

Timor-Leste, Canada (Federal Level), and Montenegro and remove East Timor and Yugoslavia.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).⁶ It follows that the requirements of the Regulatory Flexibility Act⁷ do not apply.

The effective date for the updated Filer Manual and the rule amendments is April 8, 2010. In accordance with the APA,⁸ we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 10.1 is scheduled to be available on April 12, 2010. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁹ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,¹⁰ Section 319 of the Trust Indenture Act of 1939,¹¹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹²

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: "General Information," Version 8 (September 2009). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 14 (April 2010). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N–SAR Supplement," Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, or call (202) 551–5850, on official business days between the hours of 10 a.m. and 3 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Dated: April 1, 2010.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2010–7856 Filed 4–7–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9481]

RIN 1545–BG92

Travel Expenses of State Legislators

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to travel expenses of state legislators while away from home. The regulations affect eligible state legislators who make the election under section 162(h) of the Internal Revenue Code (Code). The regulations clarify the amount of travel expenses that a state legislator may deduct under section 162(h).

DATES: *Effective Date:* These regulations are effective *April 8, 2010*.

Applicability Date: For date of applicability, see § 1.162–24(h).

FOR FURTHER INFORMATION CONTACT: R. Matthew Kelley, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control Number 1545–2115.

The collection of information in these final regulations is in § 1.162–24(e). The information will help the IRS determine if a taxpayer may make or revoke an election under section 162(h). The collection of information is required to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The information will be reported on a statement attached to individual tax returns. The time needed to complete and file this statement will vary

⁶ 5 U.S.C. 553(b).

⁷ 5 U.S.C. 601–612.

⁸ 5 U.S.C. 553(d)(3).

⁹ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

¹⁰ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

¹¹ 15 U.S.C. 77sss.

¹² 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

depending on individual circumstances. The estimated burden for individual taxpayers filing this statement is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations, 26 CFR part 1, 26 CFR part 301, and 26 CFR part 602, relating to travel expenses of state legislators while away from home.

On March 31, 2008, a notice of proposed rulemaking (REG-119518-07) was published in the **Federal Register** (73 FR 16797). Written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

Explanation of Provisions and Summary of Comments

Under section 162(a), a state legislator may be entitled to deduct expenses paid or incurred in conducting legislative business (for example, living, transportation, and miscellaneous expenses) while traveling away from home. In addition, section 162(h) allows a state legislator to deduct deemed living expenses, but not other deemed business travel expenses, on specified legislative days. These regulations provide guidance on the special rules for deducting a state legislator's deemed living expenses.

Section 162(h) and the proposed regulations provide that a taxpayer who is a state legislator at any time during the taxable year may make an election under section 162(h) to treat the taxpayer's place of residence within the taxpayer's legislative district as the taxpayer's tax home. In addition, as a result of the election the taxpayer is

deemed to be away from home in the pursuit of a trade or business on each legislative day and is deemed to have expended an amount for living expenses on that day. Under the proposed regulations, a legislative day for a taxpayer includes each day (1) The legislature is actually in session, (2) the legislature is not in session for a period not longer than 4 consecutive days, (3) the taxpayer's attendance is formally recorded at a meeting of a committee of the legislature, or (4) the taxpayer's attendance is formally recorded at a session of the legislature that only a limited number of members are expected to attend, such as a *pro forma* session.

1. Limitation on Availability of Deduction for Travel Expenses

Some commentators expressed concerns that the proposed regulations might impose new limits on state legislators' deductions for business travel expenses and suggested that the proposed regulations should not be finalized.

The final regulations do not adopt this comment because the regulations do not impose new limits. The regulations merely clarify the existing section 162(h) special rules for deducting state legislators' deemed living expenses for each legislative day. The regulations do not affect or limit the deduction for actual travel expenses under section 162(a). A taxpayer may continue to deduct actual substantiated travel expenses, whether or not the taxpayer qualifies under the special rule for deducting deemed expenses under section 162(h).

2. Definitions of In Session and Legislative Day

Some commentators objected to Federal regulations defining when a legislature is in session and what constitutes a legislative day for purposes of section 162(h). The commentators expressed concern that the proposed regulations would preempt state law governing the conduct of legislative affairs. The commentators recommended that the regulations not be issued.

The final regulations do not adopt this recommendation. These regulations define *in session* and *legislative day* solely for the purpose of interpreting the special rules of section 162(h), a matter of Federal law. See *Morgan v. Commissioner*, 309 U.S. 78, 81 (1940) ("If it is found in a given case that an interest or right created by local law was the object intended to be taxed, the federal law must prevail no matter what name is given to the interest or right by

state law."). These regulations do not preempt or supersede state laws governing the conduct or operation of state legislatures. The regulations merely address what amounts (deemed living expenses) state legislators may deduct under section 162(h).

3. Definition of a State Legislator

The proposed regulations provide that a taxpayer is a state legislator for purposes of the regulations beginning on the day the taxpayer is sworn into office and ending on the day following the day on which the taxpayer's term in office ends.

Commentators noted that some state laws treat a legislator-elect as a legislator before the legislator-elect is sworn into office, for example, on the date elected, the date the election results are certified, or on January 1 following the election. A commentator stated that legislators-elect often move to the state capital immediately upon election to conduct legislative business, for example, to participate in the formation of committees and assignments. Commentators suggested that the definition of a state legislator in the final regulations be modified to permit legislators-elect to deduct legislative business expenses under these circumstances.

The final regulations do not adopt this suggestion. Although a legislator-elect who is present in the state capital on business prior to being sworn into office is not eligible to deduct deemed living expenses under section 162(h), the legislator-elect may be traveling away from home and may be entitled to deduct actual business travel expenses under the general rules of section 162(a).

4. Definition of a Committee of the Legislature

The proposed regulations provide that a committee of the legislature is a group consisting solely of legislators charged with conducting business of the legislature.

Commentators noted that it is common practice in a number of states for legislative committees to have non-legislative members. Commentators suggested that the final regulations modify the definition of a committee of the legislature to include groups tasked with conducting public policy or other legislative business that have legislator and non-legislator members.

In response to these comments, the final regulations define a committee of the legislature as a group that includes one or more legislators and is charged with conducting business of the legislature.

5. Effective/Applicability Date

A commentator expressed concern that an effective date for the final regulations that falls in the middle of a taxable year would create confusion about expenses paid or incurred in the part of the year before the effective date. To eliminate confusion, the final regulations apply to expenses paid or incurred, or deemed expended under section 162(h), in taxable years beginning after April 8, 2010, the date of publication of this regulation.

Effect on Other Documents

Rev. Rul. 82-33 (1982-1 CB 28) is obsolete as of April 8, 2010.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is R. Matthew Kelley of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.162-24 also issued under 26 U.S.C. 162(h). * * *

■ **Par. 2.** Section 1.162-24 is added to read as follows:

§ 1.162-24 Travel expenses of state legislators.

(a) *In general.* For purposes of section 162(a), in the case of any taxpayer who is a state legislator at any time during the taxable year and who makes an election under section 162(h) for the taxable year—

(1) The taxpayer's place of residence within the legislative district represented by the taxpayer is the taxpayer's home for that taxable year;

(2) The taxpayer is deemed to have expended for living expenses (in connection with the taxpayer's trade or business as a legislator) an amount determined by multiplying the number of legislative days of the taxpayer during the taxable year by the greater of—

(i) The amount generally allowable with respect to those days to employees of the state of which the taxpayer is a legislator for per diem while away from home, to the extent the amount does not exceed 110 percent of the amount described in paragraph (a)(2)(ii) of this section; or

(ii) The Federal per diem with respect to those days for the taxpayer's state capital; and

(3) The taxpayer is deemed to be away from home in the pursuit of a trade or business on each legislative day.

(b) *Legislative day.* For purposes of section 162(h)(1) and this section, for any taxpayer who makes an election under section 162(h), a legislative day is any day on which the taxpayer is a state legislator and—

(1) The legislature is in session;

(2) The legislature is not in session for a period that is not longer than 4 consecutive days, without extension for Saturdays, Sundays, or holidays;

(3) The taxpayer's attendance at a meeting of a committee of the legislature is formally recorded; or

(4) The taxpayer's attendance at any session of the legislature that only a limited number of members are expected to attend (such as a *pro forma* session), on any day not described in paragraph (b)(1) or (b)(2) of this section, is formally recorded.

(c) *Fifty mile rule.* Section 162(h) and this section do not apply to any taxpayer who is a state legislator and whose place of residence within the

legislative district represented by the taxpayer is 50 or fewer miles from the capitol building of the state. For purposes of this paragraph (c), the distance between the taxpayer's place of residence within the legislative district represented by the taxpayer and the capitol building of the state is the shortest of the more commonly traveled routes between the two points.

(d) *Definitions and special rules.* The following definitions apply for purposes of section 162(h) and this section.

(1) *State legislator.* A taxpayer becomes a state legislator on the day the taxpayer is sworn into office and ceases to be a state legislator on the day following the day on which the taxpayer's term in office ends.

(2) *Living expenses.* Living expenses include lodging, meals, and incidental expenses. *Incidental expenses* has the same meaning as in 41 CFR 300-3.1.

(3) *In session*—(i) *In general.* For purposes of this section, the legislature of which a taxpayer is a member is in session on any day if, at any time during that day, the members of the legislature are expected to attend and participate as an assembled body of the legislature.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(3):

Example 1. B is a member of the legislature of State X. On Day 1, the State X legislature is convened and the members of the legislature are expected to attend and participate. On Day 1, the State X legislature is in session within the meaning of paragraph (d)(3)(i) of this section. B does not attend the session of the State X legislature on Day 1. However, Day 1 is a legislative day for B for purposes of section 162(h)(2)(A) and paragraph (b)(1) of this section.

Example 2. C, D, and E are members of the legislature of State X. On Day 2, the State X legislature is convened for a limited session in which not all members of the legislature are expected to attend and participate. Thus, on Day 2 the legislature is not in session within the meaning of paragraph (d)(3)(i) of this section, and Day 2 is not a legislative day under paragraph (b)(1) of this section. In addition, Day 2 is not a day described in paragraph (b)(2) of this section. C and D are the only members who are called to, and do, attend the limited session on Day 2, and their attendance at the session is formally recorded. E is not called and does not attend. Therefore, Day 2 is a legislative day as to C and D under section 162(h)(2)(B) and paragraph (b)(4) of this section. Day 2 is not a legislative day as to E.

(4) *Committee of the legislature.* A committee of the legislature is any group that includes one or more legislators and that is charged with conducting business of the legislature. Committees of the legislature include, but are not limited to, committees to which the legislature refers bills for

consideration, committees that the legislature has authorized to conduct inquiries into matters of public concern, and committees charged with the internal administration of the legislature. For purposes of this section, groups that are not considered committees of the legislature include, but are not limited to, groups that promote particular issues, raise campaign funds, or are caucuses of members of a political party.

(5) *Federal per diem.* The Federal per diem for any city and day is the maximum amount allowable to employees of the executive branch of the Federal government for living expenses while away from home in pursuit of a trade or business in that city on that day. See 5 U.S.C. 5702 and the regulations under that section.

(e) *Election—(1) Time for making election.* A taxpayer's election under section 162(h) must be made for each taxable year for which the election is to be in effect and must be made no later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year.

(2) *Manner of making election.* A taxpayer makes an election under section 162(h) by attaching a statement to the taxpayer's income tax return for the taxable year for which the election is made. The statement must include—

(i) The taxpayer's name, address, and taxpayer identification number;

(ii) A statement that the taxpayer is making an election under section 162(h); and

(iii) Information establishing that the taxpayer is a state legislator entitled to make the election, for example, a statement identifying the taxpayer's state and legislative district and representing that the taxpayer's place of residence in the legislative district is not 50 or fewer miles from the state capitol building.

(3) *Revocation of election.* An election under section 162(h) may be revoked only with the consent of the Commissioner. An application for consent to revoke an election must be signed by the taxpayer and filed with the submission processing center with which the election was filed, and must include—

(i) The taxpayer's name, address, and taxpayer identification number;

(ii) A statement that the taxpayer is revoking an election under section 162(h) for a specified year; and

(iii) A statement explaining why the taxpayer seeks to revoke the election.

(f) *Effect of election on otherwise deductible expenses for travel away from home—(1) Legislative days—(i) Living expenses.* For any legislative day

for which an election under section 162(h) and this section is in effect, the amount of an electing taxpayer's living expenses while away from home is the greater of the amount of the living expenses—

(A) Specified in paragraph (a)(2) of this section in connection with the trade or business of being a legislator; or

(B) Otherwise allowable under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(ii) *Other expenses.* For any legislative day for which an election under section 162(h) and this section is in effect, the amount of an electing taxpayer's expenses (other than living expenses) for travel away from home is the sum of the substantiated expenses, such as expenses for travel fares, telephone calls, and local transportation, that are otherwise deductible under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(2) *Non-legislative days.* For any day that is not a legislative day, the amount of an electing taxpayer's expenses (including amounts for living expenses) for travel away from home is the sum of the substantiated expenses that are otherwise deductible under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(g) *Cross references.* See § 1.62-1T(e)(4) for rules regarding allocation of unreimbursed expenses of state legislators and section 274(n) for limitations on the amount allowable as a deduction for expenses for or allocable to meals.

(h) *Effective/applicability date.* This section applies to expenses paid or incurred, or deemed expended under section 162(h), in taxable years beginning after *April 8, 2010*.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100-4T [Amended]

■ **Par. 4.** Section 301.9100-4T is amended by removing from the table in paragraph (a)(1) "section 127(a)", and removing paragraph (a)(2)(iv).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended to add in numerical order an entry for "1.162-24" to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.162-24	1545-2115
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Linda M. Kroening,
(Acting) Deputy Commissioner for Services and Enforcement.

Approved: August 27, 2009.

Michael Mundaca,
(Acting) Assistant Secretary of the Treasury (Tax Policy).

Editorial Note: This document was received in the Office of the Federal Register on April 2, 2010.

[FR Doc. 2010-7932 Filed 4-7-10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AN56

Removal of Obsolete References to Herbicides Containing Dioxin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans (VA) is amending its regulation concerning evaluation of studies relating to the health effects of exposure to herbicides containing dioxin and radiation to remove the obsolete references to herbicides containing dioxin. This final rule reflects changes made by the Agent Orange Act of 1991 in the procedures for VA's evaluation of the health effects of exposure to herbicides containing dioxin. This document makes non-substantive changes for the purpose of removing obsolete regulatory provisions.

DATES: *Effective Date:* This final rule is effective April 8, 2010.

FOR FURTHER INFORMATION CONTACT: Tracey P. Warren (022K), Attorney, Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7699. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Veterans' Dioxin