

**MEMORANDUM**

May 28, 2019

**Subject:** Legislative History of Tax Deductions for Members of Congress

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This memorandum provides a legislative history of a former tax deductions for living expenses for Members of Congress. The annual maximum of \$3,000 (not adjusted for inflation) was initially established in 1952 and remained unchanged through its repeal in 2017 (although repealed and reinstated, however, in the early 1980s). The provision was repealed by the 2017 tax revision (P.L. 115-97, sec. 13311, 131 Stat. 2132, enacted December 22, 2017). No separate vote was held on the provision related to Members of Congress.

## Overview

Prior to the enactment of P.L. 115-97, 26 U.S.C. §162 stated:<sup>1</sup>

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including-

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and
- (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000....

P.L. 115-97 struck the phrase, “in excess of \$3,000.”

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<sup>1</sup> See also the *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, §1146, and 26 CFR 5e.274-8, *Travel expenses of Members of Congress*.

## History

Language relating to tax deductions for living expenses for Members of Congress was discussed regularly in the late 1940s and 1950s.<sup>2</sup> At that time, and in periodic debates since, Congress debated both repealing the limits on this deduction (i.e., the \$3,000 cap)—therefore providing the same tax treatment of business expenses for Members of Congress as other persons working away from home—and repealing the deductions for Members.

The \$3,000 annual limit dated at least to the consideration of the FY1953 legislative branch appropriations act in 1952. At that time, the annual salary for a Members of Congress was \$12,500. The salary for most Members of Congress in 2019 is \$174,000.

The House version of the FY1953 bill would have allowed deductions for business-related expenses without an annual limit. The Senate Appropriations Committee amended the House provision to include an annual limit of \$2,400,<sup>3</sup> and an amendment on the floor on June 27, 1952, added language relating to loans made for political purposes.<sup>4</sup> Conferees agreed to a limit of \$3,000 and the deduction was limited to two years, although disagreement remained over the loan provision. Following debate in the House<sup>5</sup> and Senate<sup>6</sup> on July 5, the disagreement was resolved and the two-year \$3,000 annual limit and loan language was contained in P.L. 471 (82<sup>nd</sup> Congress). The deductions language stated:<sup>7</sup>

...*Provided*, That for the two taxable years beginning after December 31, 1952, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered to be his home for the purposes of section 23 (a) (1) (A) of the Internal Revenue Code, but amounts expended by such Member within each such taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.

The issue was revisited during consideration of the appropriations bill the following year. The House bill (H.R. 5805) would have made the provision permanent, but without the annual limit. The Senate Appropriations Committee proposed the inclusion of the \$3,000 per annum cap, which was passed by the Senate.<sup>8</sup> The House concurred in the Senate amendments on July 29, 1953.<sup>9</sup> The FY1954 legislative and judicial appropriations act stated:<sup>10</sup>

The proviso under this head in Public Law 471, Eighty-second Congress, is amended to read as follows: “*Provided*, That in the case of taxable years beginning after December 31, 1953, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home for the purposes of section 23 (a) (1) (A) of the Internal Revenue Code, but

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<sup>2</sup> For example, H.R. 1627 (79<sup>th</sup> Congress), was introduced on January 18, 1945, and referred to the Committee on Ways and Means. See also: ch. 521, 65 Stat. 569, Oct. 20, 1951; Remarks in the Senate, *Congressional Record*, September 26, 1951, pp. 12147-12161; Remarks in the House, *Congressional Record*, July 5, 1952, pp. 9671-9674.

<sup>3</sup> S.Rept. 1828 (Washington: GPO, 1952), p. 2.

<sup>4</sup> *Congressional Record*, June 27, 1952, pp. 8268-8292.

<sup>5</sup> July 5, 1952, *Congressional Record*, pp. 9671-9673.

<sup>6</sup> Remarks in the Senate, July 5, 1952, *Congressional Record*, pp. 9554-9562.

<sup>7</sup> 66 Stat. 467, July 9, 1952.

<sup>8</sup> Remarks in the Senate, *Congressional Record*, pp. 10283-10284, 10288. See also, U.S. Congress, *Legislative-Judiciary Appropriations Bill, 1954*, S.Rept. 687, report to accompany H.R. 5805 (Washington: GPO, 1953), p. 2.

<sup>9</sup> Remarks in the House, *Congressional Record*, p. 10410.

<sup>10</sup> P.L. 178, ch. 304, Aug. 1, 1953, 67 Stat. 322.

amounts expended by such Member within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.”

The Internal Revenue Code of 1954 continued this language:<sup>11</sup>

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.

## Attempts to Modify or Repeal this Provision—Selected Examples

Prior to the repeal of this provision in 2017, this provision was periodically examined by Congress. Various legislative proposals sought to:

- provide the same tax treatment for Members as other taxpayers with respect to deductible business expenses (e.g., H.R. 6481 (97<sup>th</sup> Cong.); S. 70, H.R.633 (98<sup>th</sup> Cong.); H.R. 4840 (100<sup>th</sup> Cong.); H.R. 1014 (101<sup>st</sup> Cong.));
- change the annual deduction to a per diem amount for the number of days Congress is in session (e.g., H.R. 5384, H.R. 5384 (96<sup>th</sup> Cong.));
- change requirements for substantiation of the deductions for Members of Congress (e.g., H.R. 5454, H.R. 5535, H.R. 5606, H.R. 5329, H.R. 6199, H.R. 6537, S. 2113, S. 2176, H.R. 5589, H.R. 5592, H.R. 6200, H.R. 5714, H.R. 6431, H.R. 5714, H.R. 6431, H.R. 5535, H.R. 5951, H.R. 5454, H.R. 5951, S. 2321, S. 2012, S. 2015, S. 2321 (97<sup>th</sup> Cong.));
- increase the annual cap for this deduction (e.g., H.R. 246, H.R. 4676 (97<sup>th</sup> Cong.)); or,
- eliminate the deduction for Members (e.g., H.R. 5958 (97<sup>th</sup> Cong.); H.R. 1709 (101<sup>st</sup> Cong.); H.R. 1644 (104<sup>th</sup> Cong.); H.R. 1099 (105<sup>th</sup> Cong.); H.R. 589 (106<sup>th</sup> Cong.); H.R. 2222 (114<sup>th</sup> Cong.); H.R. 4217, S. 2033 (115<sup>th</sup> Cong.).

At least one bill was introduced to reinstate the deduction after its repeal in 2017 (H.R. 5845, 115<sup>th</sup> Cong.).

## Attempt to Have IRS Establish Annual Limit or Tie Limit to the Number of Days Congress is in Session (1976)

A modification to the annual limit was considered in 1975 and 1976, along with proposals to make the deductions applicable to state legislators. The Joint Explanatory Statement on H.R. 10612, the Tax Reform Act, stated:<sup>12</sup>

The House bill modifies the \$3,000 limitation presently allowed to Member of Congress to provide that deductions by a Member of Congress would be limited to an amount determined by the IRS. The IRS is to establish an annual amount taking into account the number of days that the Members are away from home, the cost of living in Washington, D.C., and the amount normally allowed businessmen in similar circumstances....

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<sup>11</sup> Aug. 16, 1954, ch. 736, 68A Stat. 3.

<sup>12</sup> House, *Congressional Record*, September 13, 1976, p. 30114.

The Senate amendment deletes the provision in the House bill relating to Member of Congress; thus, the present \$3,000 limitation is retained....

The conference agreement follows the Senate amendment in the case of Members of Congress....

P.L. 94-455, which was enacted on October 4, 1976, with the state legislator provision, did not alter the annual limit for Members of Congress.<sup>13</sup>

## Repeal and Reinstatement of Provision, and Hearings (1981, 1982, and 1983)

This provision garnered increased attention in the early 1980s. In the 97<sup>th</sup> Congress (1981-1982) alone, for example, more than 80 related bills were introduced.

The annual limit on deductions was repealed in a joint resolution making continuing appropriations for FY1982 (H.J.Res.325, 97<sup>th</sup> Congress). On September 24, 1981, the Senate reversed a ruling of the chair (44-54, vote #280) that an amendment to H.J.Res. 325 regarding tax deductions for Members of Congress was out of order as constituting legislation on an appropriations measure. The Senate then agreed (50-48, vote #281) to an amendment to H.J.Res. 325 eliminating the existing \$3,000 per annum limit on tax deductions for living expense of Members while away from home, effective January 1, 1982.<sup>14</sup> The Senate agreed (47-44, vote # 287) to H.J.Res. 325 with this provision the next day.<sup>15</sup> The House agreed to the conference report, which contained this provision, with amendments, on September 30, 1981.<sup>16</sup> The Senate agreed to the conference report and the House amendments later that day, repealing the \$3,000 cap (see section 139(b)(1) below).<sup>17</sup> P.L. 97-51, which was enacted on October 1, 1981, stated:

SEC. 139. (a) It is the sense of the Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home shall be the same as such limits for businessmen and other private citizens.

(b)(1) The last sentence of section 162(a) of the Internal Revenue Code of 1954 is amended by striking out all after “home” and inserting in lieu thereof a period.

(2) Public Law 471, Eighty-second Congress, approved July 9, 1952 (66 Stat. 464), is amended by striking out the proviso in the second paragraph of the matter under the heading “HOUSE OF REPRESENTATIVES, SALARIES, MILEAGE, AND EXPENSES OF MEMBERS” (66 Stat. 467; 2 U.S.C. 31c).

(3) The amendments made by this subsection shall apply to taxable years beginning after December 31, 1981.

Subsequent laws in 1981 further addressed the timing and treatment of this provision.<sup>18</sup>

Additional language related to the permissible ceilings and documentation for living expense deductions was considered in H.J.Res.409, another continuing appropriations resolution. On March 30 and 31, 1982,

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<sup>13</sup> P.L. 94-455, sec. 604, Oct. 4, 1976, 90 Stat. 1575.

<sup>14</sup> *Congressional Record*, vol. 127, September 24, 1981, pp. 21911-21913.

<sup>15</sup> *Congressional Record*, vol. 127, September 25, 1981, p. 22032.

<sup>16</sup> *Congressional Record*, vol. 127, September 25, 1981, p. 22440.

<sup>17</sup> *Congressional Record*, vol. 127, September 25, 1981, p. 22575.

<sup>18</sup> A subsequent continuing appropriations resolution, H.J.Res. 370, contained language making this change retroactive to January 1, 1981 (P.L. 97-92, December 15, 1981, 95 Stat. 1199, sec. 133a). A provision in P.L. 97-119, the Black Lung Benefits Revenue Act of 1981, enacted December 29, 1981, also effected deductions for expenses while away from home (P.L. 97-119, Dec. 29, 1981, 95 Stat. 1642, sec. 113(b)). See also: *Federal Register*, vol. 47, no. 14, January 21, 1982, pp. 2986-2988, 3006; *Federal Register*, vol. 47, no. 22, February 2, 1982, p. 4680; *Federal Register*, vol. 47, no. 56, March 23, 1982, p. 12361; *Federal Register*, vol. 48, no. 109, June 6, 1983, p. 25228; and *Federal Register*, vol. 48, no. 201, October 17, 1983, 1982, p. 47844; and 26 CFR 5e.274-8).

the Senate held a series of votes (#66, 67, 69, 73, 74, 75, 76, 77, and 78) on amendments (S.Amdt. 1344, S. Amdt. 860, and S. Amdt. 862). The amendments were not adopted, and related language was not included in the Senate-passed or enacted (P.L. 97-161, March 31, 1982) versions of the bill.

On May 27, 1982, an amendment was adopted (S.Amdt. 1497, vote #163) to limit deductions and require their substantiation to H.R. 5922 (the Urgent Supplemental Appropriations Act, 1982), which ultimately was vetoed by the President and failed to become law.

The limit was reinstated by the Urgent Supplemental Appropriations Act, 1982 (H.R.6685, P.L. 97-216, July 18, 1982), which stated:<sup>19</sup>

Sec. 215. (a) The last sentence of section 162(a) of the Internal Revenue code of 1954 (relating to trade or business expenses) is amended by inserting “, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000” after “home”.

(b) Paragraph (4) of section 280A(f) of such Code (relating to coordination with section 162(a)(2) is amended to read as follows:

“COORDINATION WITH SECTION 162(A)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer’s being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).”.

(c) Subsection (a) of section 139 of the Act of October 1, 1981 (95 Stat. 967), is hereby repealed.

(d) The amendments made by this section shall apply to taxable years beginning after December 31, 1981.

On June 18, 1982, and February 25, 1983, the Senate Committee on Finance Subcommittee on Taxation and Debt Management held hearings on some of these proposals,<sup>20</sup> and to accompany these hearings, the Joint Committee on Taxation issued prints describing the bills, the law related to living expenses at that time, and a history of the rules as they relate to Members of Congress.<sup>21</sup>

## Repeal of Provision (2017)

P.L. 115-97 (enacted December 22, 2017) struck the phrase, “in excess of \$3,000,” from 26 U.S.C. §162.

The provision striking this deduction was not in the House-passed version of H.R. 1, but was included in the Senate amendment, which was agreed to in the Senate on December 2, 2017.<sup>22</sup> It was included in the conference report (H.Rept. 115-466, December 15, 2017). No separate debate or vote was held on this provision (sec. 13311).

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<sup>19</sup> P.L. 97-216, 96 Stat. 194, July 18, 1982. See also the procedural discussion in: U.S. Congress, House, *Deschler’s Precedents of the United States House of Representatives*, “Special Order May Protect Nongermane Motion While Not Precluding a Preferential Motion,” H.Doc. 94-661, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Washington: GPO, 1977), Vol. XVI, Ch. 33, §30.22.

<sup>20</sup> U.S. Congress, Senate Committee on Finance, Subcommittee on Taxation and Debt Management, *Tax Provisions Affecting State and Federal Legislators’ Away-from-Home Expenses*, hearing on S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 18, 1982 (Washington: GPO, 1982).

<sup>21</sup> *Description of Tax Bills (S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413) Relating to Federal and State Legislators’ Away-From-Home Expenses, Scheduled for a Hearing*, print prepared for the Use of the Committee on Finance by the Staff of the Joint Committee on Taxation, June 18, 1982 (Washington: GPO, 1982); and *Description of S. 70, Relating to Away-from-Home Expenses of Members of Congress, Scheduled for a Hearing*, print prepared for the Use of the Committee on Finance by the Staff of the Joint Committee on Taxation, February 23, 1983 (Washington: GPO, 1983).

<sup>22</sup> See also: text of an amendment intended to be proposed and printed in the *Congressional Record* (SA 1588), *Congressional Record*, November 29, 2017, p. S7408. The amendment was not offered.

