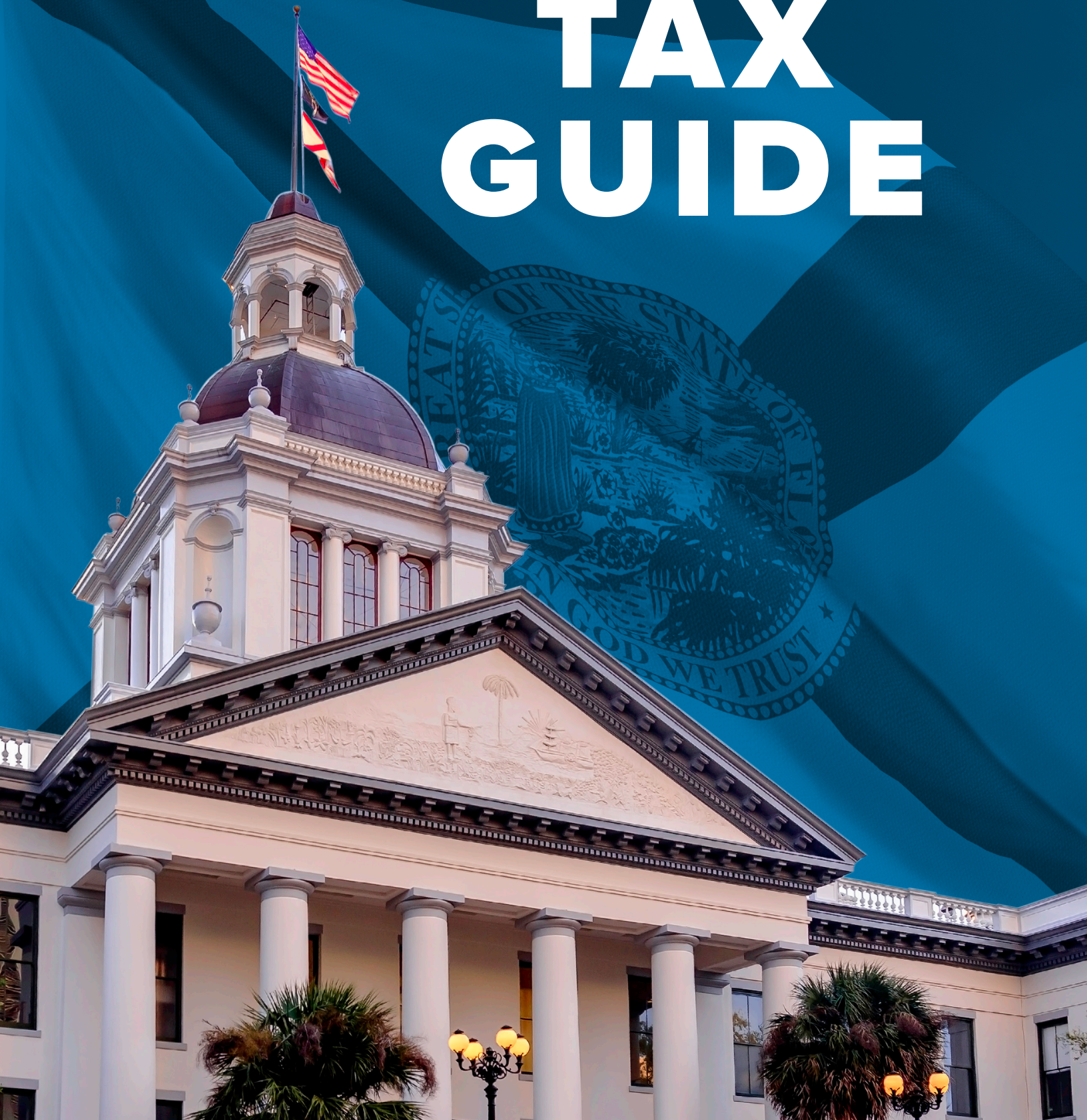




Florida Institute of Certified Public Accountants

2018 FLORIDA LEGISLATOR'S

# TAX GUIDE



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.



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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 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 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](http://www.irs.gov/formspubs)
- **Department of Revenue (DOR)** — [www.myflorida.com/dor](http://www.myflorida.com/dor)



*Note: This guide was prepared in January 2019 for the 2018 tax year.  
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# PREFACE: THE CPA PROFESSION TODAY

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Today's CPA occupies a central position in business management, whether it is in government, industry, education or 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-hour or 200 quarter-hour college educational requirement;
- Have completed one year of 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 19,000 members and has 26 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

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As a legislator, historically you may have been permitted to deduct on your federal income tax return expenses that were ordinary and necessary in performing your duties as an employee of the State of Florida. Any employee business expenses that were unreimbursed could be taken as an itemized deduction (on Schedule A) and were subject to a two-percent-of-adjusted-gross-income floor. Form 2106 was used for reporting these expenses. However, deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026.<sup>1</sup>

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.<sup>1</sup> 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, and 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

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An IRS regulation<sup>26</sup> 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 as determined by the shortest of the more commonly traveled routes between the two points. 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

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**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. State legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

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

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

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; or (2) a place where you meet for legislative business as a normal and ongoing activity. To satisfy the exclusive use test, the portion of the home used for legislative business must be used solely for the purpose of carrying on legislative business. An occasional or incidental use of your home for legislative business does not meet the regular basis test for deduction purposes. Moreover, your office must be used for the convenience of your employer (the state). Finally, 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.<sup>2</sup>

You should check with your CPA for an analysis of your situation. In any event, taxpayers may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026. 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 the two percent of your adjusted gross income floor. 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 is the form to figure the allowable expenses for business use of your home.

## SIMPLIFIED OPTION

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

Legislators who qualify for the home office deduction may elect to use a simplified safe harbor option when figuring the deduction for business use of their home.<sup>27</sup> The simplified option does not change the criteria for who may claim a home office deduction. It merely simplifies the calculation and recordkeeping requirements of the allowable deduction.

In most cases, you will figure your deduction by multiplying \$5, the prescribed rate, by the area of your home used for a qualified business use. The area you use to figure your deduction is limited to 300 square feet. If you elect to use the simplified method, you cannot deduct any actual expenses for the business except for business expenses that are not related to the use of the home. You also cannot deduct any depreciation for the portion of the home that is used for a qualified business use. You may choose to use either the simplified method or the regular method for any taxable year.

Consult with your tax advisor regarding passage of pending legislation regarding inflation adjustments to this method.

**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?**

No expenses can be deducted because taxpayers may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026, expenses related to an office (e.g., rent, utilities and depreciation on improvements and equipment) used for legislative purposes are not deductible expenses for tax year 2018.

If the office is used strictly for political purposes during the 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?**

No, due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2016. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

However, 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), withhold and 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 reemployment and federal unemployment 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, you are liable for unemployment taxes (a copy of Florida Form RT-6 and Federal Form 940 can be accessed by following the links in the front of this guide), and must obtain a state reemployment account by filing a Form DR-1.<sup>3</sup> (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 <https://taxapps.state.fl.us/Registration>. 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 no tax deduction is available.

**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.<sup>2</sup> 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

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

In prior years 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;<sup>4</sup> are directly attributable to the business; and are incurred "away from home."<sup>5</sup> 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 accommodations 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.<sup>6</sup>

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

## What is the standard mileage rate for 2018?

For miles driven in 2018, the standard mileage rate is 54.5 cents per mile.<sup>7</sup>

## 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:<sup>8</sup>

YEAR	CENTS PER MILE	YEAR	CENTS PER MILE
2018 .....	25¢	2010 .....	23¢
2017 .....	25¢	2009 .....	21¢
2016 .....	24¢	2008 .....	21¢
2015 .....	24¢	2007 .....	19¢
2014 .....	22¢	2006 .....	21¢
2013 .....	23¢	2005 .....	19¢
2012 .....	23¢	2004 .....	17¢
2011 .....	22¢		

### **What other mileage expenses can I deduct?**

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

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 no longer tax-deductible. A memorandum of this mileage should be recorded in a mileage log. 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 below.)<sup>9</sup>

**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 no longer be deducted on your personal return.

**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.

**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?**

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

**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.

**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.<sup>10</sup>

**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?**

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2016. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2016. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

You can no longer deduct actual expenses nor the use the standard mileage rate.

**2018 Depreciation Change**

Depreciation deductions have been extended by recent years' federal tax legislation under IRC Section 168(k). At the time of this publication the depreciation provisions have been extended to tax year 2018 and beyond. Please consult your CPA during tax preparation to determine the changes, if any, regarding depreciation for 2018.

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2016. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

In prior years, unreimbursed parking fees and tolls incurred for business are deductible in addition to the standard mileage allowance.<sup>11</sup>

**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. Any additional expenses will no longer be deductible.

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

In prior years you could elect to use the standard mileage rate on a yearly basis.<sup>12</sup> 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 MACRS depreciation.<sup>13</sup>

**Are there special rules for luxury automobiles?**

The special rules for luxury autos no longer apply since you are no longer able to deduct mileage.

**What about SUVs, trucks, etc.?**

The depreciation deduction limitations will no longer apply since you will no longer be able to deduct auto expenses.

As discussed previously, the bonus depreciation allowed in prior years will be available through tax year 2018. Please consult your CPA.

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

Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2018. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

## LIVING EXPENSES

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Living expenses including but not limited to meals and lodging may not be deducted in tax year 2018 because deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026.

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

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**When I am in Tallahassee, away from home overnight, may I deduct a standard amount for meals and lodging as allowed by the IRS?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.



**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.<sup>14</sup>

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

Regarding meals, as discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

Regarding entertainment, deductions for entertainment are disallowed under the Tax Cuts and Jobs Act of 2017.

## ADVERTISING EXPENSES

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2016. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

Advertising expenses may not be deducted in tax year 2018 because deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

# ENTERTAINMENT AND MEAL EXPENSES

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2026. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

**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?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

**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?**

As a legislator, historically you may have been permitted to deduct on your federal income tax return expenses related to entertainment. However, deductions for entertainment are disallowed under the Tax Cuts and Jobs Act of 2017.

# TELEPHONE EXPENSES

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2026. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

**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?**

Telephone expenses may not be deducted in tax year 2018 because deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026.

# OTHER EXPENSES

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**What other expenses may I deduct on my tax return?**

None. As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

# CAMPAIGN CONTRIBUTIONS

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## **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.<sup>15</sup>

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.<sup>16</sup>

## **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.<sup>17</sup>

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 \$50,000 or more, Form 990-EZ must also be filed. These forms must be made available to the public upon request.<sup>18</sup>
- 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.<sup>19</sup>

**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.<sup>20</sup>



# CAMPAIGN EXPENSES

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## **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

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Due to the passage of the Tax Cuts and Jobs Act, enacted on December 22, 2017, unreimbursed employee deductions that were deductible as miscellaneous deductions subject to the 2 percent floor are no longer deductible for tax years beginning after December 31, 2017 and before January 1, 2026. Form 2106 is now only applicable to armed forces reservists, qualified performing artists, employees with impairment related work expenses and fee-based state or local government officials.

## **What kind of information do I need to substantiate my deduction of certain business expenses allowed as deductions?**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026. Therefore, it is not important to substantiate your deductions since you won't be able to take a deduction for them.

In prior years estimates generally were 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.<sup>21</sup>

## **The elements for recording travel expenses, if allowed as discussed above, 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.<sup>22</sup>

In the event travel receipts are not available, travel expenses may be recorded using the federal per diem table.<sup>23</sup> 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.<sup>24</sup>

**Business Gifts:**

As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026<sup>51</sup>

# DISALLOWANCE OF CERTAIN ENTERTAINMENT EXPENSES<sup>25</sup>

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As a legislator, historically you may have been permitted to deduct on your federal income tax return expenses related to entertainment. However, As discussed above, state legislators, as employees, may not deduct unreimbursed employee business expenses for tax years beginning after December 31, 2017, and before January 1, 2026.

## POLITICIANS AND JOB SEARCH EXPENDITURES

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Job search expenses may not be deducted in tax year 2018 because deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026.

## REIMBURSED EXPENSES

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As described above, deductions for unreimbursed employee business expenses have been temporarily repealed for tax years beginning after December 31, 2017, and before January 1, 2026. This change has created a drastic reduction to the amount that a legislator, which is a state employee, can deduct on his or her tax return.

Expenses reimbursed under a so-called “accountable plan” are not deducted, but the good news is the reimbursement is not included as income.<sup>27</sup> Because of the inability to deduct the expenses described in this guide and the favorable tax consequences related to reimbursements it is crucial to get the maximum amount of reimbursement.

## ALLOWABLE EXPENDITURES EXAMPLE

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Rebecca Law is a member of the “Birthday” Party and was elected in a special election on Nov. 3, 2017. Her 2018 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 employee 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 54.5 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 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) 1,595	-	40
Mileage (Insurance)	(8) -	-	5,450
Monthly Luncheon	-	-	60
Speeding Citation	-	-	50
Lodging	150	-	150
Meals	50	-	50
United Way Contribution	-	75	-
Advertising (Birthday Party)	-	-	100
Chamber of Commerce Dues	-	-	100
Total Misc Itemized Deductions			
Less 2% AGI	(9)		
Net Misc Itemized Deductions			



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  $\$900 \times 27/30 = \$810$   
 December 900  
**\$1,710**

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

6. November  $\$50 \times 27/30 = \$45$   
 December 50  
**\$95**

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

7. Reimbursable Legislative Mileage  
 2,600 miles at \$.545 plus 400 miles at \$.445 = 1,595.

Non Deductible Legislative Miles  
 3,000 miles at \$.545 = \$1,635  
 Less reimbursement 1595  
**\$40**

8. Non Deductible Insurance Miles  
 (10,000 miles @ \$.545 = \$5,450)

As an employee of an insurance firm, the mileage deduction would be not be deductible

If Ms. Law were an independent contractor, her mileage and other expenses related to her insurance business would be deductible against her commissions on Schedule C and would not be subject to the 2% limitation.

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

# ENDNOTES

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- 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 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.01; Notice 2016-79, 2016-52, I.R.B. 918
- 8 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec 4.04; Notice 2016-79, 2016-52 I.R.B. 918
- 9 IRC §162(e)(1)
- 10 Reg. §1.162-2
- 11 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.05(3)
- 12 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.02
- 13 Rev. Proc. 2010-51, 2010-51 IRB 883, Sec. 4.05(3)
- 14 IRC §274(m)(3)
- 15 Rev. Rul. 71-449, Rev. Proc 68-19, 1968-1, C.B. 810, Sec. 5
- 16 IRC §527, Publication 525
- 17 F.S. §106.141
- 18 IRC 6012(a)(6), IRC 6104(b)
- 19 IRC §162(e)(1)
- 20 IRC §6113; §6710
- 21 Reg. §1.274-5 (c)(2)(iii)
- 22 Reg. §1.274-5T(b)(2)
- 23 Notice 2013-65, 2013-42 IRB
- 24 Reg. §1.274-2(e)(2)(i)
- 25 Reg. §1.274-2(a)(2)(iii)
- 26 Reg. §1.162-24
- 27 Rev. Proc. 2013-1327





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