

2010 LEGISLATORS' TAX GUIDE



Presented by

Alabama Society of
Certified Public Accountants

The Alabama Society of Certified Public Accountants expresses appreciation to Kevin L. Ruland, CPA, partner in Ruland and Ruland, CPAs, LLC of Mobile, for updating the Legislators' Tax Guide each year.

On the cover: Alabama State Capitol circa 1890-1895. Image is from the collection of the Alabama Department of Archives and History.



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Dear Alabama Legislator:

This Tax Guide is provided to you on a complimentary basis by the Alabama Society of Certified Public Accountants, a professional society consisting of approximately 6800 members. We appreciate our legislators and the difficult service you perform, and hope this guide will be helpful in answering some of your tax questions.

As you know, tax laws are continually changing. For this reason, this guide should not replace professional advice in preparation of your tax returns. It emphasizes information and records you should maintain to facilitate preparation of your returns to your maximum advantage. Its use should be restricted to guidance regarding certain laws relating to legislators. More complicated questions should be referred to your Certified Public Accountant.

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INTRODUCTION

The purpose of this tax guide is to examine federal and Alabama tax aspects of payments received from the state by Alabama legislators. Conclusions reached for federal taxation purposes usually will apply for State of Alabama taxes on income. By virtue of the provisions of Sec. 29-1-8.1, Code of Alabama 1975, the State Department of Revenue must accept and follow the travel expense provisions of the U.S. Internal Revenue Code as amended by the Economic Recovery Tax Act of 1981 for state legislators.

This guide is intended to deal only with the tax consequences under federal and Alabama tax laws of legislators' per diem, expense, and mileage receipts as elected officials, and does not cover any personal tax matters (such as capital gains or losses, rental income and expenses, salary from private employment, or business income and expenses).

Allowable legislative expenses are treated as miscellaneous itemized deductions and are deductible to the extent that the legislator's total miscellaneous itemized deductions exceed 2% of federal adjusted gross income. **IMPORTANT NOTE:** Although allowable legislative expenses may be deductible for regular federal income tax, they are not deductions when computing alternative minimum tax.

For Alabama state tax purposes all allowable legislative expenses are also treated as miscellaneous itemized deductions and are deductible to the extent that the legislator's total miscellaneous itemized deductions exceed 2% of the Alabama adjusted gross income.

In January 2011, the state comptroller furnished each legislator with a form W-2, which reports salary and expense reimbursement in Box 1 "Wages, Tips, Other Compensation". The legislators received an increase in their expense reimbursement beginning May 14, 1991, as explained in the section "Income and the W-2".

Under a 1951 agreement with the Social Security Administration, legislators are not covered by Social Security. Therefore, FICA is not withheld and legislators do not pay self-employment tax. The only withholding for legislators is for the Medicare tax. This tax is 1.45% of the \$10 per day salary, and is only on legislators taking office after March 31, 1986.

CAMPAIGN EXPENSES AND CONTRIBUTIONS

Campaign contributions, including proceeds of testimonial or fund-raising dinners, received by or on behalf of a candidate are not taxable to the candidate if used exclusively for campaign purposes. Any campaign funds used by the candidate for any personal purpose are taxable to the candidate unless the candidate can show an unrestricted gift was intended.

Political contributions are considered used for campaign purposes if they are:

1. Used for generally recognized campaign expenses,
2. Contributed to a committee of the candidate's party, or
3. Used to reimburse the candidate for out-of-pocket expenses paid during the current or last previous campaign.

Detailed records should be maintained to enable the candidate to account for the receipt and disbursement of contributions. In the absence of showing funds were used for campaign purposes, such disbursements will be included in the gross income of the candidate. Separate bank accounts should be maintained for campaign funds. If contributions are commingled with personal funds so as to render tracing or identification impracticable, the contributed funds will be presumed to have been diverted to personal use at the time commingled, and so taxable to the candidate at that time.

If a political committee, organization or fund formed to manage your campaign contributions and expenses has taxable income of more than \$100, it should file federal Form 1120-POL and State of Alabama Form 20 annually on or before March 15th. A newsletter fund is treated as a political organization. Taxable income is defined as gross income (excluding exempt function income) less a deduction of \$100 and deductions directly connected with the production of gross income. Exempt function income is campaign contributions, membership dues or fees from members of a political organization, proceeds from political fund raising events, and other similar income as defined by Regulation Section 1.527-3. Therefore, gross income is generally income earned on invested campaign funds. The taxable income of the campaign committee is taxed at a flat 35% rate for federal purposes.

A candidate's campaign expenditures from his own resources are not deductible for income tax purposes. This is true even though a public office is defined by the Internal Revenue Code and the regulations issued thereunder as a "trade or business", and ordinary and necessary expenses incurred in a trade or business are normally deductible. In 1962, Congress enacted a section of the Internal Revenue Code disallowing all deductions (whether business or itemized) for expenditures in any political campaign for a candidate for public office.

TAX HOME

The first requirement for the deductibility of travel expenses, meals, and lodging is that such items must be incurred "away from home". Consequently, the meaning of the word "home" is important because it serves as the starting point in computing deductible expenses.

The Internal Revenue Service has consistently defined "home" to mean the principal place of business, employment, or post of duty, regardless of where the family residence is maintained. The courts have generally supported the I.R.S. definition and application of the word "home".

The Tax Reform Act of 1976 provided that for years before 1976 a state legislator was permitted to elect to treat his or her legislative district as his or her "tax home", thereby permitting the deductibility of travel and living expenses incurred in connection with the business of being a state legislator (even though the I.R.S. definition of "tax home" was not otherwise met).

The Economic Recovery Act of 1981 extended the above election provision to the years 1976 through 1980; also, it provided that for 1981 and subsequent years only those state legislators whose homes are more than 50 miles from the capitol building are permitted to make the "tax home election".

Legislators who live more than 50 miles from the capitol building may make the “tax home” election for 1981 and subsequent years. Those legislators whose place of residence is 50 miles or less from the capitol building will be governed by the more restrictive I.R.S. definition and criteria for tax deductibility of travel, meals, and lodging costs for 1981 and subsequent years, so if the capitol is the principal place of business of a legislator, it is his “tax home”.

The Internal Revenue Service has not issued permanent regulations regarding the “tax home” election. The election is validly made only by attaching a statement to the tax return (or amended return) containing:

1. Name, address in the legislative district represented, and social security number.
- 2.. The number of legislative days during the tax year in which the taxpayer was a state legislator.
3. The federal per diem rate for the state capitol (and the state per diem rate if greater).
4. The distance from the taxpayer’s residence in his legislative district to the state capitol building.
5. An election that the place of residence within the legislative district shall be considered as the “tax home”.
6. Any changes during the year in per diem rates or residence, noting appropriate periods.

To insure the “tax home” issue will not arise, each legislator who lives more than 50 miles from the capitol building and who will use the “per diem” method for travel expenses should attach a statement to his or her tax returns as follows:

“Pursuant to the provisions of § 162(h) of the U.S. Internal Revenue Code, election is hereby made that my place of residence shall be considered my home for the tax year 2010. My residence throughout the year was 123 Magnolia Avenue, Anywhere, Alabama, which is within my legislative district and is XX miles from the state capitol building. There were XX days during the year in which I was a state legislator and the legislature was in session. The federal per diem rate for the state capital city of Montgomery was \$129 for travel between January 1 and September 30; and \$123 for travel between October 1 and December 31, 2010 (which is greater than the state per diem rate)”.

(Name)

(Address)

(Social Security Number)

INCOME AND THE W-2

Legislators should keep a calendar or diary of days they attended interim committee meetings and out of state meetings and conventions.

Payments made to legislators from the State of Alabama fall into two categories 1) salary and 2) expense reimbursement. During 2010, legislators’ salaries remained the same as in 2009, as mandated by the constitution. Determination of expense reimbursement amounts and how they are reported to the legislator are important in calculating the legislator’s allowable deductions.

1. Salary. Legislators are paid a salary of \$10 every day from the first day of session to sine die, whether or not the legislature is in session that day. If a legislator attends all regular and special sessions, their salary for 2010 would have been \$1,100.00 (110 days - the number of total days from session openings until sine die) for house and Senate members.

In addition to salary earned during the session, a legislator receives salary for attendance at interim committee meetings and out of state meetings if he or she is a member of that committee. This is important because the legislator may be able to take a per diem expense deduction for those days. See the “Travel Expenses” section for details.

Most legislators who are also educators working for the State of Alabama do not receive a legislative salary. Alabama prohibits employees from drawing two salaries from the state, and most legislators elect to forego their legislative salaries in favor of their educator’s pay.

2. Expense reimbursement. The majority of payments to legislators come from this category, in several different forms:
 - a. Every legislator receives a monthly expense reimbursement of \$3,850 per month. This is a total of \$46,200.00 for 2010.
 - b. Legislators receive \$50 per day for three days during each week that the legislature actually meets. On the calendar in the “Travel Expense” section, these days are designated by the letter “L”.

A legislator also receives the daily expense amount as described above for attendance at interim committee meetings if he or she is a member of that committee.

- c. For attending certain meetings, legislators may receive a \$5 or \$15 reimbursement in addition to the daily amount.
- d. A legislator who travels to an out-of-state meeting is reimbursed for out-of-pocket expenses whether or not he or she is a member of the applicable committee.
- e. Legislators are reimbursed for one round trip to Montgomery per legislative session at 10 cents per mile. The mileage is calculated from county seat to county seat using “Railroad” miles.

The above information and an understanding of how these amounts are reported on the W-2 can help to determine how many per diem days a legislator may deduct.

The salary amount plus the first three items of expense reimbursements are included in Box 1, “Wages, Tips, Other Compensation”. Item d. is not required to be reported since the legislator accounts to the state for it and the expenses equal the reimbursement. The legislator, however, may not claim a deduction for these fully reimbursed out-of-pocket expenses. Item e. is typically not reported because it is usually below the minimum amount reportable. However, it should be shown on Form 2106 on line 7.

To determine the days every legislator was paid for, refer to the calendars in the “Travel Expenses” section. Every legislator was paid expense reimbursement for the days marked with an “L”. A legislator’s W-2 can be broken down as follows:

Salary:	\$10/day x 110 days	\$1,100.00
Expenses:	Annual amount:	\$46,200.00
	\$50/day x 48 days	\$2,400.00

Add amounts paid for interim committee meetings and out of state meetings (see items b. and c.).

The amount reported on the W-2 for 2010 to a legislator with no interim committee meetings or out of state meetings is \$49,700.00.

Important note for legislators receiving Social Security Benefits:

By law, the monthly expense allowance of \$3,850 and the \$50 per day expense allowance must be reported as compensation on Form W-2, since no accounting for expenses is made by the legislator to the State. For legislators receiving Social Security benefits, this can become a problem that may reduce the benefits received from the Social Security Administration.

The Social Security Administration mandates that legislators receiving benefits make an accounting to them no later than April 15. Legislators can contact the Social Security Administration, which may reduce their compensation reported on Form W-2 by the amount of actual expenses that can be substantiated. Receipts for actual expenses are required.

If the legislator's compensation reported on Form W-2 is less than the annual limit allowed before Social Security benefits are reduced, or if the legislator elects not to account for actual expenses, the legislator may call the toll free number 1-800-772-1213 to make a verbal accounting.

TRAVEL EXPENSES

Amounts spent for business travel, including travel fares, meals, and lodging, and other expenses incidental to such travel, when incurred away from home on business, are tax deductible to the extent they are reasonable and necessary in the conduct of one's business and directly attributable to it. The cost of travel to and from Montgomery, ordinary and necessary costs for hotel or motel, and meals while in Montgomery on legislative business are tax deductible, subject to certain limitations. Expenses of a legislator's spouse or other family members are not deductible unless it can be definitely established that the presence of those individuals has a bona fide business purpose. The performance of incidental services by a spouse does not satisfy this business purpose requirement.

All allowable travel expenses are reported on federal Form 2106, Employee Business Expenses, and are classified as miscellaneous itemized deductions for federal and state tax purposes. Total miscellaneous itemized deductions must be reduced by 2% of adjusted gross income.

The legislator's deduction for meals and lodging may be determined in either of two ways:

1. The actual costs, or
2. A per diem deduction.

The method chosen must be utilized for the entire year. The per diem deduction applies only in the year in which elected, and once elected may not be changed without I.R.S. permission.

If "actual costs" are used, you should fully document the deduction (date, place, paid receipt, etc.). Out-of-pocket travel expenses for out-of-state meetings which are fully reimbursed are not deductible. Meal costs are only 50% deductible, and all costs, including 50% of meals, are miscellaneous itemized deductions.

The alternative "per diem" method permits a daily deduction of the greater of: (1) the per diem rate allowance given state employees (\$75) not to exceed 110% of the per diem allowance given federal employees, or (2) the federal per diem rate for Montgomery. Since the federal rate is more than the state per diem rate, the most advantageous rate is the federal per diem rate. Other living expense deductions will not be permitted, but other business expenses (e.g., transportation, telephone) are deductible in addition to the "per diem".

The per diem deduction is not available to legislators who live 50 miles or less from the capitol building and the

Per Diem Rates

Dates	Lodging	Meals & Incidentals	Total
January 1 to September 30, 2010	\$78	\$51	\$129
October 1 to December 31, 2010	\$77	\$46	\$123

capitol is the “tax home”.

For other legislators, Sec. 162 (h) (2) makes the per diem rate available for each day the legislature is in session including days the legislature was in recess for 4 or fewer days. Additionally, the per diem rate applies to days when the legislature is not in session but a committee meeting records the physical attendance of the legislator. The number of days for which a legislator may claim per diem cannot be determined from the number of days for which he or she was paid, since the criteria for each is different.

The following calendar of the Legislature’s regular and extraordinary sessions in 2010 shows the minimum per diem days a legislator is entitled to, assuming they attended all legislative session days. Interim committee meetings and out-of-state meetings attended by legislators who are members of those committees would increase the number of per diem days allowed to that legislator.

REGULAR SESSION, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		Jan-12	13	14	15	16
		S P L	P L	S P L	P	P
17	18	19	20	21	22	23
P	P	S P L	P L	S P L	P	P
24	25	26	27	28	29	30
P	P	S P L	P L	S P L	P	P
31	Feb-1	2	3	4	5	6
P	P	S P L	P L	S P L	P	P
7	8	9	10	11	12	13
P	P	S P L	P L	S P L	P	P
14	15	16	17	18	19	20
P	P	S P L	S P L	S P L	P	P
21	22	23	24	25	26	27
P	P	S P L	P L	S P L	P	P
28	Mar-1	2	3	4	5	6
P	P	S P L	S P L	S P L	P	P
7	8	9	10	11	12	13
P	P	S P L	P L	S P L		
14	15	16	17	18	19	20
21	22	23	24	25	26	27
		S P L	P L	S P L	P	P
28	29	30	31	Apr-1	2	3
P	P	S P L	P L	S P L	P	P
4	5	6	7	8	9	10
P	P	S P L	P L	S P L	P	P
11	12	13	14	15	16	17
P	P	S P L	S P L	L		
18	19	20	21	22	23	24
		L	S P L	S P L		

EXTRAORDINARY SESSION, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			Dec-8	9	10	11
			S P L	S P L	S P L	P
12	13	14	15	16	17	18
P	S P L	S P L	S P L	S P		

S=In session

P=Per diem available

L=Paid daily expenses

In addition to a deduction for meals and lodging (whether actual or per diem), the legislator is also entitled to a deduction for the cost of meals for constituents or other persons paid by the legislator as long as directly related to legislative business in Montgomery. However, only 50% of the cost of meals and entertainment qualifies.

Transportation expenses, including fares, mileage, and/or automobile expenses, are deductible while the legislator is away from home on business, unless the legislator has been reimbursed.

Automobile expenses can be in the form of the standard mileage rate (50 cents per mile for 2010), or the legislator may itemize actual automobile expenses. To itemize car expenses it is necessary to determine the total amount of such expenses (depreciation, gas, oil, repair, maintenance, insurance, etc.) and apply the business percentage. The business percentage is computed by dividing total business automobile miles during the year by total automobile miles during the year.

Depreciation is computed by determining the maximum depreciation allowable and multiplying it by the business percentage. The maximum depreciation allowable for automobiles is as follows:

	Year placed in service						
	<u>2000- 2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008- 2009</u>	<u>2010</u>
1st year	\$3,060	\$2,960	\$2,960	\$2,960	\$3,060	\$2,960	\$3,060
2nd year	\$5,000	\$4,900	\$4,800	\$4,700	\$4,800	\$4,800	\$4,900
3rd year	\$2,950	\$2,850	\$2,850	\$2,850	\$2,850	\$2,850	\$2,950
4th year (and each succeeding year)	\$1,775	\$1,675	\$1,675	\$1,775	\$1,775	\$1,775	\$1,775

Automobiles placed in service in 2010 and used more than 50% for business are depreciated over five years using the two hundred percent declining balance method with a half year depreciation for the year the car is placed in service. However, the maximum dollar limits in the above table will apply. Please note that other special rules may apply if your vehicle's loaded gross vehicle weight exceeds 6,000 pounds. See your Certified Public Accountant for more details.

Automobile expenses incurred in a legislator's home district are deductible provided a business purpose for travel can be established. Considerable travel may be required of the legislator within the district to attend civic functions, political events, or other matters related to his or her legislative duties. The cost of travel between two places of business (for example, between the state legislature in Montgomery and the legislator's place of private business elsewhere) is deductible, provided such trips are necessary to discharging business at both locations.

Other transportation expenses, such as parking fees, tolls, and taxi fares, or other transportation from the hotel or motel in Montgomery to the state capitol, are tax deductible; these expenses are not considered commuting expenses (which are not deductible). Other travel expenses in Montgomery are tax deductible if the purpose of the travel is directly related to being a member of the Alabama legislature.

Legislators should maintain records to distinguish between travel expenses related to legislative matters, travel expenses attributable to serving the legislator's constituency (deductible as miscellaneous itemized deductions for federal and state tax purposes), campaign travel expenses or personal expenses (not tax deductible), and expenses for other business (deductible for adjusted gross income).

OFFICE EXPENSES

Office expenses are reported on federal Form 2106 and treated as miscellaneous itemized deductions on both federal and state returns.

Although expenses of personal living quarters cannot ordinarily be deducted, if the property is used for both business and personal use, a portion of the expense is possibly deductible as a business expense. Such an apportioned deduction is available to a legislator who regularly uses a part of his home exclusively as an office for legislative matters. Occasional or incidental use does not qualify for the deduction. In general, the basis of apportionment between business and personal expenses is the relative value of the space occupied for each purpose; however, any reasonable method of allocation is acceptable.

Since the State of Alabama does not furnish office facilities to legislators in their home districts, many duties of legislators are carried on at their personal residences (such as receiving and making telephone calls, reading and analyzing legislation, writing letters, seeing constituents, and performing other legislative related duties). However, an office deduction will be allowed only for the portion used exclusively and on a regular basis as the principal place of conducting his or her legislative business, and/or used *exclusively and on a regular basis* as a place of business in legislative district for seeing constituents and other on legislative business.

In summary: to deduct home office expenses, a legislator must use the space exclusively and regularly:

- 1) as a principal place of business,
- 2) as a place to meet or deal with constituents in the normal course of business, or
- 3) “in connection with” the business if the space is a separate structure from the residence.

Expenses relating to the maintenance of an office in one’s personal residence include the following:

1. Rent or depreciation. If the personal residence is rented, the business portion (percentage) of the rental paid represents the deductible amount. If the residence is owned by the legislator, then the deduction is in the form of depreciation. The amount of depreciation is computed by determining the cost of the home after deducting land cost (or the fair market value of the home at the time a portion was converted to office use, if the fair market value is less than cost) and applying the business use percentage (based on space occupied or some other reasonable allocation) to determine the depreciable amount. This amount is depreciated using prescribed tables issued by the IRS, depending on date placed in service.
2. Utilities and insurance. The cost of utilities and insurance for the home may be apportioned to business use on the basis of the applicable business use percentage. For example, if the total utilities and insurance cost for the year is \$1,200 and if 1/6 of the home is utilized for office space, then the deduction for this expense would be \$200.
3. Maintenance and repairs. Any maintenance or repair costs (such as cleaning or painting) applicable to the particular space utilized as an office is deductible expense for that particular year. Permanent type improvements in the office area, such as carpeting or bookcases, represent capital expenditures and may be depreciated based on the IRS’s prescribed tables (with no allocation between business and personal).
4. Equipment. Office equipment and furniture such as desks, file cabinets, typewriters, adding machines, and similar items, used *exclusively* for legislative matters may be depreciated over their respective estimated lives and such depreciation is fully deductible.

If a legislator rents an office in his or her district and it is used exclusively for legislative purposes, the entire cost of operating and maintaining the office is deductible. The cost of secretarial assistance related to legislative duties is deductible. Campaign expenses are not deductible, so apportionment between legislative expenses and campaign expenses may be necessary.

The cost of long distance telephone calls for state business is deductible, as would be the cost of a separate phone used exclusively for legislative business.

OTHER EXPENSES

Certain additional expenses, when incurred solely for legislative purposes and provided they meet the “reasonableness” test and the “ordinary and necessary” criteria, may be tax deductible.

Stationery, office supplies and postage relating to the business of being a legislator are deductible as a business expense.

The cost of obtaining additional publications because you are a legislator, such as special papers in the legislative district, and political publications necessary to improve one’s position as a legislator are tax deductible.

The expense of a legislator's newsletters are tax deductible. Advertisements, other than campaign ads, in trade journals or magazines published by organizations in the legislator's district are also deductible.

Entertainment expenses directly related to the business of being a legislator are tax deductible, subject to the rules and limitations mentioned under the travel expense section. The cost of meals in a meeting with a constituent regarding a state problem, or the cost of certain other elected officials (such as city or county officials of one's legislative district) primarily for the purpose of maintaining communications with them or to explore each other's problems and/or determine common solutions, are tax deductible. The legislator should document the cost and business purpose of all entertainment expenses. Proof is required to establish the business purpose and benefits obtained or expected to be obtained.

Dues paid to an organization (such as a civic club or political organization) that a legislator belonged to BEFORE being elected, will generally not be tax deductible business expenses. Dues paid by a legislator who joins such an organization AFTER being elected, may be tax deductible – as long as membership in the organization is instrumental in his or her being a legislator.

The cost, including postage, of Christmas cards to community or political leaders is advertising, related directly to the business of being a legislator and is tax deductible.

Documented dry cleaning and laundry expenses incurred by legislators when they are in travel status (i.e., away from home on legislative business) are tax deductible.

Telephone costs related to business are deductible. This includes a telephone installed for business use, answering services or tape recording devices for messages, and long distance business calls. If accurate records are kept, a part of the cost of your personal telephone at home may be deductible, to the extent used for business.

RECORDS

Except for the per diem allowance provision previously explained, estimates are not acceptable in substantiating deductions for travel, entertainment, or other business expenses. The I.R.S. requires the taxpayer to substantiate "by adequate records or by sufficient evidence corroborating his own statement" all travel, entertainment, and business gifts, including the amount, business purpose, and the business relationship.

Substantiation rules provided by §274(d) of the Internal Revenue Code (for travel, entertainment, and business gifts) are summarized as follows:

1. What to prove.

- A. **Travel.** Legislators claiming a deduction for travel expenses must be prepared to prove:

- (1) The amount of each expenditure for travel away from home. The daily cost of expenditures incidental to the travel may be grouped in reasonable categories (gas and oil, taxi fares, tips, etc.).
 - (2) The time spent on business away from home, including dates of departure and return.
 - (3) The city or place where expenses were incurred.
 - (4) The business reason for the travel.

- B. **Entertainment and business gifts.** Legislators claiming a deduction for entertainment and/or business gifts must be prepared to prove:

- (1) The amount of each separate expenditure, except incidental costs (such as taxi fares, telephone calls, and tips) may be grouped on a daily basis.

- (2) The date of the expenditure.
 - (3) The place of the expenditure, with a description of the entertainment (dinner, etc.).
 - (4) The business reason for the entertainment, including the nature, date, duration, and place of any business discussion or activity which preceded or followed the entertainment, and the identity of the persons entertained.
 - (5) The business relationship with the person entertained.
 - (6) The deduction for business gifts is limited to \$25 a person each year.
2. Kind of proof. Each element of proof required must be “by adequate records and sufficient corroborating evidence”. The term “adequate records” means an account book, a diary, or an expense statement, with entries made at or near the time of the expenditure. Documentary evidence generally consists of receipts, paid bills, and canceled checks for all expenses of lodging or meals away from home, and for any other expenditure of \$75 or more for expenses incurred on or after October 1, 1995. Documentary evidence will generally be adequate where it shows the amount, date, place, and kind of expenditure. Each expenditure must be shown separately, and not aggregated. However, “concurrent or repetitious expense items of a similar nature” may be grouped together on a daily basis (e.g., meals, trips, etc.).

The records and related documentary evidence supporting the claimed deductions must be retained during the period the tax return is subject to audit by I.R.S. Normally, this limitation period is three years from the due date of the return (or three years from the date of filing if the return was filed after the due date). However, the limitations period is longer if the taxpayer consents to an extension, or if there has been a substantial understatement of income. Also, civil fraud completely eliminates the statute of limitations for assessment of additional tax.

To adequately prove deductions for travel and related expenses, legislators are strongly encouraged to maintain a diary each year to make appropriate entries or notations concerning such expenses at or about the time of the occurrence of the events.

The contemporaneous record keeping requirements of the 1984 Tax Act for use of personal cars were retroactively repealed but “adequate records” of automobile expenses must be kept. What is “adequate” may vary with circumstances, but a log of business trips showing mileage, reason for trip, and notation of odometer readings at start and end of year should suffice to support deduction of car expenses, provided that if you do not use the standard mileage allowance, your log should show all car expenses, and all receipts should be kept. A statement attached to your tax return should show (1) the date your car was placed in service, (2) the number of miles it was driven during the year and the number of business miles driven, (3) the resulting business use percentage, (4) that you have evidence to support the business use, and (5) whether that evidence is written. Form 2106 may be used to provide this information for federal and state tax purposes.

SAMPLE FEDERAL FORM 2106

The following are illustrations of a typical legislator's forms for Employee Business Expenses. Individual legislator's expenses will differ.

The following assumptions were used to calculate John Legislator's employee business expenses.:

Line 1. John drove back and forth from Montgomery once every week that the legislature was in session. His home is 100 miles from the State House. He also drove 500 additional miles for 2010 that he has documented as legislative business.

16 round trips x 200 miles/round trip	=	3,200 miles
Additional legislative miles	=	<u>500 miles</u>
 Total mileage	=	 <u>3,700 miles</u>
 3,700 miles x 50 cents/mile	=	 <u>\$1,850</u>

Line 3. John attended all sessions in 2010, but had no interim or out of state committee meetings. Therefore, he can claim the following number of per diem days:

84 per diem days x \$78/day per diem for other than meals and entertainment (Pre-September 30, 2010)	=	\$6,552
9 per diem days x \$77/day per diem for other than meals and entertainment (After September 30, 2010)	=	<u>693</u>
		\$7,245

Line 4. John had other documented legislative expenses such as postage, stationery, and the cost of a separate telephone line totaling \$500.

Line 5. Using the per diem days calculated above:

84 days x \$51/day for meals and incidentals (Pre-September 30, 2010)	=	\$4,284
9 days x \$46/day for meals and incidentals (After September 30, 2010)	=	<u>414</u>
		\$4,698

Line 7. All legislators are reimbursed 10 cents a mile for one round trip per session.

200 miles x 2 sessions x \$.10 = \$40 mileage reimbursement not reported on John's W-2

Note: For 2010, taxpayers are required to use the federal Form 2106 to report employee business expenses on the Alabama return.

Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions.
▶ Attach to Form 1040 or Form 1040NR.

Your name John Q Legislator	Occupation in which you incurred expenses Legislator	Social security number 987-65-4321
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Part I Employee Business Expenses and Reimbursements

Step 1 Enter Your Expenses	Column A Other Than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from line 22 or line 29. (Rural mail carriers: See instructions.)	1,850	
2 Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work.		
3 Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment	7,245	
4 Business expenses not included on lines 1 through 3. Do not include meals and entertainment	500	
5 Meals and entertainment expenses (see instructions)		4,698
6 Total expenses. In Column A, add lines 1 through 4 and enter the result. In Column B, enter the amount from line 5	9,595	4,698

Note: If you were not reimbursed for any expenses in Step 1, skip line 7 and enter the amount from line 6 on line 8.

Step 2 Enter Reimbursements Received From Your Employer for Expenses Listed in Step 1

7 Enter reimbursements received from your employer that were not reported to you in box 1 of Form W-2. Include any reimbursements reported under code "L" in box 12 of your Form W-2 (see instructions).	40	
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Step 3 Figure Expenses To Deduct on Schedule A (Form 1040 or Form 1040NR)

8 Subtract line 7 from line 6. If zero or less, enter -0-. However, if line 7 is greater than line 6 in Column A, report the excess as income on Form 1040, line 7 (or on Form 1040NR, line 8).	9,555	4,698
Note: If both columns of line 8 are zero, you cannot deduct employee business expenses. Stop here and attach Form 2106 to your return.		
9 In Column A, enter the amount from line 8. In Column B, multiply line 8 by 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses incurred while away from home on business by 80% (.80) instead of 50%. For details, see instructions.)	9,555	2,349
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 21 (or on Schedule A (Form 1040NR), line 9). (Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and individuals with disabilities: See the instructions for special rules on where to enter the total.) ▶		11,904

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **2106** (2010)

Part II Vehicle Expenses

Section A - General Information (You must complete this section if you are claiming vehicle expenses.)

	(a) Vehicle 1	(b) Vehicle 2
11 Enter the date the vehicle was placed in service	11 07/08/2006	
12 Total miles the vehicle was driven during 2010	12 12,400 miles	miles
13 Business miles included on line 12	13 3,700 miles	miles
14 Percent of business use. Divide line 13 by line 12	14 29.8387 %	%
15 Average daily roundtrip commuting distance	15 miles	miles
16 Commuting miles included on line 12	16 miles	miles
17 Other miles. Add lines 13 and 16 and subtract the total from line 12	17 8,700 miles	0 miles
18 Was your vehicle available for personal use during off-duty hours?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
19 Do you (or your spouse) have another vehicle available for personal use?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
20 Do you have evidence to support your deduction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
21 If "Yes," is the evidence written?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Section B - Standard Mileage Rate (See the instructions for Part II to find out whether to complete this section or Section C.)

22 Multiply line 13 by 50¢ (.50). Enter the result here and on line 1	22 1,850
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Section C - Actual Expenses

	(a) Vehicle 1	(b) Vehicle 2
23 Gasoline, oil, repairs, vehicle insurance, etc.	23	
24a Vehicle rentals	24a	
b Inclusion amount (see instructions)	24b	
c Subtract line 24b from line 24a	24c	
25 Value of employer-provided vehicle (applies only if 100% of annual lease value was included on Form W-2 - see instructions)	25	
26 Add lines 23, 24c, and 25	26	
27 Multiply line 26 by the percentage on line 14	27	
28 Depreciation (see instructions)	28	
29 Add lines 27 and 28. Enter total here and on line 1	29	

Section D - Depreciation of Vehicles (Use this section only if you owned the vehicle and are completing Section C for the vehicle.)

	(a) Vehicle 1	(b) Vehicle 2
30 Enter cost or other basis (see instructions)	30	
31 Enter section 179 deduction and special allowance (see instructions)	31	
32 Multiply line 30 by line 14 (see instructions if you claimed the section 179 deduction or special allowance)	32	
33 Enter depreciation method and percentage (see instructions)	33	
34 Multiply line 32 by the percentage on line 33 (see instructions)	34	
35 Add lines 31 and 34	35	
36 Enter the applicable limit explained in the line 36 instructions	36	
37 Multiply line 36 by the percentage on line 14	37	
38 Enter the smaller of line 35 or line 37. If you skipped lines 36 and 37, enter the amount from line 35. Also enter this amount on line 28 above	38	

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