Massachusetts Legislator's

Tax Guide

2012

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INTRODUCTION

The Massachusetts Society of Certified Public Accountants, Inc. is pleased to provide this Guide to members of the Massachusetts Legislature.

As a Massachusetts Legislator, you should be aware of certain tax benefits available to you in the form of tax deductions for expenses that are ordinary and necessary in pursuit of your business as a legislator. This Guide has been designed to highlight those tax deductible expenditures affecting your 2012 income tax returns.

This Guide is not intended to cover all tax matters related to an individual's tax return. Items such as medical expenses, interest, charitable contributions or 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 questions concerning income tax laws as they relate to your unique position as a member of the Legislature.

Please be aware that this guide is current only as of the publication date. For questions regarding tax issues not covered in this guide or for assistance with preparation of your individual income tax return, we recommend that you contact your certified public accountant.

NOTE REGARDING AUTOMOBILE AND TRAVEL EXPENSES

In order to be deductible, travel expenses must be incurred while a taxpayer is away from "home". Expenses for travel and meals, etc., incurred in the general vicinity of one's home will not be allowed as deductions.

The Internal Revenue Service does not define a taxpayer's "home" as his or her residence. For income tax purposes, a taxpayer's "tax home" will generally be where his or her principal place of business or employment is located. The final determination, however, will be based on the facts and circumstances of a particular taxpayer.

In the case of legislators, there are special provisions for the determination of their "tax homes". Internal Revenue Code Section 162(h) provides for an election whereby individual legislators can consider their personal residences within their legislative districts to be their "tax homes". Although the principal place of business or employment for the legislators may be at the State House in Boston, by making this election, the "tax home," for those who so elect, will be where their residences are located. The election is not available to legislators whose residence is 50 miles or less from Boston. This election is also not available for Massachusetts income tax purposes (see Page 28 for further discussion).

When utilizing this election, the total deductions for meals, lodging and other living expenses while away from the "tax home", will be limited to an amount determined by multiplying the number of legislative days by the greater of: (1) the amount generally allowable with respect to such days to employees of the executive branch of the Federal Government for per diem expenses while away from home but serving in the United States or (2) the amount generally allowable to employees of the State of Massachusetts for per diem expenses to the extent such amount does not exceed 110 percent of the amount described in clause (1) above.

For purposes of this provision, a legislative day is defined as a day when the legislature is in session, including periods of up to four consecutive days when the legislature is not in session (or any other day when the legislature is not in session, but the legislator's presence is formally recorded at a committee meeting).

The answers to the questions in this guide assume that the legislator will not have Boston classified as his or her "tax home".

The importance of recordkeeping is emphasized throughout this guide. Since the **burden of proof** as to the appropriateness and extent of deductibility is **on the taxpayer**, it is imperative that detailed records be maintained. Failure to adequately support a deduction can result in its disallowance.

Reimbursed business expenses under an accountable plan are not considered income.

The regulations describe the three characteristics of an accountable plan:

(1) expenses must have a business connection;
(2) expenses must be substantiated to the payor within a reasonable period of time;
(3) any payments received in excess of actual expenses must be returned to the payor.

If the plan fails to satisfy any of these requirements, it is a non-accountable plan. Payments to an employee pursuant to a non-accountable plan must be reported as income. If the payments are paid under an accountable plan, the employer does not report them as income to the employee. However, the reimbursement that exceeds the actual substantiated expenses must be reported as income. The answers to the questions in this guide are based on a non-accountable plan.

AUTOMOBILE AND TRAVEL EXPENSES

FEDERAL

Q How do I report my mileage or automobile expenses on my tax return?

A The Internal Revenue Service considers you an employee of the Commonwealth. All mileage or automobile expenses are reported on Form 2106 - Employee Business Expenses. (Sample Form 2106 is included in this guide to assist you in understanding the questions and answers which follow.)

Q How much can I deduct for the automobile mileage I incur traveling to and from Boston?

A The Commonwealth provides each legislator with an annual allowance and a per diem allowance for mileage, meals and lodging while the legislature is in session which are both reported on Form W-2. The per diem rate is based on the distance from the legislator's residence to the State House.

Because you are not required to account to your employer for expenses incurred and since a portion of your expenses may not be deductible, you must submit a statement with your tax return (Form 2106, Part I) showing deductible expenses incurred.

The deduction for automobile expenses can be either in the form of the standard mileage rate for all business miles or you can itemize your actual automobile expenses (depreciation, gas and oil, repair and maintenance, insurance, etc.).

For 2012, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) was **55.5 cents per mile** for business miles driven. If the standard mileage rate is not used and you claim depreciation on the vehicle (or vehicles), the depreciation deduction must be shown in Section D, Form 2106. MACRS depreciation may be claimed only if the vehicle was used more than 50% for business use. If less than 50% business use, depreciation must be taken using the straight-line method. The business use percentage is computed by dividing your total business miles by total miles driven during the year. Depreciation is explained more fully starting on page 9.

Employee business expenses are reported on Form 2106 and can only be claimed as miscellaneous itemized deductions which are deductible to the extent they exceed 2% of adjusted gross income (AGI).

Q What other mileage expenses can I deduct?

A A member of the General Court usually incurs significant mileage expenses while in his home district. This mileage can become substantial for individuals whose districts are large. For example, a legislator may be required to travel several miles from one side of town to the other in order to gather facts for potential legislative actions or investigations, or to attend civic functions, political functions, or other meetings related to his legislative duties. All travel to meetings where you will speak or which you believe are important to attend because of your elected position are tax deductible. A memorandum of this mileage should be recorded in a diary. You may also deduct the cost of unreimbursed travel between two places of business (State Legislature or another business or occupation) provided such trips are necessary to discharge business at both locations. (Calculate this expense on Part 2 of Form 2106 and enter on Line 1, Part I of Form 2106.)

Q What about mileage expenses incurred while going to meetings during a political campaign for my reelection? Although I am running for reelection, I still feel it is incumbent upon me to attend these meetings to explain to my constituents the activities of the General Court, the legislation that we are currently working on, and the disposition and explanation of legislation that has gone through committee and legislation that we have already acted on.

A The Internal Revenue Code specifically states that campaign expenses are not tax deductible. (See section on campaign expenses.) Therefore, it is very important for the legislator to distinguish between those expenses which are directly related to a reelection campaign that are not deductible and those expenses which can be directly attributable to serving the legislator's constituency that are deductible.

Q If I use another mode of transportation to get to Boston, such as a bus or airplane, can I deduct these expenses in addition to my mileage expenses?

A If you use a bus, airplane or other means of transportation to Boston, these expenses should be detailed on Form 2106, Part 1, Lines 2 and/or 3. You cannot, however, claim both the mileage you would have incurred had you driven an automobile to Boston and the cost of the bus fare or airplane ticket.

Q On occasion, I ride with another legislator to Boston. Can I still claim a tax deduction for the mileage for that particular day, even though I did not drive my own car?

A When you ride with someone else and do not directly incur any travel expenses yourself, you can not claim any mileage expense for that day's travel.

Q While away from home staying in a Boston hotel for the legislative session, I am required to drive or take a taxi to the State House each day. Can I deduct this as a business expense?

A Yes. The place at which you reside in Boston is not considered your tax home and, therefore, expenses incurred in Boston are not considered commuting expenses (assuming you live outside Metropolitan Boston.) You may deduct as travel expense the mileage you incur going from your living quarters in Boston to either the State House, or any other location, as long as the purpose of the travel is directly related to the business of being a member of the General Court.

Q I have an office in my home district. Can I deduct mileage expense from my residence to this office?

A No. Mileage from residence to place of business is not deductible. This is considered a nondeductible commuting expense.

Q The Commonwealth will pay me certain allowances for travel and other expenses. Do these allowances create additional income to me?

A Yes, they are itemized in boxes 14m and 14r and included in box 1 (federally taxable income). However, you may deduct your travel expenses while away from home (Form 2106, Part I, Line 3), transportation expenses (Form 2106, Part I, Line 2-3), meals and entertainment (Form 2106, Part I, Line 5), and other ordinary and necessary expenses for the year (Form 2106, Part I, Line 4).

In that your employer does not specify the expenses for which it is reimbursing you, you must classify the expenses in the various categories indicated on Form 2106.

Q The IRS allows me to deduct a standard allowance per mile or to itemize all of my automobile expenses and deduct the business portion of these expenses. Which method results in the greater deduction for me?

A For 2012, the standard business use mileage rate for transportation expenses paid or incurred is 55.5 cents per mile. It is necessary to itemize your automobile expenses and compare them to the deduction under the standard mileage allowance to determine which method gives you the larger deduction. However, as explained below, switching methods may be restricted.

Q If I itemize my automobile expenses one year, can I use the standard mileage allowance method the following year?

A You must elect to use the standard mileage allowance method for the first year that the automobile is used for business purposes if you wish to use the standard allowance in any other year. Once you have elected to use the standard allowance method in the first year, you may elect to use the standard allowance or you may itemize your actual automobile expenses in later years. If you use the standard mileage allowance method in the first year and then switch to the actual expense method in a later year, depreciation must be computed based on the straight-line method over the estimated remaining useful life of the automobile.

If you lease your vehicle, you may use the standard mileage rate, but you must use the rate for the entire lease period.

The standard mileage rate may not be used if any of the following apply:

a. The automobile has been previously depreciated using a method other than the straight-line method.

b. You claimed a Section 179 deduction.

c. You use the car for hire, that is, you use it carrying passengers for a fare.

Q If I don't use the standard mileage allowance method for computing automobile expenses, what specific expenses am I allowed to deduct?

A Part II, Section C of Form 2106 is where you list automobile expenses. These include gasoline, oil, repairs, tires, supplies, insurance, taxes, licenses and depreciation.

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

A Yes. Parking fees and tolls (Form 2106, Part I, Line 2).

Q I received a traffic ticket when I was rushing to Boston for a Committee Meeting. Is the fine deductible?

A No. A traffic violation is a penalty and not a deductible expense. The same applies to parking tickets.

Q Since I receive allowances from the Commonwealth for travel, meals and lodging and other expenses while the General Court is in session, would it not be best to just disregard the allowance entirely and assume that they are completely offset by the mileage expenses and therefore not report anything?

A No, because the allowances are included in your W-2 gross income.

Q If I itemize my automobile expenses, how do I compute the depreciation deduction?

A The rules for computing depreciation of your automobile depend on the date it is placed in service and the type of vehicle.

In general, an automobile placed in service after 1986 must be depreciated over a five year recovery period using the 200% declining balance method with a switch to straight line method at a time that maximizes the deduction. If elected, the automobile may be depreciated over a five year recovery period using a straight line depreciation method.

Special Depreciation Allowance/Bonus Depreciation

In 2008, the Economic Stimulus Act of 2008 provided for a special 50% first-year depreciation for new property acquired and put into service in 2008. The maximum depreciation amount was thereby increased by $8,000. The **American Recovery and Reinvestment Act of 2009** and subsequently the **Small Business Jobs Act of 2010** extended the 50-percent special depreciation allowance and added the 100% special depreciation allowance for to acquisitions of qualifying property placed in service after September 8, 2010 and on or before December 31, 2012. This provision enables businesses to deduct a larger portion of the adjusted basis of qualifying property in the year it is placed in service. Prior to the enactment of these acts, the 2012 maximum depreciation amount for a passenger automobile was $3,060. The acts increased this limitation by $8,000 for a new maximum limit of $11,060. Note, however, all depreciation must be reduced by the percentage of personal use. For more information, see instructions for Form 2106.

Note that Massachusetts does *not* allow for the special first year depreciation. For Massachusetts returns, taxpayers must use the "Standard" column reduced by the percentage of personal use.

Annual ceilings may limit the amount of depreciation you are allowed to deduct. You must use the following applicable chart for your type of vehicle. Note that the amounts are maximum limits and include the bonus depreciation enacted in 2008 and extended through 2012. Bonus depreciation is optional and is *not* allowed for vehicles used less than 50% for business.

2012 Limits for Passenger Automobiles
(except Truck, Van, and Electric Automobiles placed in service after August 5, 1997)

Date Vehicle Was Placed in Service	Standard	50% Bonus
01/01/12 to 12/31/12	$3,160	$11,160
01/01/11 to 12/31/11	4,900	
01/01/10 to 12/31/10	2,950	
1/1/2006 to 12/31/2009	1,775	
1/1/2004 to 12/31/2005	1,675	
1/1/1995 to 12/31/2003	1,775	

A passenger automobile is a four wheeled vehicle manufactured for use on public roads with an unloaded gross weight of 6,000 pounds or less. Certain commercial vehicles are not considered passenger vehicles and therefore are not subject to these limits. See Publication 463 for details.

Limits for Trucks and Vans
(gross weight not to exceed 6,000 pounds)

Date Vehicle Was Placed in Service	Standard	50% Bonus
01/01/12 to 12/31/12	$3,360	$11,360
01/01/11 to 12/31/11	5,200	
01/01/10 to 12/31/10	3,050	
1/1/2009 to 12/31/2009	1,775	
1/1/2004 to 12/31/08	1,875	
1/1/2003 to 12/31/2003	1,975	
1/1/1995 to 12/31/2002	1,775	

A truck or a van is a passenger automobile built on a truck chassis including a minivan or a sport utility vehicle build on a truck chassis.

Additional rules for automobiles:

a. The above limits are applied before any reduction for nonqualified business use or other use that does not qualify for the recovery deduction. Thus, the limits are applied after determining the depreciation deduction and before reduction for any personal use of the automobile.

b. Additionally, if the business use of the automobile is 50% or less, depreciation can only be figured using the straight-line method over a five year recovery period. Special Depreciation is not allowed. Use Standard limits. Also, if business use is more than 50% in the year of acquisition but falls below that in a future year, a portion of the depreciation deductions taken in prior years may have to be added back to income in such future year.

c. Unrecovered Basis - Additional depreciation may be allowed if at the end of the recovery period, there is an excess of the unadjusted basis over the depreciation deductions that would have been allowed if the automobile had been used exclusively for business purposes. This excess may be treated as depreciation deductions in subsequent tax years up to the applicable maximum allowance in each year until such unrecovered basis is used up. These limits are also reduced to the extent of personal use. Such post-recovery-period deductions are allowable in any subsequent taxable year only if the property continues to be eligible for a depreciation deduction for that year.

Q I hear there are special rules for SUV's. What are they and how do I know if I qualify?

A If you drive a qualifying SUV (built on a truck chassis and has a gross vehicle weight in excess of 6,000 pounds), you are not subject to the limits listed above. For qualifying SUV's placed in service in 2012, the portion of the vehicle's cost taken into account in figuring your Section 179 deduction is limited to $25,000. The balance of the cost of the SUV is depreciated over a five year recovery period. See the instructions to Form 2106 for the applicable depreciation method and percentages.

Q If I attend a convention relating to my activities as a legislator, and the convention is held in a foreign country, will I be able to deduct the expenses allocable to the foreign convention?

A Yes, however you must establish that the foreign convention (held outside the United States, its possessions, the Trust Territory of the Pacific Islands, Canada, or Mexico and certain Caribbean islands) is directly related to your activities as a legislator and that, after taking certain factors into account, it is "as reasonable" for the meeting to

be held outside the North American area as within it. The factors to be taken into account are:

a) the purpose of the meeting and the activities taking place at such meeting,

b) the purposes and activities of the sponsoring organization or group,

c) the places of residence of the active members of the sponsoring organization or group and the places at which other meetings of the organization or group have been held or will be held, and such other relevant factors as the taxpayer may present.

Expenses incurred for conventions on U. S. Ships making ports of call only in the U. S. or its possessions are deductible. The deduction must be related to the active conduct of your activities as a state legislator and is limited to $2,000 for each person attending per year for all qualified cruises. The cruise must be on a ship registered to the US and all ports of call must be in the US or US possessions. For luxury cruises, the deduction cannot exceed twice the highest per diem amount allowable to U. S. government employees while away from home in the U. S. Two statements are required to be attached to the return. One must be signed by you listing the number of days on the trip and the number of hours of each day that is devoted to business activities as supported by a program of activities. The second statement must be signed by the representative of the sponsoring organization and it must include a schedule of the business activities each day and indicate the hours the individual attended the business related meetings.

AUTOMOBILE AND TRAVEL EXPENSES

MASSACHUSETTS

Q How do I treat these various automobile and travel expenses on my Massachusetts income tax return?

A Massachusetts allows a deduction on Form 1 at Line 15 for employee business expenses. The deduction follows rules similar to the Federal tax deduction rules described above.

One major difference, however, is that Massachusetts does **not** allow the election to treat your home district as your tax home. Without the election, it will be difficult to take deductions for travel, meals and lodgings to and within Boston since such expenses will not automatically be deemed to have been incurred away from your tax home.

Also, as mentioned above, Massachusetts does not allow the special depreciation allowed by the Federal Economic Stimulus Act of 2008 and extended by ARRA of 2009 and SBJA of 2010.

Please refer to General Notes on The Deduction of Employee Business Expenses For Massachusetts Purposes (hereafter referred to as General Notes) located at Page 22 of this Guide for a more complete discussion.

In addition, a copy of Massachusetts Schedule Y, Other Deductions and U.S. Form 2106 or statement must be attached to your Massachusetts income tax return or the amount claimed as an employee business expense on Massachusetts Form 1, Line 15, will be disallowed, and you will be assessed an additional tax plus interest. A worksheet is provided in the Form 1 instructions.

NOTE REGARDING MISCELLANEOUS ITEMIZED DEDUCTIONS

The following expenses, beginning with *Living Expenses - Federal* on page 13 and ending with *Other Expenses - Federal* on Page 23, are deductible for Federal income tax purposes as miscellaneous itemized deductions. Currently, these deductions, plus unreimbursed automobile and other travel expenses described on Pages 5-12 and other miscellaneous deductions, such as tax preparation fees, professional dues, investment advisory fees, etc. are deductible only to the extent that in the aggregate they exceed 2% of Adjusted Gross Income (AGI).

Miscellaneous itemized deductions are not allowed for purposes of computing the alternative minimum tax (AMT). It is possible, especially for those legislators that live more than 50 miles from Boston and who have made the election under Internal Revenue Code Section 162(h) described on Page 4, that your AMT will be greater than your regular income tax. A sample Form 6251 Alternative Minimum Tax-Individuals is included in this guide to assist you in computing the AMT. Due to the number of variables used in calculating AMT, each situation is different. The easiest way to check if you are subject to AMT is via the IRS website. Using a draft 1040, go to www.irs.gov and enter “AMT Assistant” in the IRS.gov Search Box to find this online tool.

LIVING EXPENSES

FEDERAL

Q I understand that I may deduct living expenses while in Boston only if it is not considered my “tax home”. How do I determine whether Boston or my residence within my legislative district is my tax home?

A Generally, if being a state legislator is your most significant income-producing activity and you spend more time in Boston carrying our your legislative duties than you do in your home district, the IRS and most courts would consider Boston your tax home.

Hence, the cost of meals and lodging while in Boston and travel to and from Boston would not be considered deductible business expenses. It should be noted that if your tax home is Boston, you may be allowed a business expense deduction for overnight travel expenses incurred while carrying out your legislative duties within your home district or while carrying on another trade or business there.

However, as noted on Page 4, if you make the election under Internal Revenue Code Section 162(h), your residence in your home district will be treated as your tax home.

Q How do I make this election and to which taxable years does it apply?

A The IRS has published guidelines for the time and manner of making the election, provided the statute of limitations has not yet expired. The election is made by attaching a detailed statement to your tax return. Consult your Certified Public Accountant for additional information. (See a sample election included in this guide).

Q If I elect to make my residence in my legislative district my tax home, what living expenses may I deduct?

A For 2012, you may report as out-of-town living expenses for each legislative day as described on page 4 as follows:

January 1 – March 31	$229.00
April1 - June 30	$272.00
July 31 - August 31	$254.00
September 1 – October 31	$292.00
November 1-December 31	$229.00

The above rates are maximum per diem rates for the Boston/Cambridge area. As an alternative for simplicity, taxpayers may determine the per diem reimbursement for using the High-Low Substantiation Method. The High-Low Substantiation Method allows $242 per day. You must consistently use either the High-Low rates or the seasonal rates listed above.

Your reimbursements from the Commonwealth for living expenses are included in your gross income. Thus, the benefit of this deduction will equal the difference between the total per day expense allowance reduced by the reimbursement.

Q What expenses are included in the flat per day allowance?

A The allowance is for living expenses. These include but are not limited to meals and lodging, laundry, cleaning and pressing of clothing, and fees and tips for services, such as for waiters and porters. They do not include cab fares or other auto expenses incurred in or traveling

to Boston, or the cost of phone calls. Hence, these amounts may be deducted in addition to the flat allowance. (Note: The per diem allowances consist of lodging expense and meals and incidental expense. The breakdown of expenses is as follows:

	Lodging	Meals & Inc.
January 1 – March 31	$158.	$71
April1 - June 30	$201	$71
July 1 - August 31	$183	$71
September 1 – October 31	$221	$71
November 1-December 31	$158	$71

Unless you are reimbursed by the Commonwealth, you can deduct only 50% of otherwise allowable meal expenses. Expenses for taxes and tip are also subject to the 50% limit. However, transportation expenses to and from a business meal that are otherwise deductible are not subject to the 50% limitation. These rules apply regardless of whether the expense is incurred while you are away from home overnight or not. For those using the High-Low method, Lodging is $177 and Meals & Incidentals are $65.

Q How do I determine my deductible living expenses if I have made a Sec. 162(h) election and the Federal per diem reimbursement is greater than the amount I receive from the Commonwealth?

A The Internal Revenue Service in its Notice 87-23 gives the following example of determining deductible living expenses in instances where the Federal per diem reimbursement stipulated by the Internal Revenue Service is greater than the amount actually reimbursed to the legislator, living at least 50 miles from the state capital:

> *As of February, 1987, the per diem reimbursement for California state legislators was $75 per day. The current Federal per diem for Sacramento, the state capital, was $87 per day of which $54 was allocable to lodging and $33 (38% of $87) represented a meal allowance. For each legislative day, a legislator electing under Sec. 162(h) would include the $75 per diem in income, and, with respect to the $87 that would be otherwise be deductible, would allocate $12 (excess of $87 over $75) between meals and travel expense. Of the $12, the percentage allocable to the meals allowance (38%) would result in an allocation to meals of $4.56, of which 20% (.91 per day) would*

not be deductible. The portion of the $12 allocated to travel expense ($7.44) and the deductible portion of the meals expense ($3.65) would be treated as a miscellaneous itemized deduction subject to the 2% adjusted gross income limitation. [Note - For 2012, the 20% disallowance factor for meals would be 50%].

Q If I choose not to elect this special treatment or if I am not eligible to make the election, what can I deduct for living expenses while attending sessions in Boston?

A If, given your circumstance, your tax home is your residence within your legislative district, you may deduct actual amounts spent for lodging, meals, laundry, cleaning and pressing of clothes, tips, telephone calls, and all transportation costs including commuting costs within Boston and transportation to and from Boston.

Receipts are required to be kept for certain expenses. It is suggested that you keep as many receipts as possible and all cancelled checks to support your business expenses (see section on recordkeeping requirements at page 31).

Q Because I am in Boston for long periods of time, I find it necessary and desirable to have my spouse and children occasionally come to Boston. Can I deduct the incremental cost of their travel to Boston, incremental motel costs and cost of their meals?

A No. No deduction is allowed for expenses paid or incurred with respect to a spouse or other individual accompanying you unless your spouse or other individual is an employee of the Commonwealth and the travel is for a bonafide business purpose.

Q After some committee meetings in Boston which last late into the evening (until 11:00 or 12:00), I have a sandwich or some refreshments. Is this a deductible business expense?

A Yes, provided that you are away from your tax home (as explained on page 4 of this guide). In addition, the cost is subject to the 50% limitation.

LIVING EXPENSES

MASSACHUSETTS

Q How do I treat these living expenses on my Massachusetts tax return?

A The State does not allow such living expenses as deductions. These expenses are expenses that would be only deductible in computing Federal taxable income if

incurred while away from your tax home. See the General Notes at Page 29 of this Guide for a discussion of the "tax home" rules.

OFFICE AT HOME

FEDERAL

Q Can I deduct any costs of my home as a business expense?

A Yes, if all of the following conditions are met:

1) A specific portion of your home is used ***exclusively*** and regularly as an office to meet with your constituents (occasional meeting does not suffice);

2) The foregoing is your ***principal place of business*** for your legislative activities within your legislative district; and

3) Your office at home must be for the convenience of your employer - the Commonwealth. If the use of the home office is for your convenience and merely helpful, it cannot be deducted.

A home office meets the **principal place of business** test if:

1) you use it regularly and exclusively for administrative or management activities, and
2) you have no other fixed location to do such work.

If the above conditions are met, deductions for a home office are based on the percentage of your home devoted to your business activities. You may deduct the following items:

Depreciation or rent:

Depreciation is computed by using the lower of the cost of your home, less the land cost *or* the fair market value less land value, when your home or part of it was converted to business use and apportioning it over the remaining useful life. Compute the percentage of space in your home used for business purposes based on a pro-ration over the total space in your home. This percentage is applied to the total annual depreciation and the resulting portion of depreciation may be deducted on your tax return. If you are renting a home or apartment, the business portion (percentage) of your residence is applied to your annual rent to determine the deduction.

Note that if deducting your home office, it may impact your taxes upon selling your home. When calculating any gain, you must decrease the cost basis by the depreciation your were allowed to take whether you took it or not. If you have any concerns, you should consult a tax advisor for more information.

Other expenses:

Utilities and insurance related to maintaining an office in your home may be apportioned based on the percentage of square footage of your home or apartment that is used as an office.

Also, where a designated space or particular room in your home is used exclusively for such an office, any maintenance expenses to keep up this particular area may be deducted as a business expense for that particular year. Examples of such items would be cleaning and painting. Carpentry work to install bookcases or other improvements and work to install carpet in this particular area would be a capital expense and also fully deductible by depreciation over the appropriate recovery period.

The expenses attributable to the business use of the home may not exceed the business gross income after it has been reduced by all other expenses not allocable to the use of the home. Expenses not deductible due to this limitation may be carried forward.

Careful records of how often meetings with constituents took place and how much time was devoted to them should be kept to substantiate regular use of the home office.

For more information on the tax deduction for a home office, you may wish to refer to IRS Publication 587, Business Use of Your Home.

Q What office expenses may I deduct?

A Office equipment and furniture such as a desk, file cabinet, computer, adding machine and similar other items used by a legislator may be depreciated over the applicable recovery period and the business portion of this depreciation expense may be deducted on your income tax return.

Salaries or wages paid are another deductible expense you may incur. If you hire someone such as a full or part-time secretary to assist you in legislative matters and handle constituent complaints, the salary paid to this individual is deductible. If an individual is on your payroll, you, as an employer, must obtain a Federal identification number and withhold and pay the appropriate payroll taxes (the employer's portion is deductible). For the details on the proper accounting and tax reporting of payroll, you should contact your Certified Public Accountant.

The fee paid to your CPA is also a business expense and may be deducted on your tax return. If you have student help or volunteer help in working on local legislative matters, and no out-of-pocket expense is incurred by you, then, of course, there is no tax deduction.

Q If I have a legislative assistant in my home district that I pay only a token amount each month, am I required to go through the process of filing payroll tax returns and withholding payroll taxes?

A In most situations, all amounts paid for services are subject to payroll taxes. However, there are some exceptions as in the case of an independent contractor. You should consult your Certified Public Accountant to evaluate each situation for you.

Q Instead of an office in my home, I maintain a rented office in my district for the purpose of serving my constituents. What expenses can I deduct on my tax return for the cost of maintaining this office?

A If the office is being used exclusively for legislative purposes, all expenses related to this office (rent, utilities, depreciation on improvements and equipment, etc.) are deductible. The issue to be aware of in this instance is the use of the office for other purposes, such as campaign matters. If some office expenses are paid out of campaign contributions, these expenses would not be a valid tax deduction since you personally have not incurred an out-of-pocket expense. If campaign contributions used for office expenses exceed the campaign-related costs of operating the office, then such excess is includible in taxable income. If campaign-related office expenses exceed campaign contributions, such excess is not deductible. Detailed records should always be maintained and in case of campaign expense you should keep a detailed record of all receipts used from sources other than yourself to determine whether or not your expenses exceed your income or vice versa. If expenses exceed funds from these other sources, and such expenses are in fact campaign expenses, then these specific expenses are not deductible (see Campaign Expenses beginning on page 26).

OFFICE AT HOME

MASSACHUSETTS

Q What is the Massachusetts treatment of office at home expenses?

A Generally, these expenses are only deductible for Federal purpose if one itemizes deductions on Schedule A, Form 1040. Since Massachusetts does not recognize itemized deductions (with the exceptions of alimony, medical expenses and unreimbursed expenses for travel, meals and lodging while away from home), there is generally no deduction allowed for office at home expenses. However, to the extent these itemized deductions are treated as reimbursed, they will also be allowed as a deduction for the Massachusetts tax return. See enclosed Worksheet on page 30.

ADVERTISING EXPENSE

FEDERAL

Q Because I am a member of the General Court, I am often called upon to purchase ads in trade journals, newspapers, or magazines sponsored by various organizations in my district. Can I deduct the cost of these ads?

A Where these ads are paid by you and are a necessary part of your business in order to maintain relations with your constituency and also in order to promote your name (which is necessary to an elected official so people are aware of who you are), then this type of expenditure is deducted as a business expense on your tax return.

If these ads appear during a re-election campaign period in which you are involved, the cost of these ads are considered campaign expenses and as such are not deductible. The ads appearing during your campaign should be paid out of campaign contributions.

Q **I buy calendars, pens or similar items which include my address and phone number as a means of advertising. I pass these items out to my constituents so they can contact me when needed. Can I deduct such items?**

A Since this is directly related to your business of adequately and properly serving your constituency, you may deduct the cost of these items on your tax return. When these items are distributed during a re-election campaign period, they should be paid out of campaign contributions.

ADVERTISING EXPENSE

MASSACHUSETTS

Q How do I treat these various advertising expenses on my Massachusetts tax return?

A Because these expenses are only deductible for Federal purposes as itemized deductions they are not deductible in arriving at Massachusetts taxable income except to the extent they are treated as reimbursed, in which case they would appear on Massachusetts Form 1, Line 15. See enclosed Worksheet on page 30.

MEAL AND ENTERTAINMENT EXPENSES

FEDERAL

NOTE: Only 50% of meal and entertainment expenses are deductible. In additional, in order to obtain any deduction, there must be a substantial and bona-fide business discussion during, directly preceding or following the meal provided to others, and the meal may not be lavish or extravagant.

Q I am required to meet with a constituent regarding a state problem and I meet him for breakfast, lunch or dinner, and pay for his meal. Can I deduct this as a tax expense?

A Yes. Remember to keep up your expense diary as to who, why, where, when and how much. Receipts must be retained for any meal consumed at a meeting exceeding $75 in total cost.

Q As a member of the General Court, I am requested (and required because of my position) to attend many dinners within my district. Can I deduct the cost of these dinners?

A Yes, if you pay for your dinner. Incidentally, any costs incurred to attend such dinners (travel expense, parking fees, etc.) are also deductible and are not subject to the 50% limitation described above.

Q Because of my position in the community, I occasionally will entertain other elected officials, such as city councilors and mayors or I will entertain congressmen, primarily for the purpose of maintaining communications with them and to explore common problems and determine solutions. Can I deduct this expense?

A Yes, as long as it is directly related to your legislative position and you can show the business purpose for the entertainment or meeting. Here again, it is recommended that you keep an itemized record to indicate the date, place, who was there, and the purpose of the meeting together with receipts for expenses in excess of a total of $75 per meeting.

Q While in Boston on certain special occasions, such as St. Patrick's Day, I will have a gathering of fellow legislators and other individuals connected with the legislature. Can I deduct the expense of this gathering as a business expense?

A If the gathering can be shown to have a business purpose, then it would qualify as a business deduction. You should have paid receipts for support and indicate the business purpose and show who attended the function.

MEAL AND ENTERTAINMENT EXPENSES

MASSACHUSETTS

Q Are meal and entertainment expenses deductible in arriving at Massachusetts taxable income?

A With the exception of meal and entertainment expenses incurred away from home, such expenses are deductible only to the extent they are treated as reimbursed. These expenses would appear on Massachusetts Form 1, Line 15. See enclosed Worksheet on page 30.

TELEPHONE EXPENSE

FEDERAL

Q Can I deduct the cost of my telephone since I use the telephone for calling and receiving calls from constituents and for other State business?

A The basic cost of the telephone land line is an expense that you would incur whether or not you were in your position as a member of the General Court, and is therefore a nondeductible personal expense. Calls charged in *excess of the basic rate* are a deductible expense if they directly relate to State business and to your position as a member of the General Court. If you have a separate telephone installed **exclusively** for the purpose of your legislative business, then the entire cost of this telephone could be deducted as a business expense. The cost of long distance telephone calls and electronic communications that relate to State business is a deductible expense. Use of an answering service is also a deductible expense, if it is directly related to your position as a member of the General Court. An answering machine to record messages phoned into your home in your absence is an expense required by your office and would be a deductible business expense. Cell phones costs can be deducted based on proportion of business use.

TELEPHONE EXPENSE

MASSACHUSETTS

Q How are telephone expenses handled for State purposes?

A They are deductible for State purposes if they are treated as reimbursed. They would appear on Massachusetts Form 1, Line 15. See enclosed Worksheet on page 30.

OTHER EXPENSES

FEDERAL

Q What other expenses can I deduct on my tax return?

A There are many other expenses you would incur as a result of your position as a member of the General Court. Some of these expenses would include the following:

1. Stationery and postage related to mail concerning your business as a member of the General Court.

2. Any other supplies such as pens, paper clips, pencils, etc. necessary to maintain your office and serve your constituency.

3. Dues to certain organizations that you now belong to, only to benefit you in your capacity as a member of the General Court, are deductible expenses. Examples would be dues to civic and public service organizations in your community. Dues paid to athletic clubs, business luncheon clubs, and airline and hotel clubs are **not** deductible, regardless of business purpose.

4. Newspapers and magazines - the cost of obtaining additional publications because of your position as a State legislator, such as special weekly papers in your district, special publications relating to politics, to the State or related areas of government, which are necessary for you to improve yourself as a legislator, are deductible expenses. If you incurred these expenses on a normal basis and for personal reasons, the costs would not be deductible expenses.

5. The cost of holiday cards to ward leaders, and leaders in the community, is a form of advertising expense, again directly related to your business as a member of the General Court. To the extent that you buy special holiday cards and have a mailing to people related to you in politics, this becomes a tax deductible expense (cost of the cards, envelopes, postage, and photographs if included in the card).

6. Cost of newsletters sent to constituents is a tax deductible expense.

OTHER EXPENSES

MASSACHUSETTS

Q Are there other expenses deductible on my Massachusetts return?

A Yes, any business-related miscellaneous expense that is treated as a reimbursed expense is deductible and reported on Massachusetts Form 1, Line 15. See enclosed Worksheet on page 30.

CAMPAIGN CONTRIBUTIONS

FEDERAL

Q During my recent campaign for office, I received contributions which exceeded my campaign expenses by $3,500. How do I treat this excess on my tax return?

A 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.

Political contributions are considered used for campaign purposes if: (1) they are utilized 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 out-of-pocket expenses paid during the current, or if he is not currently campaigning, the last previous campaign.

Where political contributions are includible in income, a deduction may be allowed if, for example, the funds are used for business purposes or contributed to charity.

The Treasury says detailed reports should be kept summarizing the receipt and disbursement of funds. If political funds are commingled with personal funds so as to make tracing impractical, the funds will be presumed to be devoted to personal use.

Contributions to funds used exclusively to prepare and circulate a newsletter are treated the same as other political contributions. Questions and answers regarding a newsletter fund appear later in this guide.

Income from excess contributions set aside in a separate campaign fund bank account for use in subsequent campaigns must be reported on a U. S. Income Tax Return for

Certain Political Organizations, (Form 1120-POL), for the taxable year in which such income is so credited. (See copy of Form 1120-P0L at end of this guide).

IMPORTANT - Please note that any fund-raising solicitation done by a political organization having gross receipts of more than $100,000 per year must include an express statement in the solicitation stating that contributions or gifts to a political organization are not deductible as charitable contributions.

Additionally, a political organization that offers to sell or solicits money for specific information or a routine service to any individual that could be easily obtained by that individual from an agency of the federal government free of charge or for a nominal fee must disclose that fact in a conspicuous manner when making any such offer or solicitation.

Failure to comply with these requirements could result in substantial penalties.

Q During the period of my last campaign, I received cash and securities from donors for use in my campaign. The cash earned interest while on deposit in a savings bank, cash dividends were paid on securities and a gain realized on their subsequent sale. I maintained a complete set of books and records for these funds which were held separate and distinct from my personal funds. No part of these funds was used by me for other than campaign purposes.

a. What part of these funds is taxable for Federal income tax purposes?

b. What type of return should I file to report income from campaign funds and when is such a return due?

c. What expenditures are deductible in computing taxable income?

A a. Campaign contributions 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) are includible in gross income. Expenses incurred upon the sale of contributed securities are to be taken into account in determining gain realized on such sales.

b. If a political organization or committee's taxable income is greater than $100, that income must be reported on a U.S. Income Tax Return for Certain Political Organizations (Form 1120-POL), and any resultant tax paid. The due

date for filing for Form 1120-POL is the fifteenth day of the third month following the close of each taxable year.

With respect to political candidates who have exclusive personal control over campaign funds which are maintained separately from their personal funds, taxable income exceeding $100 is reported on U.S. Fiduciary Income Tax Return (Form 1041). The return is due April 15 following the year during which the candidate held the funds.

c. Allowable deductions in computing taxable income are limited to the $100 exemption and expenses directly attributable to the income are required to be reported on Form 1120-POL or Form 1041.

Thus, you may claim a deduction for expenses directly attributable to the production of interest and dividend income. You may not claim a deduction for any expenses in connection with your campaign in computing taxable income.

Q Can individual donors claim a tax deduction on their personal income tax returns for contributions to my campaign?

A No.

CAMPAIGN CONTRIBUTIONS

MASSACHUSETTS

Q How are these various questions relating to campaign contributions handled on my Massachusetts return?

A Massachusetts gross income is based upon Federal gross income with appropriate State adjustments. In the case of excess campaign contributions, if an individual finds that he must include political contributions with his Federal income, then he must likewise recognize this income for State purposes.

If a Federal Form 1120-POL or 1041 is required to be filed, then a Form 3M is required for Massachusetts. (See Form 3M attached.)

CAMPAIGN EXPENSES

FEDERAL

Q Are my campaign expenses deductible for tax purposes?

A A candidate's campaign expenditures out of his or her own resources are not deductible for income tax purposes.

In 1962, Congress enacted Section 162(e)(2)(A) of the Internal Revenue Code, which disallows all deductions for expenditures in any political campaign for a candidate for public office.

Even though a public office is defined as a trade or business (Section 7701(a)(26), 1986 IRC), none of a candidate's campaign expenses are deductible. Regardless of the result of the election, the candidate cannot deduct expenses for attending political conventions, contributions to the political party which sponsored the candidacy, expenses of campaign travel, campaign advertising, the expenses of successfully defending his or her position in a contested election, filing fees, or the cost of legal fees paid in litigation over redistricting. Furthermore, none of these expenses may 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 the hope that the exposure will build his or her professional practice. Even though a candidate felt that his or her professional reputation was damaged during a political campaign, he or she cannot deduct the cost of any defamation litigation for allegations published during the campaign.

CAMPAIGN EXPENSES

MASSACHUSETTS

Q Are my campaign expenses deductible on my State tax return?

A No.

NEWSLETTER FUND

Q What is a newsletter fund?

A A newsletter fund is a fund established and maintained by an individual to prepare and circulate a newsletter. The fund can be set up by the holder of any Federal, State or local elective public office. Candidates for any such office can also establish a newsletter fund, as can individuals who have been elected to public office but have not yet started their term in office.

After leaving office, the newsletter fund provision is not available unless the individual again becomes a candidate.

Q How is a newsletter fund accounted for?

A A newsletter fund is treated as an exempt political organization. The assets in the fund must be maintained in separate accounts and used solely to prepare and circulate the newsletter. The cost of preparing the newsletter includes the cost of secretarial services and the cost of printing, and mailing the newsletter.

Q Is a newsletter fund subject to tax?

A A newsletter fund is subject to tax similar to a political organization as discussed in answers to previous questions, except that it is not allowed the $100 deduction allowed to political organizations (See Form 1120-POL).

Q What about unexpended balances of a newsletter fund?

A The unexpended balances of a newsletter fund may be contributed to or for the use of another newsletter fund, transferred to the general fund of the U. S. Treasury or of any State of

local government, or transferred to or for the use of an exempt public charity, without being considered as having been diverted for the individual's personal use. However, transfer of unexpended assets to a political organization which is not a newsletter fund will be considered as being diverted for the individual's personal use and deemed as taxable income to the individual.

GENERAL NOTES ON THE DEDUCTION OF EMPLOYEE BUSINESS EXPENSES FOR MASSACHUSETTS PURPOSES

1. Election to Treat Your Home District as Your Tax Home Inapplicable for Massachusetts Purposes:

Federal law allows legislators to make an election under Internal Revenue Code Section 162(h) permitting their home district to be deemed as their tax home. The significance of this election is that all travel, meals and lodging incurred on business conducted outside the home district is considered to be "away from home" and, consequently, fully deductible as miscellaneous itemized deductions subject to the 2% AGI floor.

This election is inapplicable for Massachusetts tax purposes. However, Massachusetts legislators may still be able to establish through other facts and circumstances that their home district is their tax home. Maintaining an office in the home district, either within their residence or in an outside office, where constituents are regularly consulted will be a key factor. A detailed log of time spent in the office and the names of constituents should also be kept. The amount of time spent working in the home district will probably have to equal or exceed the time spent in Boston in order for the legislator to prevail. In most cases, it is likely that Boston will be determined to be a State legislator's tax home. Accordingly, unreimbursed meals and lodging and transportation to and from the home district will not be deductible in many instances.

2. Computation of Deduction of Business Expenses as Employee of the Commonwealth:

The employee business expense deduction is limited. Reimbursed and certain unreimbursed business expenses can be deducted if all of the following conditions are met:

a. The expenses are itemized on Schedule A of Form 1040.

b. Taxpayers who file a joint U. S. return must also file a joint Massachusetts return.

c. Unreimbursed business expenses taken together with other miscellaneous deductions reported on U.S. Form 1040, Schedule A, exceed 2% of your federal gross income.

Note: Same sex joint filers must recalculate allowable expenses and adjusted gross income by combining income and expenses as reported on individual 1040. Refer to TIR 04-17 available through www.mass.gov for more information or consult your tax advisor.

The following Worksheet may be used to calculate your Massachusetts employee business expense deduction.

1.	Enter the amount from U.S. Form 2106, line 10, or 2106-EZ, line 6	
2.	If you are an employee other than an outside salesperson, enter the amount of unreimbursed expenses included in U.S. Form 2106 or 2106-EZ, line 4	
3.	If you are an employee other than an outside salesperson, enter the amount of unreimbursed meals and entertainment expenses included in U.S. Form 2106, line 9, column B or 2106-EZ, line 5 , except for meals incurred while away from home	
4.	If you are an individual with a disability, enter the amount of impairment-related expenses included in item 1 and claimed on line 28 of U.S. Form 1040, Schedule A	
5.	Add lines 2 through 4. Enter the result here	
6.	Subtract line 5 from line 1, and enter the result here	
7.	Enter the amount from U.S. Form 1040, Schedule A, line 27	
8.	Enter the smaller amount of line 6 or line 7 here and on Massachusetts Schedule Y, line 1	

RECORD KEEPING

Q What kind of information do I need to substantiate my deduction for travel, entertainment and other business expenses?

A *Estimates are not acceptable.* The taxpayer must "substantiate by adequate records or sufficient evidence corroborating his own statements" all expenditures for travel, entertainment, meals, gifts and listed property.

Other business expenses must be supported by receipts, cancelled checks and books of record. In every case, the business nature of the expense must be evidenced in some fashion. You should err on the side of keeping more documentation than is required, rather than not enough.

The elements for recording **travel expenses** 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, meals, etc.. You do not have to substantiate the amount of business expenses incurred while away from your "tax home" on business, if they do not exceed the standard allowance for such expenses. The standard allowance for living expenses incurred in Boston while away overnight from your tax home are as described on pages 13 through 16. As discussed on Page 4, legislators qualifying to make the election under Internal Revenue Code Section 162(h) will be deemed to be away from their "tax home" for each legislative day. You still must substantiate Items 2 through 4 below;

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 business benefit derived or expected to be derived as a direct result of the travel.

Entertainment expenses, including business meals provided to others, should be recorded as follows:

1. The amount and description (i.e., "dinner' or "theater") of each separate expenditure. (However, incidentals such as taxi fares and telephone calls may be aggregated.);

2. The time and place the entertainment was provided; and

3. The business purpose of the activity including a description of any business benefit derived or expected, and the nature of any business discussion or activity with the person entertained.

In order to deduct the cost of **business gifts**, the taxpayer must substantiate:

1. The cost and a description of the gift (it should be noted that the deduction for gifts is limited to $25 per donee per year);

2. The date upon which the gift was made;

3. The business reason for or the benefit derived or expected as a result of the gift; and

4. The business relationship of the recipient to the taxpayer, including the name, title, or other designation sufficient to establish such relationship. It is not necessary to record the recipient's name in certain situations, if the business relationship of the gift is clear and if it is apparent that the taxpayer is not attempting to avoid the $25-per-donee limitation.

Thus, if a taxpayer purchases a large number of inexpensive tickets to a local high school basketball game, and distributed one or two of them to each of a large number of constituents, he need not record the names of recipients. However, the taxpayer must still substantiate the cost, date, description, and business purpose of the gift. (Note however, if the taxpayer accompanies the recipient to an event, you must treat the cost of those tickets as entertainment expense.)

Exceptions: The following items are not considered gifts for purposes of the $25 limit and therefore do not require the substantiation noted above.

1. An item that costs $4 or less and:

    a. Has your name clearly and permanently imprinted on the gift, and

    b. Is one of a number of identical items you widely distribute. (e.g. pens, bags, etc)

2. Signs, display racks or other promotional (not campaign) material to be used on the business premise of the recipient,

In order to deduct the cost of **other entertainment:**

The taxpayer must record the above elements for each separate expenditure. Generally, a single payment for goods, services, or facilities will be considered a separate expenditure. Thus, where the taxpayer entertains a guest for dinner and the theater, the payment for the meal and the payment for the tickets are deemed to constitute separate expenditures, each of which must be individually recorded. If the taxpayer holds season or series tickets to an event, he or she must treat each ticket in the series as a separate item, and record the use of each for entertainment or gift purposes.

However, concurrent or repetitious payments made during the course of a single event which are of a similar nature may be treated as a single expenditure. Thus, rounds of drinks paid for separately during an evening's entertainment at one place may be aggregated.

In some instances certain kinds of expenses can be aggregated on a daily basis. Thus, the regulations permit the taxpayer to treat as one expenditure the total meal expenses (breakfast, lunch, and dinner) incurred in one day. Tips may be aggregated with the expense of the services

to which they relate. Other expenses which may be grouped include "gasoline and oil", "taxi", and "telephone calls".

Listed property:

Includes automobiles, other forms of transportation (airplanes, certain trucks, boats, etc.), computers (except computers used by a regular business establishment) and entertainment, recreational and amusement property. To obtain the depreciation deduction, the records must establish:

a. The amount of deduction (use of the standard mileage rate for automobiles referred to on Page 5 will substantiate the amount);

b. The date of the business use;

c. The number of miles (total and business) in the case of an automobile or other means of transportation; or amount of time the property was used (total and business) in the case of other listed property;

d. Purpose of the use of the property.

Records regarding personal use of the listed property do not have to be kept if the overall use of the property for the year can be definitely determined without such records, such as by automobile odometer readings at the beginning and end of the year.

Employees must establish that use of the listed property is for the convenience of the employer and that without use of the property, the employee could not properly perform his duties.

Adequate records consist of:

1. Diaries or account books. Recording the elements of an expenditure "at or near the time" when the expense was incurred has a high degree of credibility not present with respect to a statement prepared subsequent thereto when generally there is a lack of accurate recalls. Thus, although no special form of records must be maintained, it is clear that the IRS contemplates that the taxpayer will keep a diary or account book in which entries can be made on a daily basis.

The degree of specificity of entries in a diary or account book will vary with the facts and circumstances of each expenditure.

Where documentary evidence is required, it is not necessary to make a diary entry which duplicates information contained in the receipts if the receipts and diary complement each other in an orderly fashion. Again, where the business purpose of an expenditure is evident from surrounding facts and circumstances, a written statement of such business purpose is not required.

Confidential or highly sensitive information need not be recorded in a diary or account books. However, the taxpayer should be ready to submit a proper record of the expenditure to the District Director during an audit if he is to support a deduction for the expenditure.

2. Documentary evidence. A diary or account book standing alone is not sufficient substantiation in all circumstances. The taxpayer must be prepared to produce documentary evidence (i.e., receipts, paid bills, etc.) in order to deduct (i) lodging expenses incurred while traveling away from home, and (ii) expenses in excess of $75. Documentary evidence supporting an expenditure for transportation in excess of $75 will not be required if said documentation is not readily available. Such expenses can be easily authenticated by fare schedules and by mileage rates.

Usually a receipt will suffice if it contains enough information to establish the amount, date, place and character of an expense. Thus, a hotel receipt must include the name, location, date, and the separate charges for lodging, meals, telephone, etc., if it is to serve as adequate substantiation of a business travel expense. Similarly, a restaurant receipt must indicate the name and location of the restaurant, the date, and the charge for food, beverages, and other items.

A cancelled check will not ordinarily constitute adequate documentary evidence since it does not show in detail the specific items composing the total expenditure. Thus, if a taxpayer makes a long-distance telephone call home (a personal expense), a hotel receipt would usually indicate this fact while a cancelled check would not. However, a cancelled check, in connection with the payee's bill, will typically be sufficient to substantiate the business nature of an expenditure. The detail required is important for it is the basis upon which an allocation between personal and business expenses can be made.

Moreover, if expenses incurred with respect to certain persons (i.e., spouses) are not deductible, it is essential that evidence of the cost incurred with respect to them be available. Otherwise, they will be deemed to bear a proportionate share of the total charge.

RETENTION OF RECORDS

The taxpayer must retain his records and related documentary evidence in support of travel, entertainment, and gift deductions during the period that his taxpayer's return is subject to audit.

Normally, this period is three years from the date of filing the tax return on which he claimed the deduction. However, the period of limitations is longer if the taxpayer consents to an extension, or if there has been a substantial omission from gross income. Moreover, there is no statute of limitations in cases of fraud.

Please note that the sample forms included in the following section are not necessarily the most current. You will need to obtain the most current forms for filing purposes. The following sites are useful for obtaining forms and additional information:

Internal Revenue Service: **www.irs.gov**

Massachusetts Department of Revenue: **www.mass.gov**

ELECTION PER IRC SECTION 162(h)

An individual who is a state legislator at any time during the tax year may elect to treat his residence within the legislative district that he represents as his tax home. He will thus be considered to be “away from home" on each legislative day. The election is available to a legislator if his residence is (1) within his legislative district and (2) is more than 50 miles away from the state capitol building.

How to make the election:

The election is made by a written statement attached to the income tax return (or amended return) for the tax year for which the election is made. The election is an annual election and must contain:

1. The name, address, and taxpayer identification number of the electing taxpayer,

2. Identify the election,

3. Indicate that is made under Code Sec. 162(h),

4. Provide the information necessary to show that the taxpayer is entitled to make the election.

SAMPLE ELECTION

State Legislator's Election to Treat Residence as Tax Home

Taylor C. Ross
100 Main Street
Someplace, MA 12345
SSN 123-45-6789

Taxpayer, a state legislator, elects to treat his residence as his tax home pursuant to Code Sec.162(h). His place of residence is within the 99nd district, which is the legislative district that he represents. The residence is more than 50 miles from the State Capital building in Boston.