

**ALASKA**

**LEGISLATOR'S TAX GUIDE**

**2012 SESSION**

**PRODUCED BY THE**

**TAXATION COMMITTEE OF THE**  
**ALASKA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS, INC.**

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# **2012 INCOME TAX GUIDE FOR ALASKA LEGISLATORS**

January 2013

Dear Alaska Legislator:

The Alaska Society of Certified Public Accountants is pleased to provide you with its “Legislator's Tax Guide for 2012”.

This guide, provided by the Society as a public service, is designed to answer your questions concerning federal and State of Alaska income tax laws as they relate to your position as a member of the Alaska Legislature. The guide does not cover other tax matters that are considered personal or otherwise unrelated to your position as a legislator.

If you have any questions regarding information in this guide we suggest you contact a CPA in your legislative district, or call the ASCPA office and we will have a member contact you to answer your questions.

Sincerely,

John Rodgers  
ASCPA Tax Committee Chair

## **Taxation Committee**

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# 2012 INCOME TAX GUIDE FOR ALASKA LEGISLATORS

## INTRODUCTION

The purpose of this guide is to provide general information on the tax ramifications to you as a legislator in the employ of the State of Alaska and to provide guidance on the record keeping required to document deductions that you may be entitled to. This guide is by no means all-inclusive, and individual tax consultation with a CPA is recommended.

As an Alaskan Legislator, you are an employee of the State of Alaska and receive annual compensation in return for your services. This compensation is reported on your annual individual income tax return. In addition, you are entitled to receive allowances, or "per diems" for items such as living expenses, travel, auto usage, and other expenses. Some of these allowances are included in your gross income on your W-2 form while others are not. A brief synopsis of the various allowances and their tax significance follows:

### SESSION PER DIEM

This allowance is paid for living expenses while the Legislature is in session. Below is a chart listing the effective rates for the year. In addition, please note the following items for your specific situation:

**Juneau Legislators** - While the Legislature was in session in Juneau, you were paid 75 percent of the Federal per diem, which is included in gross wages on your W-2 form. Because you live within a 50 mile radius of the Capitol, it is unlikely that any of your living expenses could be considered "away from home", and therefore, neither the expenses nor the per diem would be deductible.

**Non-Juneau Legislators** – When the Legislature was in session, the allowance you were paid was the Federal per diem rate, which is **excluded** from your gross wages on your W-2 form.

The Juneau Federal per diem rate varies by time of year and changes in May and September.

Below is a chart listing the effective rates for the respective time periods.

<b><u>Regular Session</u></b>	<b><u>Federal Per Diem Rate</u></b>	<b><u>Juneau Legislators (75% of Federal Per Diem Rate)</u></b>
January 17 thru January 31	\$233.00	\$174.75
February 1 thru April 15	\$238.00	\$178.50
<b><u>Third Special Session</u></b>	<b><u>Federal Per Diem Rate</u></b>	<b><u>Juneau Legislators (75% of Federal Per Diem Rate)</u></b>
April 18 thru April 30, 2012	\$238.00	\$178.50

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### TRAVEL PER DIEM

The per diem for legislative travel is paid at the Federal per diem rate for the city in which overnight lodging is obtained. The Federal meal allowance rate is used for legislator meal reimbursements. When the Legislature is not in session, per diem for legislative travel is not included in your W-2 form.

For **Juneau Legislators** all reimbursements for travel per diem expenses during the session will not be included in your W-2 since the regular session per diem is already included in your form W-2.

For **non-Juneau Legislators** the travel per diem during the session will be included in your W-2 form since the regular session per diem is not included in your form W-2.

### RELOCATION EXPENSES

Relocation expenses are paid as a reimbursement for "relocation" to Juneau at the beginning and end of the session. This allowance is included in gross wages if it is for your spouse or dependents or freight costs, but is not included if it is for you as a legislator. If the legislator qualifies or elects to be treated as "away from home", then any deductible expenses associated with this reimbursement would be deducted on your individual income tax return as an employee business expense on Form 2106, not as moving expenses.

### MILEAGE

In 2012, the reimbursement rate was 55.5 cents per mile and will be excluded from your wages if for legislative business mileage. However, it would be included in your wages if the mileage was for your spouse or another party driving the vehicle.

### EXPENSE ALLOWANCE

This allowance is used for postage, stationery and various other office supplies and expenses. The maximum allowance is \$20,000 for State Senators and \$16,000 for State Representatives. Legislators may elect to receive the old rate of \$10,000 for Senators and \$8,000 for Representatives. You may receive either the total allowance and spend it in any way you wish, or you may "account" for your expenses to the State, following the rules and guidelines of an accountable plan and receive reimbursement.

If the first method is chosen, the entire allowance is included in gross wages. Any documented business expenses associated with the allowance are then deductible as an employee business expense.

Under the second method, referred to as an "accountable" method, the reimbursements are not included in gross wages, nor are any reimbursed expenses deductible on Form 2106 .

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### SECTION 162(h) ELECTION - TRAVEL AND LIVING EXPENSES

In order for overnight travel or living expenses to be tax deductible it must generally meet the following four criteria:

1. The expense must be reasonable,
2. The expense must be necessary,
3. The expense must have a business connection, and
4. The expense must be incurred while you are "away from home".

"Home" in the tax sense is generally the taxpayer's principal place of business. Thus, your tax home, while the Legislature is in session, is most likely Juneau. However, in the case of State Legislators, a special election or exception is provided by law under Internal Revenue Code Section 162(h).

If the election is made, the legislator's place of residence within the represented district is considered to be the legislator's tax home. Therefore, living expenses while in Juneau may be considered to be incurred while "away from home". An eligible legislator making this special election is deemed to be away from home in the pursuit of business on any day that the legislature is in session (including periods of up to four consecutive days when not in session) or on any day that the legislature is not in session, but the legislator's presence is formally recorded at a legislative committee meeting.

Legislators whose place of residence is within 50 miles of the state capital may not elect to have these rules apply. The travel expenses of these legislators will fall under the general rules discussed later in this section.

Under this election, you are allowed to deduct from income any per diem received for meals, lodging and incidental expenses related to subsistence in an amount up to the greater of:

1. The allowance actually received or the federal per diem rate given to federal employees while in Juneau or;
2. The State of Alaska per diem rate, provided it does not exceed 110% of the federal per diem rate.

The benefits to be gained by making an election under IRC Section 162(h) are four fold:

1. You do not have to defend your "tax home" status (your tax home is your residence within your district),
2. Your employee business expense deduction is fixed,
3. You are relieved of record keeping requirements for meals and lodging while in Juneau on legislative days, and
4. You are presumed in the pursuit of business on each legislative day.

If you are a non-Juneau legislator, you are entitled to this deduction. The amount of session per diem you received under either the State or federal rate has already been excluded from your W-2 form; therefore you have already in effect deducted the amount received for session per diem.

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The **annual election** under IRC Section 162(h) is made by attaching a statement to your tax return and must be made by the due date (including extension) of the return for the taxable year. No other extension of time is granted. An election can be revoked only with the consent of the IRS. A signed application for permission to revoke the election must be filed with the same IRS center that received the original election notice.

### TRAVEL, MEALS AND LODGING UNDER THE GENERAL RULE

Bear in mind that while the Sec.162(h) election makes it easy to determine your deduction for travel, meals and lodging and simplifies your record keeping, you could be foregoing additional deductions. Any legislator who can document incurring meal and lodging expenses in excess of the maximum allowed under the Sec.162(h) election should seriously consider calculating their deduction incurred for expenses away from home under the general rules applicable to all employees. Under general tax rules, those expenses paid or incurred while traveling "away from your tax home" overnight on legislative business, which *you should document*, will be deductible.

Under the general rule you must first show that your "tax home" is in your home district rather than Juneau. You might have difficulties proving it unless you earn substantial income in your home district.. To avoid this problem, you may still wish to make the Section 162(h) election to eliminate any discussion of where your tax home is.

There have been a number of instances where the IRS has challenged state legislators who have claimed that their tax home was a location other than the state capital. This caused the Congress to enact the Sec. 162(h) election for state legislators.

The following expenses (if unreimbursed) incurred in connection with legislative business should be deductible as employee business expenses on your individual income tax return, Form 2106, , irrespective of how you compute your living expenses:

1. Cost of transporting job related materials
2. Cost of maintaining or operating a vehicle for transportation
3. Air, rail or bus fares
4. Baggage charges
5. Taxi fares
6. Lodging and meals (the excess amount of meals is limited to 50%)
7. Cleaning and laundry services
8. Reasonable tips incident to any of the above expenses
9. Costs of telegrams, faxes or telephone calls

These expenses are limited to 2 percent of your adjusted gross income.

If you use your personal vehicle in legislative business, you may be able to deduct an allocable portion of the depreciation expenses as travel expense.

Travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel are not deductible, unless:

1. The spouse, dependent, or other individual accompanying the person is a bona fide *employee* of the person paying or reimbursing the expenses,

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2. The travel of the spouse, dependent, or other individual is for a *bona fide business purpose*, and
3. The expenses of the spouse, dependent, or other individual would otherwise be deductible.

Although lodging expenses generally consist of a room or apartment rental, you may purchase a house to use for lodging while in Juneau as a legislator. Deductions which are allowable for business use of a dwelling unit are severely limited if the dwelling is used by you as a personal residence or second home other than during the legislative sessions.

### DOCUMENTING DEDUCTIONS

#### TRAVEL AND LIVING EXPENSES

Should you choose not to make the Sec.162(h) election and therefore deduct your actual travel and living expenses, you must maintain records that substantiate the following:

1. The amount spent daily for transportation, meals, lodging, etc.,
2. The dates 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 benefit derived or expected to be derived from the trip.

In lieu of substantiating actual travel-related meal and lodging costs you may utilize optional IRS per diem allowances. The per diem amounts may be used only if the time, place and business purpose of the travel are substantiated by adequate records. The per diem allowance may be used to substantiate expenses incurred or paid and reimbursed only if payment is made under a reimbursement or other expense allowance arrangement that meets the "accountable plan" requirements. Our discussions with State officials indicate that the State per diem and reimbursement arrangements constitute an "accountable plan."

The per diem rates for various localities equal the maximum rates published under the Federal Travel Regulations for government travel.

Separate lodging, meals and incidental expense rates apply within the Lower 48 and the District of Columbia. A single rate is available for travel outside of the 48 contiguous states including foreign travel. If your travel takes you to the Lower 48 or to a foreign location, please consult your tax advisor for applicable rates.

Because the State reimburses your expenses under an "accountable plan", the amounts you receive as reimbursements are not taxable unless the amounts exceed the federal per diem rates. Any excess amounts should be reported to you on your W-2 form along with any amount of excess reimbursement which you failed to return to the State. Excess reimbursements are subject to income tax and excess expenses may only be deducted as miscellaneous itemized deductions subject to the 2% limit.

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### **FOREIGN TRAVEL**

Traveling expenses while outside of the United States on business must be allocated between business expense and personal expense.

The allocation rule does not apply to expenses of foreign travel away which does not last one week or more or where the time spent on personal activities is less than 25% of the total time away from home, and no allocation is required if the individual traveling:

1. Had no substantial control over the arranging of the trip or
2. A personal vacation was not a major consideration in making the trip.

If expenses must be allocated, the allocation is made on the basis of time spent on business and personal affairs.

Days spent traveling to or returning from a foreign business trip are considered business days providing the route is direct. Where a person must attend a specific business meeting on a specific day, it is considered a business day even if the rest of the day is spent for personal pleasure. Saturday, Sunday, legal holidays and other reasonably necessary standby days that intervene between business days are also counted as business days (but not where they are tacked on the end of the trip).

### **MEALS AND ENTERTAINMENT**

The deduction for business meals and entertainment is limited to 50% of the expenditure. If you dine with a business associate, the deduction is available only if the meal is directly related to or associated with legislative business. Under this concept, business must be discussed at the table or the meal must be subsequent to or precede a business discussion.

Entertainment expenses that are ordinary and necessary with respect to a taxpayer's trade or business are generally deductible. The expense should be reasonable in amount and customary in the particular trade or business with which the taxpayer is associated. Additionally, the expenses must be either related directly to or associated with the "active conduct of the taxpayer's trade or business". The rules for allowable entertainment expenses are strict. However, as legislators, you may be incurring legitimate entertainment expenses that will qualify for deductions.

To establish a deduction for entertainment expenses there must be a record of the amount of the expenditure, the time and place that the entertainment took place, the business purpose for which the expenditure was incurred and identification of the business relationship between the taxpayer deducting the expenditure and the person or persons who are being entertained. In order to do this, you should maintain a diary. However, a diary alone is not enough, because receipts for any expenditure of \$75.00 or more are also required.

### **AUTOMOBILE EXPENSES**

When using an automobile for legislative purposes, the expenses of operating and maintaining the automobile in excess of any allowance received are deductible. These expenses may include gasoline, oil, repair, insurance, depreciation (if owned), rental (if rented or leased), taxes, licenses, garage rental, parking and tolls.



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If you make both personal and business use of your car, you must apportion your expenses between business (deductible) and personal (non-deductible) transportation. You are responsible for making and defending the apportionment. A safe method for making the apportionment is to maintain a detailed log of the date and the purpose for each trip. At year end, total business mileage driven is divided into total miles driven to obtain a percentage of business use. Other expenses are allowed in proportion to the business percentage derived.

Form 2106, Employee Business Expenses, includes schedules for the computation of auto expenses, depreciation, and for making the allocation between business and non-business use. Many taxpayers have found that the actual costs for the use of an automobile are far more than the standard mileage rate per mile. Therefore, in order to maximize your deduction, you should keep track of all your auto expenses. The business portion of your auto expenses in excess of any allowance received would be deductible on Form 2106. An easy method of controlling and tabulating actual auto expenses is to pay all expenses by credit card.

Expenses for commuting between your residence and a business location within the area of your tax home are not deductible. However, if you are considered "away from home" while in Juneau (in other words, the Sec. 162(h) election is in effect), you may deduct the costs you incur going from your living quarters in Juneau to either the Alaska State Capitol or to any other location, as long as the purpose of the travel is directly related to the business of being a member of the Alaska Legislature.

### HOME OFFICE DEDUCTIONS

A home office deduction is allowed if the office is used exclusively and on a regular basis as a taxpayer's principal place of business for any trade or business. Exclusive use no longer means that a separate room must be used for the office but rather a specific portion of a room used regularly and exclusively for the conduct of business now qualifies. You may now use the home office deduction for the administrative or management of any trade or business, but only if there is no other fixed location where the taxpayer conducts substantial administrative or management activities. Additionally, it must be determined that the office in the home is for the employer's convenience, and not for the convenience of the employee. If the State of Alaska furnishes you with an office in Juneau, that would disqualify your Juneau residence from the deduction. However, your home district residence may qualify unless the State furnishes you an office in your district.

The home office deductions are limited to the gross income derived from the business, less any deductions related to the residence which would have been allowed whether the home office deductions were being taken or not, such as property taxes and mortgage interest. Any deductions not allowed by reason of the gross income limitation are available for carryover to future years.

If your home office satisfies the criteria mentioned above, the following items may be deducted in the order listed:

#### 1. **Other Expenses**

Utilities, insurance, property taxes, cleaning, and mortgage interest related to maintaining an office in the home may be apportioned based on the square footage of the office space compared to the total square footage of the home. A pro rata portion of the cost of making repairs that benefit the entire home, such as repairing a roof or painting the interior may

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also be deducted. Maintenance expenses incurred solely for the office area would be allowed in full. Carpentry work to install bookcases or for carpeting the home office are deemed capital expenditures and therefore, must be depreciated.

### 2. Depreciation

In order to compute the amount of depreciation on a home office, the legislator must first deduct the cost of the land from the total cost of the residence, then apportion the total cost of the office on a square footage basis to the total cost of the residence. Consult your tax advisor on how to calculate depreciation.

If a legislator is renting a home, a rent expense deduction will be allowed under an apportionment system as described above.

Depreciation will also be allowed for any office equipment and furniture the taxpayer may have placed in service during the year.

When and if you sell your property, you must compute your tax basis based on depreciation allowed through May 6, 1997, and depreciation taken after May 6, 1997. You do not have to pay an additional tax on pre May 7, 1997, depreciation taken on your residence, but the amount of depreciation taken after May 6, 1997, does not qualify for the gain exclusion and therefore will be taxable. You should review this with your personal tax advisor.

If you are deducting home office expenses and are entitled to depreciate your home, failure to do so could result in a taxable gain on the home office portion, calculated in the fashion indicated above, even though you never deducted depreciation. This is because the IRC requires that your home office tax basis be reduced by the depreciation allowed or allowable, whatever is greater.

## BUSINESS PROMOTION

Gifts to business associates and employees can qualify as deductible expenses if they meet the usual requirement of "ordinary and necessary" expenses. The deduction is generally limited to \$25.00 per year for each donee. A gift of tangible personal property valued under \$400 is allowed if made to an employee by reason of length of service, productivity or safety achievement. Again, records should be kept which document the cost of the item given, the name of the recipient of the gift and the business relationship. There are special rules and you should check with your tax advisor.

## ADVERTISING

Advertising expenses incurred in the conduct of your business as a legislator are deductible as employee business expenses if considered to be ordinary and necessary. For example, advertising in periodicals designed to inform constituents of who their legislator is and keeping one's name, address and telephone number before the public, serve a bona fide business purpose and are, therefore, deductible.

Advertising expenses are generally deductible in the year paid, and are not capital expenditures even if the period over which the benefit accrues exceeds the year in which paid. Once again the

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burden of proof falls upon the taxpayer. You must be able to describe the nature and detail of the expenditure as well as how it related to your business as a legislator.

Expenses incurred during a candidate's campaign for re-election will be very susceptible to scrutiny. Campaign expenses are not deductible. These expenses should be borne by campaign contributions.

### OTHER EXPENSES

Other deductible business expenses which you as an Alaska Legislator may expect to incur include, but are not limited to, the items discussed below. You should be aware that any amounts for which you could have been reimbursed by the State *if you had made a claim* are not deductible for income tax purposes if you simply neglect to make the claim.

#### 1. **Salary or Wages**

Salary or wages paid to an employee are a deductible expense. If you hire someone to assist you in legislative matters and/or handling constituent questions, such as a full-time or part-time secretary, the compensation paid is deductible. If an individual is on your payroll, you must obtain a federal identification number and pay the proper employment taxes. The employer's share of payroll taxes is also deductible. For details on the proper accounting and tax reporting of payroll, you should contact your personal tax advisor.

#### 2. **Telephone Expenses**

Telephone charges are deductible to the extent that the calls are related to your business as a legislator. The basic fee assessed for your home telephone is not a deductible item unless you would not otherwise incur it (e.g. you have a separate line installed). Of course, long distance calls relating to your legislative business and likewise telegrams would be deductible. Additionally, an answering service, fax machine or tape recording device to record messages would also qualify, assuming the expenses are incurred for the conduct of legislative business and not for personal use. These expenses can be apportioned according to the percentage of business use.

#### 3. **Dues and Subscriptions**

Dues paid to civic or professional organizations and subscriptions paid to professional magazines or journals relating to your legislative business are deductible in full.

#### 4. **Newsletters**

The cost of a newsletter which you publish and mail to your constituents, again assuming the State of Alaska does not reimburse you, is another deductible expense.

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### **CAMPAIGN CONTRIBUTIONS AND EXPENSES**

A qualified political organization such as a committee to elect a candidate is generally treated as a tax exempt organization for both federal and Alaska purposes. A qualifying political organization is not taxed on "exempt function income" if its receipts are segregated into a separate account to be used solely for the exempt function of the political organization. If the funds are not segregated, they will not be deemed exempt. Even if the function for which they are being used is exempt, the organization which maintains a segregated fund must keep adequate records to verify receipts and disbursements. If these rules are not complied with, the political organization will be taxed on any income.

A political organization is taxed by both the federal government and the State of Alaska on its non-exempt or investment income. For example, interest income, dividends, real estate rentals, capital gains and other investment activity is taxed under the current corporate tax structure. However, the tax is computed by using the highest percentage rate, which for federal purposes is 35%. Of course, any deductions for expenses that are directly connected with the production of the nonexempt income will be allowed. A political organization may not retain excess funds in its account; it must contribute any excess funds to another qualified political organization, or to a charitable Sec. 501 (c)(3) organization, thereby eliminating any taxable income. Also, a political organization is not required to file a return if its net income is \$100.00 or less.

It is possible that a candidate may not have formed a political organization for the purpose of campaign activities. No taxable income results if campaign contributions received individually:

1. Are used for generally recognized campaign expenses;
2. Are contributed to a committee of the candidate's party; or
3. Are used to reimburse the candidate for out of pocket campaign expenses.

If a candidate diverts any funds for personal use, the amounts are taxable income to the candidate.

### **RECORDKEEPING**

We have attempted to apprise you of the recordkeeping which is unique to the specific deductions addressed in this guide. Under general principles of the law a taxpayer needs to be able to establish proof that the deduction is allowable, that it is reasonable with respect to amount, and prove by virtue of supporting documentation that there was an actual expenditure.

You should consider keeping a diary or account book which will allow you to keep a day by day record of business activities. However, this diary or accounting record is not a substitute for actual receipts and canceled checks which should serve to prove that the expenditure was actually made.

It is advisable to retain records of this sort for at least three years from the date of filing the tax return to which the deduction is applicable. This is generally known as the audit period. However, the statute of limitations is longer than the three year period in cases of fraud, substantial omission from gross income or by consenting to an extension.

**REPORTING REQUIREMENTS**

Per IRS Regulations, expense reimbursements received from the State should be excluded from wages if:

1. Reimbursement is for actual business expenses incurred and substantiation is provided to your employer, or
2. If your employer reimburses you a per diem or other fixed allowance amount that is similar in form and amount to an allowance specified by the federal government and you establish the time, place and business purpose of the expense.

If the reimbursements and per diem payments are excluded from taxable wages, no further adjustment or deduction would be required on your tax return unless actual deductible expenses exceeded those amounts. The excess expenses incurred would be treated as miscellaneous itemized deductions on Schedule A of your individual income tax return and are limited to 2 percent of your adjusted gross income. Unsubstantiated reimbursements or unreturned excess allowances are generally subject to income tax withholding, social security taxes, and federal unemployment tax.

*All facts and circumstances must be considered on a case by case basis and professional advice should be obtained before making any adjustments or taking any deductions.*