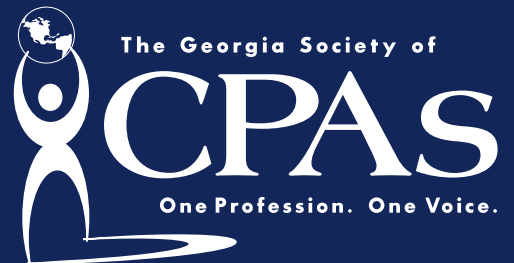
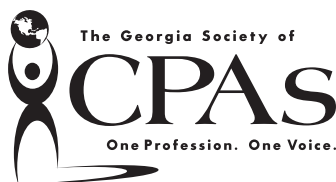


2008

Tax Guide for Georgia Legislators



Provided By



January 2008

Dear Georgia Legislator,

Every year, the Georgia Society of Certified Public Accountants publishes a Tax Guide for Georgia Legislators. The purpose of this guide is to answer questions regarding federal taxes and how they affect you as an elected official in the Georgia Legislature.

The Guide includes information concerning recent changes in the tax law and the records that should be maintained to help you prepare your income tax return, which income is taxable, and which expenses related to your legislative service can be deducted as business expenses.

If you have a question about the material in this booklet or need additional information, contact the Georgia Society of CPAs in Atlanta at 404-231-8676 or 800-330-8889. The material in this publication is available on the GSCPA web site at <http://www.gscpa.org>.

The Georgia Society of CPAs recognizes the contributions made by members of the legislature. We thank and commend you for your willingness to serve the citizens of Georgia.

Sincerely,

Paula Y. Mooney
GSCPA President

Gary L. Julian
Executive Director/COO

The CPA Profession

Today's CPA occupies a central position in business management, whether it be in government, industry, education, or in the traditional role of public accounting. The CPA continues to evolve as clients and customers demand more of their most "trusted" advisor. With the global business economy and information technology shaping the financial activities of our domestic economy, CPAs are being called upon to meet the varied business challenges of their clients and employers. The CPA of today must be knowledgeable in varied fields of expertise outside accounting. Such fields include taxation and tax planning; estate, trust, and retirement planning; budgeting; management advisory services; financial management and financial forecasting; and audit, review, and compilation of financial statements, as well as other assurance services.

The highest professional standards and integrity in the practice of accountancy are maintained by the holders of the CPA certificate issued by the state of Georgia and other states.

To be licensed for public practice, a CPA must:

- have fulfilled stringent educational requirements
- have passed a comprehensive examination covering accounting practice and theory, taxes, commercial law, and auditing
- obtain a minimum of 80 hours of continuing professional education during each two-year reporting period
- abide by the profession's Code of Ethics

The Georgia Society of CPAs includes more than 11,000 members and has 22 chapters throughout the state. Members subscribe to the rules of professional conduct embodied in the bylaws of the American Institute of Certified Public Accountants and the State Board of Accountancy and subject themselves to discipline thereunder.

Table of Contents

2008 Tax Guide for Georgia Legislators

Introduction	4
Income Reporting and "Tax Home" Status	5
Ordinary Business Expense Reporting	6
Automobile and Travel Expenses	7
Living Expenses	9
Office Expenses	10
Advertising Expenses	11
Entertainment and Meal Expenses	11
Telephone Expenses	11
Other Expenses	11
Campaign Contributions and Expenditures	12
Newsletter Fund	13
Recordkeeping	14
Exhibit A: Recordkeeping Requirements for Travel, Entertainment, and Gifts	15
Exhibit B: Form 2106-Employee Business Expenses	16
Exhibit C: Section 162(h) Tax Home Election	18
Exhibit D: Affidavit for Georgia Legislator Tax Home Election	19
Exhibit E: Reporting Flow Chart	20

The 2008 Tax Guide For Georgia Legislators is a joint project of the Taxation Section of the Georgia Society of CPAs and public relations department.

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Introduction

As employees of the state of Georgia, legislators are entitled to deduct on their Federal Income Tax Returns expenses that are ordinary and necessary in pursuit of the performance of their duty.

Throughout this guide there is an important emphasis placed on recordkeeping. The burden of proving the appropriateness and extent of deductibility is on the taxpayer. Therefore, it is imperative that sufficiently detailed records be kept by the taxpayer. Failure to adequately support a deduction can result in a disallowance.

A question and answer format is used to provide specific answers to some frequently raised questions concerning income tax laws as they relate to your unique position as a member of the Georgia Legislature.

This guide can also be accessed and downloaded from the GSCPA web site at www.gscpa.org.

Caveat

This guide is not intended to cover all tax matters related to an individual's return. Items of a personal nature, such as medical

expenses, interest and charitable contributions, or tax matters unrelated to your position as an elected official are not covered.

This guide provides guidance on the federal and state income tax laws at the time of publication. Periodically, tax laws will change by legislative mandate. Relevant changes enacted by recent tax legislation have been considered. However, pending legislation could affect planning.

Additionally, the existing law is affected by judicial and administrative interpretations. Thus, it would be prudent for the legislator to consult his CPA who can assess the interaction between tax matters relating to his position as a legislator and all other tax matters in view of the facts and circumstances unique to the individual legislator.

Important Reporting and "Tax Home" Status

Under Section 62, officials compensated on a "fee basis" are allowed to report on Schedule C their per diem income reimbursement and deduct all business related expenses. The IRS, however, issued a statement indicating the Section 62 law did not apply to state legislators' per diem reimbursement for travel, lodging, meals, and incidental expenses since the per diem was not considered "compensation on a fee basis", as defined under Section 62.

Generally speaking, per diem payments paid to state legislators are taxable as follows: If a state legislator elects to treat his place of residence within his legislative district as his "tax home" and it is more than 50 miles from the Capitol, then per diem payments to such legislator would be considered non-taxable under an "accountable plan" as long as the legislator returns any excess per diem. Legislators whose place of residence is within a 50 mile radius of the Capitol are not eligible to receive such treatment and their per diem reimbursement are included in W-2 wages. Business expenses (and non W-2 reimbursed income payments) must be reported on Form 2106 and the excess expenses are allowed as a Schedule A miscellaneous itemized deduction subject to the 2 percent of adjusted gross income threshold. Excess income not returned to the State of Georgia is included in taxable income.

"Home" as used by the IRS is not necessarily synonymous with domicile or residence. Deductibility of certain travel expenses while away from home is the determination of what is considered "home" for tax purposes. A taxpayer's "tax home" has to be determined in light of all facts and circumstances relative to a particular taxpayer. If, for example, your duties as a legislator are your main source of income, Atlanta, being your principal place of employment, would probably be your "home" for travel expense purposes. The result of such determination would be that your living expenses while in Atlanta would be nondeductible. However, in that event, you may be able to deduct travel expenses incurred on overnight business trips to the area which you represent even though that is where you maintain your family residence.

A state legislator can elect under Code Section 162 (h) (Exhibit C) to use his legislative district as a "tax home." A legislator making the election is treated as having spent an amount equal to the greater of the state per diem or the federal per diem while in the state capitol. If the state per diem is greater than the federal per diem, it cannot exceed it by more than 10 percent. When a legislator's tax home is farther than 50 miles from the state capitol building, the legislator is deemed away from home on legislative business on each day that the legislature is in session (including periods of up to four consecutive days when the legislature is not in session) and on each day he attends committee meetings of such legislature where his presence is formally recorded.

- 1) Legislators outside the 50 mile radius of the Capitol building
 - a) Legislators who file an affidavit with the State of Georgia (Exhibit D) at the beginning of 2007, and each subsequent year, electing their legislative district as their "tax home" will receive a "per diem" and it will not be reported in their W-2 as earnings. This approach is under the "accountable plan" rules which allow a non-taxable reimbursement of business expenses. Any amount received in excess of actual (or allowed per diem rate) expenses will be included in taxable income unless returned. There may be no reportable items on the legislator's individual tax return unless Form 2106 is filed to report excess expenses over amounts reimbursed. The legislator will still need to file the 162(h) election and attach it to their tax return (Exhibit C).
 - b) If the affidavit (Exhibit D) is not signed, the State of Georgia will continue to treat the "per diem" as taxable W-2 wages and the legislator will only be able to deduct related business expenses on Form 2106 as a Schedule A miscellaneous itemized deduction, subject to the 2 percent of Adjusted Gross Income (AGI) limit.
- 2) Legislators within the 50 mile radius of the Capitol building

Since legislators within 50 miles of the Capitol building are not eligible for the 162(h) election, all "per diem" amounts received are included in taxable wages and all related expenses are reported on Form 2106 and Schedule A subject to 2 percent AGI limit.

The affidavit (Exhibit D) need not be filed with the State of Georgia at the beginning of each year for legislators within the 50 mile radius. The varied reporting is a result of the "tax home" rules and the method of reporting by the State of Georgia. If additional information or clarification is needed, please contact the Georgia Legislative Fiscal Office at 404-656-5054.

Generally, the answers in this booklet assume that the income earned or the amount of time spent by the legislator in Atlanta, in relation to the income earned or the time spent in the city or town of residence or other business, does not result in Atlanta being classified as a "tax home." Thus, the answers in this booklet may not apply to legislators who normally reside and work in the general vicinity of Atlanta, including those whose "tax home" is Atlanta. State legislators who normally reside in the Atlanta area cannot deduct their commuting expenses.

You may wish to consult your CPA or tax advisor who can assess your situation and advise you as to the treatment of these expenses in your particular case.

Ordinary Business Expense Reporting

As noted in the Introduction, legislators are employees of the state of Georgia. Generally, expenses which are ordinary and necessary to the performance of the legislator's duties are deductible on his/her Federal Income Tax Return.

Where to Deduct:

An employee whose business expenses are reimbursed by the state of Georgia under a specific reimbursement program or other expense allowance arrangement that is at or under federal guidelines (i.e. accountable plan) need not report the income or expenses on his or her return. If the official is not compensated under such arrangement, the unreimbursed employee business expenses are allowable as miscellaneous itemized deductions on Schedule A, subject to a two percent of adjusted gross income (AGI) floor. To the extent that the individual's aggregate amount of miscellaneous itemized deductions exceeds two percent of the taxpayer's AGI and the individual files Schedule A, the official will have an allowable deduction. State officials should clarify what expenses are covered under the states' reimbursement program, for appropriate reporting.

Officials who are not under an "accountable plan" and receive per diem income must report the income in their W-2 and deduct the business expenses as a miscellaneous Schedule A deduction (i.e. legislators with Atlanta as their "tax home").

Officials who receive per diems, which are not included in their W-2 as income, should use Form 2106 to report both the non W-2 income and expenses. If the expenses reported on Form 2106 are greater than the per diem income received, deduct the excess expenses as a two percent miscellaneous itemized deduction on Schedule A. Excess income over expenses on Form 2106 must be reported as other income.

Meals and Entertainment Expense Limitations:

Generally, the allowable deduction for meal and entertainment expenses will be limited to 50 percent of such expenditures which

are not considered to be "lavish and extravagant" under the Internal Revenue Code. Tips, cover charges, room rentals, parking fees, and other related expenses are subject to the 50 percent limitation. Transportation costs to and from a business meal are not reduced by the rule. Fully reimbursed expenses are not subject to the 50 percent limitation.

Various exceptions to the percentage reduction rule exist. Some of the relevant exceptions are:

1. Meal and entertainment expenses which are reimbursed are fully deductible.
2. Expenses for certain traditional social or recreational activities primarily for the benefit of employees are not subject to the limitation.
3. Tickets to charitable sporting events are not limited if:
 - the event was organized primarily to benefit a tax-exempt charitable organization.
 - all of the net proceeds are contributed to the tax-exempt charitable organization.
 - volunteers perform substantially all the work required to carry out the event.
4. Meals provided on the employer's premises for the convenience of the employer, are now considered a de minimis fringe benefit under Code Section 132. Therefore, meals that are provided at an eating facility for employees are deducted by the employer.

Business Connection Requirement:

The more stringent business connection requirement is applicable to entertainment expenses, as well as to business meals. The expense must be directly related to the active conduct of the business. Thus, business must be discussed during, directly preceding, or directly following the meal. This requirement is waived where the taxpayer is traveling away from his home on business and he only claims his own meal expenses. In any event, the 50 percent limitation is applicable.

Automobile and Travel Expenses

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

A. You are considered an employee of the state. All mileage or automobile expenses are reported on Form 2106, Employee Business Expenses. Form 2106 (Exhibit B) is included in this booklet to help you understand the questions and answers, and properly report your tax deductible information on your annual Federal Income Tax Return. Form 2106 must be completed to properly report all of your employee business expenses. If you are also employed by an employer other than the state, those employee business expenses should be reported on a separate Form 2106.

Q. How much can I deduct for the auto mileage I incur traveling to and from Atlanta?

A. The state pays each legislator certain specified allowances for expenses. In order to assure compliance with the IRS regulations, you should submit a statement (Form 2106) with your tax return showing the total allowances received not included in W-2, and expenses incurred. Any excess reimbursement over actual expenses is included in income while any excess of expenses over reimbursement is deducted on Schedule A using Form 2106. Your deduction for automobile expenses can be either in the form of the federal standard mileage rate of 48.5 cents per mile for 2007, and 50.5 cents per mile for 2008, or you can itemize your actual automobile expenses. To itemize, total the automobile expenses (depreciation, gas, oil, repairs, maintenance, insurance, etc.) and apply your business percentage. The business percentage is computed by dividing total business miles by total miles driven during the year. General information is also requested from the taxpayer including commuting mileage, personal mileage, and whether you have written evidence to support your deduction.

Q. What if I lease my automobile?

A. The business portion of the monthly lease payment on a "true lease" may be deductible as an actual expense subject to the restrictions imposed on "luxury cars." A lease which is an alternative financing arrangement will be treated as a purchase.

Q. What expenses qualify for consideration if I use actual expenses rather than mileage?

A. Although we cannot list all of the expenses that qualify, a partial list includes gas, depreciation, insurance, garage rental space, repairs, maintenance, license, automobile club memberships, washing, and chauffeur.

Q. What other mileage expenses can I deduct?

A. A legislator usually incurs a great deal of mileage expenses while in his legislative district. This mileage can become substantial, particularly for those individuals whose districts are geographically widespread. The legislator may be required to travel several miles from one town to another and attend civic functions, political functions, or other meetings related to his legislative duties. You may be able to deduct the cost of nonreimbursed transportation between two places of business provided such trips are necessary to discharge business at each location. Also, mileage costs incurred in investigating facts concerning possible legislation may be deductible.

Q. What about mileage expenses incurred while going to meetings during a political campaign for my re-election? Although I am running for re-election, I still feel it is incumbent upon me to attend these meetings to explain to my constituents the activities of the Legislature.

A. The Internal Revenue Code specifically states that campaign expenses are not tax deductible. Because of this, it is very important for the legislator to distinguish between those expenses which are directly related to the campaign for re-election and those expenses which can be directly attributed to serving the legislator's constituency. (See question under "Campaign Contribution and Expenditures" subheading.)

Q. How much depreciation may I deduct for my automobile used for business?

A. Allowed depreciation on automobiles placed in service during 2007 will depend on the type of vehicle, weight of vehicle, the date placed in service, and the business use of such vehicle.

"Luxury Automobile" limits apply if the Gross Vehicle Weight Rating (GVWR) (unloaded for passenger automobiles and loaded for trucks, vans, and SUVs) is less than 6,000 lbs. as follows:

Passenger Automobiles	
	Annual Depreciation
2007	3,060
2008	4,900
2009	2,850
2010 and thereafter	1,775

Light Duty Truck, Vans, and Sport Utility Vehicles (SUVs)	
	Annual Depreciation
2007	3,260
2008	5,200
2009	3,050
2010 and thereafter	1,875

(All limits above are based upon 100% business use)

If the automobile has a Gross Vehicle Weight Rating (GVWR) (unloaded for passenger automobiles and loaded for trucks, vans, and SUVs) greater than 6,000 lbs. the above "Luxury Automobile" limits do not apply. If the vehicle is not "luxury" and it is used more than 50 percent business use, the vehicle will qualify for immediate expensing (Section 179) for both federal and Georgia Income Tax purposes up to the following limits:

Annual Expensing Limits (Sec. 179)	Placed in Service in 2007
Passenger automobiles (non-"luxury")	\$125,000
Truck and Vans	\$125,000
Sport Utility Vehicles (GVWR - 6,000-14,000 lbs.)	\$25,000
Sport Utility Vehicles (GVWR - over 14,000 lbs.)	\$125,000

(All limits above are based upon 100 percent business use)

If the vehicle is placed in service during the last quarter of the year, "mid quarter" convention rules may apply.

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

A. You cannot claim the mileage you would have incurred had you driven to Atlanta and the cost of the bus fare or airplane ticket. If you use the bus, airplane, or other mode of transportation to Atlanta, these expenses will be segregated depending on whether overnight travel is involved and should be detailed on Form 2106. They are offset by the amount of reimbursement received on Form 2106. The result will be that the expenses incurred in excess of reimbursement may be deductible as a Schedule A miscellaneous deduction subject to the 2 percent AGI limitation, while the reimbursement in excess of such expense will be taxable income to you.

Q. On occasion I ride with another legislator to Atlanta. Do 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 incur any transportation expense yourself, you cannot claim any mileage expense for that day's travel.

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

A. If Atlanta is not considered your "tax home," business transportation between your hotel and the Capitol, etc., is not considered commuting. Consequently you may be able to deduct such transportation expense.

Q. I received a traffic violation ticket because I was rushing to get to Atlanta to be on time for a session or committee meeting. Is the fine a tax deductible expense?

A. No. A traffic violation fine is a penalty and therefore not a deductible expense.

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

A. No. The mileage from residence to place of business is not deductible; this is considered a nondeductible commuting expense.

Q. The state pays me certain allowances for travel and other expenses. Do these allowances create additional income to me?

A. These allowances, intended to reimburse you for certain expenses incurred as a legislator, are not included in income if at or under federal guidelines. They may be offset by your actual travel expenses while away from home, transportation expenses, and other ordinary and necessary business expenses incurred during the year, giving rise to a deduction if such expenses exceed the allowances. The allowance and related travel and other expenses are reported on Form 2106 and Schedule A as a miscellaneous deduction subject to the 2 percent AGI limit.

Q. The IRS allows me to deduct a standard mileage allowance or itemize all of my automobile expenses and then take a portion of those expenses based on the percentage that my business mileage bears to the total mileage during the year. Which method results in the greater deduction?

A. The advantage of using the IRS's standard mileage allowance varies depending upon the age of the vehicle and the amount of mileage driven. It is necessary to itemize your automobile expenses and then compare the total to the standard mileage allowance to determine which method is most beneficial.

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

A. Qualified no. Generally, for automobiles depreciated under the ACRS or MACRS, actual expenses must continue to be used as long as the automobile is used for business purposes. Because of the complexities and interaction of the above, it is beyond the scope of this booklet to examine all alternatives. Consult your CPA to assure maximum tax benefits under these rules.

Q. What automobile expenses may be deductible regardless of the method used to report automobile expenses?

A. Sales tax should be added to the basis of the automobile. Other expenses which are business related, such as parking fees and tolls, may be deductible.

Q. I receive expense allowances from the state. Would it be best to disregard the allowances entirely and assume that they are completely offset by expenses and, therefore, not report anything?

A. If you are receiving reimbursement under an "accountable plan," i.e. official who lives 50 miles outside of the capitol who a) files affidavit with State of Georgia (Exhibit D), and b) files 162(h) election with your tax return (Exhibit C), you are not required to report such income and expenses on your return. However, in order to assure compliance with the IRS regulations and test for the better tax answer, you should plan on including these allowances and related expenses on Form 2106. Use Form 2106 to record the allowances received and the related expenses. If expenses exceed your allowances, you may have a Schedule A deduction in computing taxable income.

Living Expenses

Q. What may I deduct for living expenses incurred in a hotel, apartment, etc. while attending sessions in Atlanta?

A. You can deduct rental payments, including taxes, service charges, utilities, etc., that you may incur. If facilities are shared with others, you can deduct your share of the expenses. This is the case even if the facility is not used during a part of the month (year) as long as it is maintained in order to fulfill your duties as a legislator. The actual expenses should be supported by documentary evidence.

Q. Can I deduct a standard amount for meals and lodging when I am in Atlanta? I understand that the IRS permits a daily allowance.

A. The amount you can deduct for meals and lodging in Atlanta is either the actual out-of-pocket expense incurred or the qualified daily allowance for meals and for lodging. The daily allowance rule is a standard per diem for such expenses.

If the daily allowance rule applies to you the calculations are as follows. The daily allowance rule for meals and lodging relates to an employer's satisfaction of the substantiation requirements of the regulations, and the information that an employee must submit with respect to such a reimbursement arrangement. The standard daily federal per diem meals and lodging allowance for Atlanta for 2007 of \$173 through September 30, 2007 and \$178 thereafter for meals and lodging needs no accounting unless you incur expenses in excess of such amount. The standard per diem allowance is separated into \$124 (\$129 after October 1, 2007) for lodging and \$49 (\$49 after October 1, 2007) for meals, incidentals, and entertainment for Atlanta. However, in lieu of the standard per diem allowance, a taxpayer may use a simplified "high-low" cost substantiation method to reimburse the actual expense or standard daily per diem allowance discussed above. Atlanta is considered a "low-cost" locality for this purpose, and the daily per diem under "high-low" cost substantiation method is \$148 (\$152 after September 30, 2007) for lodging, meals, and incidental expenses. The "high-low" daily per diem allowance of \$148 (\$152 after September 30, 2007) is separated into \$103 (\$107 after September 30, 2007) for lodging and \$45 (\$45 after September 30, 2007) for meals and incidental expenses. The daily per diem allowances are changed periodically. You should consult with your tax advisor for the most current daily per diem allowances as well as daily per diem allowances for business meals and lodging for locales outside of Atlanta. You can access the Domestic Per Diem rates at www.gsa.gov or see IRS publication 1542.

In order to assure compliance with IRS regulations, one should maintain adequate records with sufficient documentation to establish the taxable amount or to claim a deduction for the excess of expenses over the reimbursement. Expenses which may be deductible include lodging, breakfast, lunch, dinner, and snacks while in Atlanta. If you prepare your own meals, the cost of groceries, etc., may be a deductible expense. Incidental expenses, such as laundry and cleaning, may also be deductible. Maintain adequate records with documentation (see "Recordkeeping" subheading).

Under certain circumstances, you may make an election to take per diem deductions. The amount allowable as business meal and entertainment expenses is limited to 50 percent of the cost which is to be determined not to be "lavish and extravagant." Where the cost of the business meal and entertainment is paid by the legislator who is fully reimbursed by the state as the employer (i.e. the per diem reimbursement), the 50 percent limitation on the deduction is not applicable to the reimbursed expenses. You should consult your tax advisor for the most beneficial method of accounting for and deducting lodging, meals, and incidental expenses.

Q. My principal employment is as a legislator, with no other substantial source of income. I reside in Atlanta most of the year. The remainder of the time during the year, I reside in and represent a district 150 miles from Atlanta. The time I spend as a legislator while living at home is considerable, but less than the time I spend working in Atlanta. What expenses can I deduct?

A. Under the general rule, the IRS would consider Atlanta your "tax home." Under these circumstances, you are not entitled to any living expenses while in Atlanta. Since the district you represent is another post of duty, you may be able to deduct certain living expenses while in your district overnight on legislative business. The cost of your transportation between Atlanta and your district may be deductible when incurred for legislative purposes. A state legislator may elect to have his legislative district to be considered his "tax home."

Q. Can I deduct the expense of meals I have purchased for constituents and other persons who have to come to Atlanta where legislative business is involved?

A. Yes, the cost of meals paid for you may be an allowable deduction as long as that expense is directly related to the active conduct of your legislative business, but the deduction for food and beverage is subject to the 50 percent limitation.

Q. I am in Atlanta for long periods of time. Occasionally my spouse and/or children visit. Can I deduct their transportation, motel, and meal costs?

A. Travel expenses paid with respect to a spouse or dependent are nondeductible unless 1) the spouse, etc., is an employee, 2) the travel of the spouse, etc., is for a bona fide business purpose, and 3) the expenses would be otherwise deductible by the spouse, etc. Unreimbursed expenses are subject to a two percent floor as miscellaneous itemized deductions.

Q. Sometimes while in Atlanta, I have a gathering of legislators and individuals connected with the Legislature. Is this expense deductible?

A. Yes, if the gathering has a direct relationship to the active conduct of your business as a legislator. The deduction for food, beverage, and entertainment is, however, subject to the 50 percent limitation.

Q. On traditional holidays, or at the end of the session, if I and a fellow legislator take secretaries who have worked long hours during the session out to dinner, or if we buy them small gifts, would this be a deductible expense?

A. Expenses for traditional, social, or recreational activities that are primarily for the benefit of employees may be fully deductible. This is an exception to the percentage reduction rule which applies to expenses for food, beverages, or entertainment. Business gifts are limited to \$25 per donee per year. Employee achievement awards of tangible personal property awarded to an employee for reason of length of service, productivity, or safety achievement may be deductible up to \$400 per employee per year.

Office Expenses

Q. When can I claim expenses of my home as a business expense?

A. No deduction will be allowed with respect to expenses of a legislator's personal residence unless a portion of the residence is used exclusively and regularly as the principal place of business and the state does not provide an office or other fixed location for his use. Generally, for non-residential real property, the MACRS deduction is computed on the straight-line method over a period of 39 years. There is the potential for negative tax attributes if the residence is subsequently sold. Furthermore, all deductions allocable to the home office business activity must be offset against the gross income from the business activity. The home office deduction is one of the several deductions to be offset against a legislator's income. The home office deduction cannot be used to reduce taxable income arising from the home office business activity to less than zero. Any amount disallowed due to the income limitation may be carried forward to a succeeding year to offset income from the home office business activity in the future.

Once the allowable deduction is determined by considering all related business deductions versus the gross income from the business activity, the allowable employee business expenses, including the home office expenses, are reported on Schedule A subject to a two percent floor as miscellaneous itemized deductions.

The home office deduction rules state the principal place of business includes the home office if used by the taxpayer for the administrative or management activities of any trade or business if there is no other fixed location where the taxpayer conducts substantial administrative or management activities of such trade or business. However, the deductibility of an office in the home has been the subject of much litigation. You may wish to consult your CPA or other tax advisor regarding the deductibility of a home office in your particular situation and related travel expenses between a home office and business destinations.

Q. Can I deduct expenses for my cellular telephone and home computer used for business purposes?

A. The IRS has classified home computers and cellular telephones as "listed properly" making them subject to certain limitations. Adequate documentation, similar to that required for automobiles, is required to substantiate the business use. If the business use is greater than 50 percent, the accelerated method of depreciation pursuant to MACRS is allowable. If the percentage is less than 50 percent, the straight-line method of depreciation must be used. Expenses such as repairs, maintenance agreements, and monthly fees may also be claimed according to the business use percentage. These deductions are claimed on Form 2106, and reported on Schedule A.

Q. While in Atlanta, I stay in and take many of my meals at a private club. May I deduct the cost of my dues, meals, lodging, and related expenses?

A. Meals and lodging may be deductible. No deduction is allowed for amounts paid or incurred for membership in a club organized for business, pleasure, recreation, or other social purpose. This includes, but is not limited to, dues paid to country clubs, hotels, and airline clubs. This limitation on deductibility does not include dues paid to various civic organizations such as Rotary or Kiwanis.

Q. Can I deduct the cost of equipment and computers used for business purposes?

A. Yes. If equipment (including computers) is a requirement for conducting your activities as a legislator then the cost of such "business" equipment can be recovered under the depreciation recovery methods allowed under federal law. Typically, office equipment (i.e. furniture, desks, etc.) can be recovered over a seven year recovery period while computers are recovered over a five year recovery period.

An immediate deduction of up to \$125,000 for 2007 is available for eligible personal property used in a trade or business subject to income limitations for Federal and Georgia purposes. The \$125,000 maximum Code Section 179 limitation is reduced dollar for dollar by the cost of qualified property placed in service during the tax year in excess of \$500,000. For details of the eligible expensing of equipment you may wish to consult your CPA or tax advisor.

Q. Can I deduct a salary paid for administrative and clerical assistance?

A. Yes. Salary paid in connection with your business is a deductible expense. If you hire someone, such as a secretary, to assist you in your legislative matters and handling constituent questions and complaints, the compensation paid is deductible. If you pay salaries, you must obtain Federal and Georgia identification numbers and report and pay payroll taxes. For the details on the proper accounting and tax reporting of payrolls, you may wish to consult your CPA or tax advisor.

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

A. Usually, all amounts paid for services are subject to the payroll tax laws. However, there are some exceptions, such as in the case of an independent contractor. Since each situation is decided on its particular facts and circumstances, you may wish to consult your CPA or tax advisor to evaluate the situations for you.

Q. I maintain a rented office in my district for the purpose of serving my constituency. What expenses can I deduct for the cost of maintaining this office?

A. If the office is being used exclusively for legislative purposes, all expenses related to rent, utilities, depreciation on improvements and equipment, etc., may be deductible. However, to the extent that the office is used during your campaign for strictly political purposes, that portion of the total expenses is not deductible. Campaign contributions may be used to offset these campaign office expenses.

Advertising Expenses

Q. As a member of the Legislature, I am often called upon to buy ads in trade journals, magazines, etc., published by various organizations in my district. Can I deduct the cost of these ads?

A. Yes, the cost of those ads may be deductible. It is important that a public official support worthwhile business and community activities in his district, and it is necessary that he keep his name before the public. However, it is advisable that any ads taken during a re-election campaign be paid for by campaign contributions, since they probably would not be deductible if paid from personal funds.

Q. As a member of the Legislature, I am asked to purchase a ticket for and attend many dinners within my district. Can I deduct the cost of these dinners?

A. The cost of the ticket for the dinners plus incidental related expenses such as parking is subject to the 50 percent limitation on meal and entertainment expenses. Fully reimbursed expenses, reported on Form 2106, may not be reportable while unreimbursed expenses are subject to a two percent floor as miscellaneous itemized deductions on Schedule A.

Entertainment and Meal Expenses

Q. I meet a constituent regarding a legislative problem. We have lunch or some other meal together and I pick up the check. Is this a deductible expense?

A. Yes, the expense may be partially deductible. Make an entry in your expense diary as to who, why, where, when, and what, and retain receipts for any expenditure of \$75 or more.

Meal and entertainment expenses are subject to the 50 percent limitation when they are not fully reimbursed. Unreimbursed expenses are subject to the two percent floor as miscellaneous itemized deductions on Schedule A.

Q. I occasionally entertain other elected officials, such as city council members, mayors, and congressmen, primarily for the purpose of maintaining communication with them and to explore common problems. Can I deduct this expense?

A. Yes, this expense may be deductible. The criteria for deducting entertainment costs are that such expenditures have a business purpose and that you and the persons entertained have a business relationship. If a business discussion does not take place during the entertainment, it must at least directly precede or follow the entertainment. Observe the substantiation rules described in the answer in the preceding question regarding meals and, in addition, if the entertainment involves anything other than a meal in surroundings conducive to a business discussion, include in your diary the time, place, duration, and description of the nature of the business discussion.

Telephone Expenses

Q. Can I deduct the cost of my personal residence telephone in my district? I use it for calling and receiving calls from constituents and for other state business.

A. Normally your personal telephone at home is a personal expense. However, if the telephone at home is used to contact constituents or for other business purposes, then an allocable portion used for business may be deducted only if you have a separate business telephone line. No deduction is allowed for the first telephone line

into each residence. Records should be accurately maintained. Calls charged in excess of those covered by the basic rate are a deductible expense if they are business calls. If you have a telephone installed exclusively for business use, the entire cost of this telephone may be deductible. Long distance telephone calls and telegrams that relate to the legislative business may be a deductible expense. An answering service or a tape recording device for telephone messages may also be deductible if related directly to the business.

Other Expenses

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

A. Other deductible expenses you are likely to incur as a member of the Legislature are as follows:

1. Stationery, postage, and office supplies relating to your position as a member of the Legislature.
2. Dues to organizations you have joined because they are helpful to you as a State legislator. Examples would be civic and political organizations. Dues to organizations of which you were a member before being elected to public office may be deductible if business related. A portion of dues paid to trade or other organizations allocable to certain lobbying by the organization will be nondeductible if the organization informs you of the nondeductible portion.

Lobbying expenses are not deductible. Lobbying expenses to influence local legislation (below the state level) are excluded from the above rule and remain deductible.

3. Publications, including books, newspapers, and magazines, which you purchase to assist you in your work as a legislator. Expenses of this nature incurred for personal reasons are nondeductible.

4. The cost of greeting cards for persons bearing a business relationship to you.

5. Cost of newsletters sent to constituents. (See the "Newsletter" subheading for tax treatment of a separate newsletter fund.)

6. Fees paid to CPAs and others for services relating to business and income taxes.

The expenses listed above may be deductible using Form 2106. Unreimbursed expenses are subject to a two percent floor as miscellaneous itemized deductions on Schedule A.

Q. Can any deductions be taken for conventions and seminars?

A. A deduction may be allowed for expenses related to attending a convention, seminar, or similar meeting if they are ordinary and necessary business expenses of your trade or business as a legislator. The taxpayer must be a participant in the seminars, discussions, workshops, etc. sponsored by the convention. If the taxpayer is merely furnished with individual video tapes of the lecture topics, the expense will be disallowed.

Campaign Contributions and Expenditures

Q. Are campaign receipts and expenditures subject to IRS Review?

A. Yes. The IRS has ruled that campaign contributions and political gifts used solely for the expenses of an election campaign or similar purpose are not taxable income to the candidate. Any contributions that are used for personal purposes must be included in the candidate's taxable gross income.

Q. Is it permissible to commingle political funds with personal funds?

A. No. If the funds are commingled so as to make tracing impractical, the entire fund will be presumed devoted to personal use and deemed taxable income to the candidate.

Q. How are proceeds derived from fund-raising dinners or testimonial dinners accounted for?

A. The accounting and reporting for dinner proceeds are the same as for campaign contributions; see below.

Q. Are contributions of property, such as stocks or bonds, recorded the same as cash?

A. Yes. The fair market value on the date of the contribution should be acknowledged as the amount of the contribution.

Q. Are campaign expenses deductible for tax purposes?

A. Campaign expenses paid from the candidate's private resources are considered nondeductible personal expenses regardless of the results of the election. Such expenses would include the cost of attending political conventions, contributions to the party which sponsored the candidacy, expenses of campaign travel, campaign advertising, expenses of successfully defending a contested election, filing fees, or the cost of legal fees paid in litigation over redistricting.

Q. What types of expenditures may be paid from campaign contributions?

A. Expenditures properly payable from campaign contributions includes amounts:

1. used for generally recognized campaign expenses regardless of when such expenses were incurred;
2. contributed to the national, state or local committee of the candidate's party; or
3. used to reimburse the political candidate for out-of-pocket campaign expenses paid by him during a current campaign, or if he is not currently campaigning, during his last previous campaign.

Q. What is the tax status of unexpended balances of political funds refunded to contributors?

A. For tax purposes, unexpended balances of political funds which are repaid to known contributors are not considered to be either expended or diverted; therefore, the unexpended balances are not taxable income to the candidate. Unexpended balances of political funds may be contributed to or for the use of another political organization, transferred to the general fund of the U.S. Treasury or of any state or local government, or transferred to or for the use of an exempt public charity, without being considered to be expended or diverted and, therefore, are not taxable to the candidate.

Q. What reporting is required of a political committee, organization, association or fund formed for the purpose of managing campaign contributions and expenses of a candidate?

A. Such an entity, whether or not it is tax exempt, is considered an association taxable as a corporation and must annually file Form 1120-POL if it has any political organization taxable income. Political organization taxable income is the excess of gross income for the tax year (excluding exempt function income) over deductions connected with the earnings of gross income (excluding exempt function income). The return is due on or before the 15th day of the third month after the end of the taxable year.

Q. What items would be reported and subject to tax on the 1120-POL?

A. All receipts and expenditures must be reported on the Form 1120-POL. As discussed in answers to the previous questions, however, campaign receipts are not subject to tax. Dividends, interest, rents, royalties, capital gains, and nonexempt function expenditures are subject to tax at the regular tax rates applicable to corporations.

Q. What accounting records are required for political funds?

A. Detailed substantiating records should be kept by the political candidate or other custodian to enable the candidate to account accurately for the receipt and disbursement of political funds. Otherwise, receipts may be taxed on his individual return, whereas campaign expenses would be nondeductible. If political funds are commingled with personal funds of the political candidate so as to render tracing or identification impractical, the political funds will be presumed to have been diverted to personal use at the time so commingled.

Q. What is the tax rule regarding presumption against unrestricted gifts?

A. The IRS will presume, in the absence of evidence to the contrary, that contributions to a political candidate are political funds which are not intended for the unrestricted personal use of such recipient. If, in fact, the funds were intended for the unrestricted personal use of the political candidate, he must be able to substantiate this claim.

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 his 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 individuals who have been elected to public office. After an individual has left office, the newsletter fund provision is not available to him unless once again he 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 are used solely to prepare and circulate the newsletter. Cost of preparing the newsletter includes the cost of secretarial services and the cost of printing, addressing, and mailing the newsletter.

Q. Is the 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.

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 or 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 him.

Recordkeeping

Q. Which elements of an expenditure must be substantiated?

- A. Who: Person who traveled, persons entertained, etc.
What: Amount of each separate expenditure.
When: Time of travel, entertainment or use of facility.
Where: Place.
Why: Business purpose of each expenditure. See chart attached. (Exhibit A)

Q. Must each of the above elements be substantiated?

- A. Yes. If any one is not, the entire expenditure can be disallowed.

Q. Are estimates of amounts acceptable?

- A. No. The amounts must be recorded exactly.

Q. How should substantiation of travel, entertainment, and other business expenditures be maintained?

- A. The substantiation of the elements discussed above should be recorded contemporaneously in an account book, diary, statement of expense or similar record and supported by adequate documentary evidence. A record prepared at a date subsequent to the expenditure has little, if any, credibility.

Q. Is there a limit on the amount of travel and entertainment expenses?

- A. Generally, no; however, amounts deemed to be lavish or extravagant will not be allowed. Entertainment expenses are subject to the 50 percent reduction rule to the extent that they are not reimbursed.

Q. What constitutes adequate documentation?

- A. Adequate documentary evidence is a receipt, bill marked paid or similar evidence. Merely maintaining a record of the expenditures is insufficient.

Q. Is documentary evidence required for every single expenditure?

- A. No. Documentation is required to support all expenditures for lodging while traveling away from home and for any other expenditures of \$75 or more. Where such evidence is not readily available for transportation charges, it will not be required.

Q. Would a canceled check be adequate evidence?

- A. No. A canceled check will not by itself support a deduction without other evidence (i.e. payee's bill) demonstrating the business purpose.

Q. How long should a legislator retain supporting records?

- A. Proof to support a deduction must be retained as long as your tax returns are open for audit. Generally, it will be necessary to retain records for at least four years from the date the tax return was filed or due, whichever is later.

Q. What substantiation is required for supporting business use of a personal automobile?

- A. A diary or log of the business use of the automobile indicating the time, place, business purpose, and related mileage would provide adequate support.

Q. Could a legislator claim a deduction for more than the federal standard mileage rate?

- A. Yes, but significantly more documentation of the detailed actual expenses incurred would be required (See Form 2106, Exhibit B).

Q. How can the business purpose of an expenditure be substantiated?

- A. The business purpose can be substantiated by noting the time, title, and occupation of the contacts, the type of activity, and describing the business benefit derived or expected. The business relationship of the individuals contacted must also be noted. If the group is large, the legislator is not required to record the names of each individual present if a class designation would indicate the business relationship.

Q. Do any special recordkeeping rules apply to the deduction of dues and expenses related to the use of a private club or other facility for business purposes?

- A. The cost of membership in any club organized for business, pleasure, recreation, or other social purpose is nondeductible. This includes dues (and initiation fees) paid to country clubs, golf and athletic clubs, airline clubs, hotel clubs, and other social clubs. Specific expenses (e.g., meals) incurred at a club are deductible only to the extent they otherwise satisfy the standards for deductibility. As for entertainment facilities you own personally, you should consult with your CPA or tax advisor on what expenses you may be able to deduct related to that facility.

Exhibit A: Recordkeeping Requirements for Travel, Entertainment, and Gifts

Factors to be Proved in Substantiating Elements in Column 1			
Elements to be Substantiated (1)	For Expenditures for Travel Away from Home (2)	For Expenditures for Entertainment (3)	For Expenditures for Gifts (4)
Amount	Amount of each separate expenditure for transportation, lodging, and meals. Permissible to total incidental expenses in reasonable categories, such as gasoline and oil, taxis, daily meals for traveler, etc.	Amount of each separate expenditure. Incidental items such as taxis, telephones, etc. may be totaled on a daily basis.	Cost of Gift
Time	Dates of departure and return for each trip, and number of days attributable to business activities	Date of entertainment or use of a facility for entertainment. (Duration of business discussion.)	Date of Gift
Place	Destination by name of city or other appropriate designation.	Name and address or similar designation or place of use of a facility in connection with entertainment. Type of entertainment if not otherwise apparent. (Place of business discussion.)	Not Applicable
Description	Not applicable	Not applicable	Description of Gift
Business Purpose	Business reason for travel or nature of business benefit derived or expected to be derived.	Business reason or nature of business derived or expected to be derived. Nature of business discussion or activity if entertainment is other than "business meals."	Business reason for making the gift or nature of business benefit to be derived.
Business Relationship	Not applicable	Occupation or other information such as names or other designation - about persons entertained which established their business relationship to taxpayer. (Identification of persons entertained who participated in business discussion.)	Occupation or other information - such as name or other designation - about recipient which establishes business relationship to taxpayer.

Exhibit B:

Form **2106**

Department of the Treasury
Internal Revenue Service

Employee Business Expenses

▶ See separate instructions.

▶ Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2007

Attachment
Sequence No. **54**

Your name	Occupation in which you incurred expenses	Social security number
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Part I Employee Business Expenses and Reimbursements

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

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

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

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

8 Subtract line 7 from line 6. If zero or less, enter -0-. However, if line 7 is greater than line 6 in Column A, report the excess as income on Form 1040, line 7 (or on Form 1040NR, line 8)	8		
Note: If both columns of line 8 are zero, you cannot deduct employee business expenses. Stop here and attach Form 2106 to your return.			
9 In Column A, enter the amount from line 8. In Column B, multiply line 8 by 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses incurred while away from home on business by 75% (.75) instead of 50%. For details, see instructions.)	9		
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 21 (or on Schedule A (Form 1040NR), line 9). (Reservists, qualified performing artists, fee-basis state or local government officials, and individuals with disabilities: See the instructions for special rules on where to enter the total.) ▶	10		

Part II Vehicle Expenses

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

		(a) Vehicle 1	(b) Vehicle 2
11	Enter the date the vehicle was placed in service	11 / /	/ /
12	Total miles the vehicle was driven during 2007	12 miles	miles
13	Business miles included on line 12	13 miles	miles
14	Percent of business use. Divide line 13 by line 12	14 %	%
15	Average daily roundtrip commuting distance.	15 miles	miles
16	Commuting miles included on line 12	16 miles	miles
17	Other miles. Add lines 13 and 16 and subtract the total from line 12.	17 miles	miles
18	Do you (or your spouse) have another vehicle available for personal use?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
19	Was your vehicle available for personal use during off-duty hours?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
20	Do you have evidence to support your deduction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
21	If "Yes," is the evidence written?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

22	Multiply line 13 by 48.5¢ (.485)	22	
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Section C—Actual Expenses

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

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

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

Exhibit C:
Example 162(h) Election to file with Income Tax Return

Taxpayer Name

Taxpayer SSN #

Taxpayer Address

Taxpayer City/State/Zip

**State Legislator's Election under IRC Section 162(h)
to treat Residence as Tax Home**

Taxpayer, a state legislator who served in the Georgia (House) (Senate) during the year ending on (year end), elects to treat his residence as his tax home pursuant to IRC Section 162(h). His place of residence is within the _____ ,
(district)
which is the legislative district that he represents. The residence is more than 50 miles from the capitol building of the state.

During the tax year, the taxpayer was a state legislator for _____ days. The taxpayer received a per diem
(number)
allowance of \$ _____ per day. This amount is what is generally allowed employees of the state of which taxpayer
(amount)
is a legislator.

Exhibit D:
Affidavit for Georgia Legislators
IRC Section 162(h)
Tax Home Election

I, _____, as a State Legislator, for (Senate) (House) _____
(type or print name)

District of the State of Georgia, do hereby state that I intend to elect under the provisions of IRC Section 162(h) to treat my residence within said district as my "tax home" for purposes of deducting business expenses associated with my legislative duties while away from said home, including expenses in the capitol city while the legislature is in session. I understand that filing this affidavit with the Legislative Fiscal Office does not satisfy the election requirements under IRC Section 162(h), and I intend to file the appropriate election with my annual federal individual income tax return. I also certify that my "tax home" residence in my legislative district is further than 50 miles from the capitol building of the State of Georgia.

I authorize the Legislative Fiscal Office to accept this affidavit, until otherwise notified, as proof that I will treat my residence as my tax home and that I have complied with all requirements of IRC Section 162(h) and that my "per diem allowance" shall be excluded from taxable wages. I further agree that I will report any taxable portion of said per diem should I not comply with IRC Section 62 or should the per diem exceed the allowed reimbursable amount.

Signature _____

Legislative District _____ Date _____

GEORGIA, _____ COUNTY

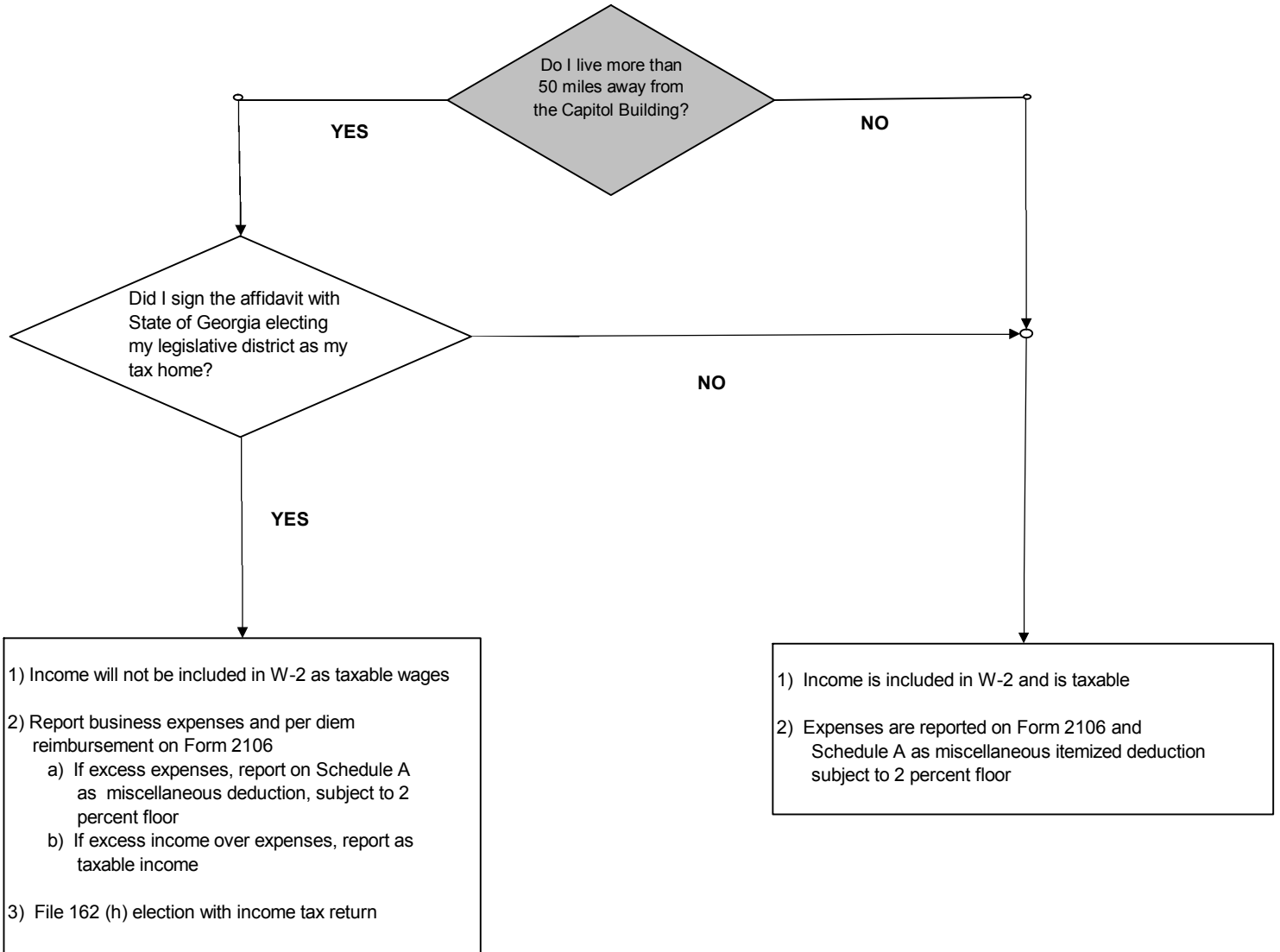
Sworn to and subscribed before me,

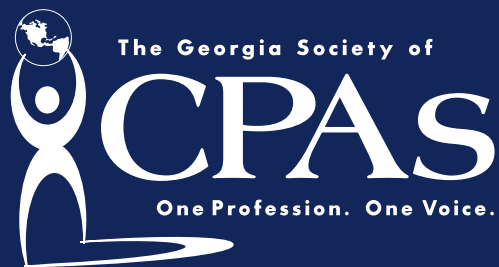
this _____ day of _____ year of _____

Notary Seal _____

Exhibit E:

Flowchart of Reporting Business Expenses for Georgia Legislators





**Georgia Society of CPAs
Atlanta Financial Center
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