

**DESCRIPTION OF H.R. 511, H.R. 2250, AND
H.R. 2550**

RELATING TO

**CERTAIN BUSINESS EXPENSES OF
LEGISLATORS**

SCHEDULED FOR A HEARING

BY THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

**COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES**

ON MARCH 28, 1979

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION



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THE ABOVE NAMED PERSONS ARE BEING
SEARCHED FOR BY THE
FEDERAL BUREAU OF INVESTIGATION
OF THE DEPARTMENT OF JUSTICE

IN CONNECTION WITH THE INVESTIGATION OF
THE ALLEGED VIOLATION OF THE
SMITH ACT

AND THE VIOLATION OF THE
COMMUNIST CONTROL ACT

AND THE VIOLATION OF THE
INTERNAL SECURITY ACT

AND THE VIOLATION OF THE
SMITH ACT



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SMITH ACT

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SMITH ACT

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F. INTRODUCTION

The bills discussed in this pamphlet, H.R. 511, H.R. 2250, and H.R. 2550, have been scheduled for a hearing on March 28, 1979, by the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means. The bills relate to the tax treatment of certain expenses incurred by legislators.

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a description of the bills. The description indicates the present law treatment and its background, an explanation of what changes each bill would make, its effective date, and its estimated revenue effect.

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II. PRESENT LAW

In general

Under present law, an individual is allowed a deduction for traveling expenses (including amounts expended for meals and lodging) while away from home overnight in the pursuit of a trade or business (sec. 162 (a)). These expenses are deductible only if they are reasonable and necessary in the taxpayer's business and directly attributable to it. "Lavish or extravagant" expenses are not allowable deductions. In addition, no deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code (sec. 262).

Generally, under section 262, expenses and losses attributable to a dwelling unit which is occupied by a taxpayer as his personal residence are not deductible. However, deductions for interest, certain taxes, and casualty losses attributable to a personal residence are expressly allowed under other provisions of the tax laws (secs. 163, 164, and 165).

A taxpayer's "home" for purposes of the deduction of traveling expenses generally means his principal place of business or employment. Where a taxpayer has more than one trade or business, or a single trade or business which requires him to spend a substantial amount of time at two or more localities, his "home" is held to be at his principal place of business. A taxpayer's principal place of business is determined on an objective basis taking into account the facts and circumstances in each case. The more important factors to be considered in determining the taxpayer's principal place of business (or tax home) are: (1) the total time ordinarily spent by the taxpayer at each of his business posts, (2) the degree of business activity at each location, (3) the amount of income derived from each location, and (4) other significant contacts of the taxpayer at each location. No one factor is determinative.

Members of Congress

In 1952, a provision was adopted with respect to the living expenses paid or incurred by a Member of Congress (including a Delegate or Resident Commissioner).¹ Under these rules (sec. 162(a)), the place of residence of a Member of Congress within the congressional district which he or she represents in Congress is considered to be the tax home. However, amounts expended by the Member within each taxable year for living expenses away from home are not deductible in excess of \$3,000.

State legislators

Prior to the Tax Reform Act of 1976, no rule similar to that for ascertaining the place of residence for a Member of Congress applied in the case of a State legislator. As a result, the tax home of a State legislator was determined in accordance with the general rule described above.

¹ Prior to this time, Members of Congress were not allowed a deduction for these expenses because Washington, D.C. was considered to be their tax home. See *George W. Lindsay*, 34 B.T.A. 840, 843 (1936).

The Tax Reform Act of 1976 provided an election for the tax treatment of State legislators for taxable years beginning before January 1, 1976. This was extended for one year by the Tax Reduction and Simplification Act of 1977 to taxable years beginning before January 1, 1977, and was extended further by Public Law 95-258 to taxable years beginning before January 1, 1978.

Under this election, a State legislator may, for any such taxable year, treat his place of residence within his legislative district as his tax home for purposes of computing the deduction for living expenses. If this election is made, the legislator is treated as having expended for living expenses an amount equal to the sum of the daily amount for per diem generally allowed to employees of the U.S. Government for traveling away from home,² multiplied by the number of days during that year that the State legislature was in session, including any day in which the legislature was in recess for a period of four or fewer consecutive days. In addition, if the State legislature was in recess for more than four consecutive days, a State legislator may count each day in which his physical presence was formally recorded at a meeting of a committee of the State legislature. For this purpose, the rate of per diem to be used is to be the rate that was in effect during the period for which the deduction was claimed.

These limitations apply only with respect to living expenses incurred in connection with the trade or business of being a legislator. The 1976 Act did not impose a limitation on living expenses incurred by a legislator in connection with a trade or business other than that of being a legislator. As to any other trade or business, the ordinary and necessary test of prior law continues to apply.

In the absence of further congressional action, the tax home of a State legislator, for taxable years beginning after December 31, 1977, has to be determined in accordance with the general rules described previously.

On March 21, 1979, the Committee on Ways and Means favorably reported H.R. 3091 (H. Rept. No. 96-63). This bill would extend, for one additional year, the effective date for the tax treatment of travel expenses incurred by State legislators while away from home to taxable years beginning before January 1, 1979.

Prior Congressional consideration

The House-passed version of the Tax Reform Act of 1976 contained a nonelective provision which would have converted the \$3,000 deduction allowed to Members of Congress into a limited annual deduction,

² The maximum per diem allowance generally is \$35.00. Greater maximum amounts apply, however, to designated high rate geographical areas, including the capitals of Alaska (\$60), Connecticut (\$39), Hawaii (\$58), Massachusetts (\$49), Minnesota (\$41), New York (\$39), Rhode Island (\$40), and West Virginia (\$39).

The maximum allowable deduction computed by this method does not include any otherwise deductible expenses of long distance travel between the district represented and the capital. Thus, if otherwise qualifying long distance travel expenses were \$800, the per diem amount was \$35, and there were 200 legislative days, the total deduction allowed to the legislator would be \$7,800 (\$800 plus \$7,000 aggregate per diem).

the amount of which was to be established by the Internal Revenue Service.³ The applicable annual dollar limitation was to be determined by taking the following three factors into account: (1) the number of legislative days, (2) the cost of living in the Washington, D.C. area, and (3) amounts normally allowed as expenses for businessmen under similar circumstances. Under the provision, a Member's tax home would have remained in the congressional district represented.

This provision was not adopted by the Senate,⁴ and was deleted in conference.⁵

In 1977, the Ways and Means Committee conducted hearings on H.R. 4007 relating to expenses of Members of Congress and State legislators. This bill would have left the statutory tax home of Members unchanged, but would have replaced the fixed \$3,000 deduction allowed to Members with a variable deduction, the amount of which was to be determined by the Secretary of Labor. In establishing the amount of the replacement deduction the following three factors were to be taken into account: (1) the number of legislative days, (2) the cost of living, and (3) amounts normally allowed as living expenses for businessmen under similar circumstances.

As an alternative to H.R. 4007, the Treasury Department proposed allowing State legislators and Members of Congress a maximum annual deduction equal to the product of the highest allowable Federal per diem multiplied by the number of days of legislative participation (subject to a ceiling of 180 days). This proposed deduction would have been allowed only if a second residence was maintained, or if expenses for lodging other than in a principal residence were incurred. No deduction would have been allowed where a Member's or legislator's principal residence was within 50 miles of the capital.

The provisions of H.R. 4007 relating to Members of Congress were not adopted by the committee, and the maximum deduction which would have been allowed to a State legislator under the reported bill was the lesser of \$9,000 or the product of the applicable number of days times the greater of \$50 or the maximum Federal per diem for the State capital.⁶

In a report submitted by the Senate Committee on Finance, in consultation with the Senate Committee on Appropriations, as required pursuant to section 302(a) of Senate Resolution 110,⁷ (relating to amendments of the Senate rules pertaining to permissible expenditures, etc.), three alternatives to the fixed \$3,000 deduction allowed to Members of Congress were presented.⁸ The first alternative essentially was the same as the provision passed by the House in its version of the Tax Reform Act of 1976. Under the second alternative the deduction ceiling would have been increased to an amount equal to the product of \$44 per day multiplied by the number of days the Member was away from the district on legislative business. Under the third

³ H.R. Rep. No. 94-658, 94th Cong., 1st sess. 178-181 (1975).

⁴ S. Rep. No. 94-938, 94th Cong., 2d sess. 165-168 (1976).

⁵ H.R. Rep. No. 94-1515, 94th Cong., 2d sess. 439-440 (1976).

⁶ H. Rept. No. 95-163, 95th Cong., 1st sess. (1977).

⁷ 95th Cong., 1st sess. (1977).

⁸ S. Rept. 95-779, 95th Cong., 2d sess. (1978).

alternative, the deduction ceiling would have been increased to an amount equal to the product of the daily Federal per diem for Washington, D.C. multiplied by the number of days the Member was away from the district on legislative business.

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III. DESCRIPTION OF BILLS

A. H.R. 511 (Mr. Kindness)

Description of provision

The bill would provide that a State legislator's tax home is located at the place of his or her residence within the legislative district represented. The provision would not be elective, and would apply to taxable years beginning after December 31, 1977.

The bill also would allow State legislators a deduction, comparable to that now provided for in the case of Members of Congress, not in excess of \$3,000 annually, for living expenses while away from home.

Effective date

The amendments made by the bill would apply to taxable years beginning after December 31, 1977.

Revenue effect

It is estimated that the provisions of the bill would reduce budget receipts by \$2.7 million in fiscal year 1979, by \$2.2 million in fiscal year 1980, by \$2.1 million in fiscal year 1981, and by \$2.4 million in fiscal year 1984.

B. H.R. 2250 (Messrs. Traxler, Brodhead, Nedzi, Ford of Michigan, Blanchard, Bonior of Michigan, Albosta, Dingell, Diggs, Wolpe, Conyers, and Carr)

Description of provision

The bill would make permanent the elective tax treatment of State legislators originally enacted in the Tax Reform Act of 1976.

Effective date

The amendment made by the bill would apply to taxable years beginning after December 31, 1977.

Revenue effect

It is estimated that the provisions of the bill would reduce budget receipts by \$4.2 million in fiscal year 1979, by \$3.6 million in fiscal year 1980, by \$3.2 million in fiscal year 1981, and by \$3.6 million in fiscal year 1984.

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**C. H.R. 2550 (Messrs. Rostenkowski, Corman, Lederer, and
Duncan of Tennessee)¹**

Description of provisions

State legislators

The bill would extend the provisions of the Tax Reform Act of 1976 relating to the election accorded to State legislators to taxable years beginning before January 1, 1979, and would make the election available on an annual basis for all taxable years beginning after December 31, 1978.

Members of Congress

The bill also would extend the method of computing deductible living expenses accorded to electing State legislators to Members of Congress (including a Delegate or Resident Commissioner), and would repeal the \$3,000 deduction provided for Members by present law. The provisions of the bill, however, would apply to Members of Congress on a nonelective basis. Thus, the bill would treat a Member of Congress as having incurred an amount of deductible expenses equal to the product of the per diem allowance authorized to be paid by the Federal Government and the appropriate number of House or Senate legislative days.

Effective date

The amendments made by the bill relating to State legislators generally would apply to taxable years beginning after December 31, 1977; those relating to Members of Congress would apply to taxable years beginning after December 31, 1978.

Revenue effect

It is estimated that the provisions of the bill relating to State legislators would reduce budget receipts by \$4.2 million in fiscal year 1979, by \$3.6 million in fiscal year 1980, by \$3.2 million in fiscal year 1981, and by \$3.6 million in fiscal year 1984.

It is estimated that the provisions of the bill relating to Members of Congress would reduce budget receipts by \$0.4 million in fiscal year 1979, by \$2.5 million in fiscal year 1980, by \$2.4 million in fiscal year 1981, and by \$2.5 million in fiscal year 1984.

¹ An identical bill, H.R. 3001, was introduced by Messrs. Rostenkowski and Michel.