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SOLIMAN v. COMMISSIONER: THE LATEST WORD ON THE HOME OFFICE DEDUCTION

Robin A. Clark

Demands of the business world, more often than not, require that professionals take their work home with them, both in the evenings and on the weekends. Additionally, many self-employed individuals, salespersons, artisans, and musicians find it necessary, convenient, and economically efficient to work out of their homes. It is not uncommon for these groups of professionals to set aside rooms in their houses, apartments, or condominiums as "home offices." Some use their home offices just on occasion to mill through piled-up paperwork or to make telephone calls. Others, however, conduct their business affairs regularly and exclusively from their home offices.

As exhibited in § 262 of the Internal Revenue Code (hereinafter "the Code"), Congress has long been reluctant to allow deductions for expenses incurred for personal, living, and family purposes. Under § 162(a), however, Congress has consistently allowed deductions for "ordinary and necessary" expenses paid or incurred by the taxpayer in carrying on a trade or business. Where the personal and business spheres merge, such as in the case of the home office, legislative and judicial reconciliation of these competing Code provisions, §§ 262 and 162(a), pave a treacherous, yet well-traveled, road.

Section 280A, enacted through the Tax Reform Act of 1976, sets forth the extent to which a taxpayer is allowed to take a deduction from gross income for expenses incurred for a home office.

Under the current law, a taxpayer who qualifies for the home office deduction may deduct a prorated portion of certain expenses, e.g., real estate taxes, deductible mortgage interest, utilities and services, casualty losses, rent, insurance, depreciation, security systems, painting, and repairs. To calculate the deduction, a qualifying taxpayer must take the portion of the home used as the "home office" as a percentage of the total square footage of his home and use this percentage to calculate the prorated portion of expenses deductible under the home office statute. The amount of the deduction, however, is limited to the excess of the gross income derived from the home office activity over the sum of those expenses incurred without regard to the business use of the home and all other expenses attributable to the business activity but not attributable to the home business.

Congress intended § 280A to provide "definitive rules to resolve the conflict that exist[ed] between several recent court decisions and the position of the Internal Revenue Service as to the correct standard governing the deductibility of expenses attributable to the maintenance of an office in the taxpayer’s personal residence." Prior to the enactment of § 280A in 1976, little guidance existed for determining the appropriateness of a home office deduction. Although § 262 generally disallows deductions for personal, living, and family expenses, the only express statutory restriction on the deduction is set forth in § 162(a). That provision simply requires that expenses be "ordinary and necessary" in carrying on the taxpayer’s trade or business to qualify for the deduction.

The IRS has attempted to offer some guidance to taxpayers and the courts through the promulgation of Treasury Regulation § 1.262-1(b)(3) in 1960. In its current application, that regulation states in pertinent part:

If . . . [the taxpayer] uses part of the house as his place of business, such portion of the rent and other similar expenses as is properly attributable to such place of business is deductible as a business expense.

Under this regulation, in order for a taxpayer to take the deduction for the expenses incurred in the business use of a personal residence, the taxpayer must first establish that such expenses were incurred in carrying on a business or trade pursuant to the requirement of § 162(a). Thus, it requires a "relatively reasonable connection" between the activity conducted in the home and the taxpayer’s trade or business. If successful, "the allocable portion of the expenses attributable to the use of the home as a place of business [is] allowed as a deduction" to the extent the expenses were "ordinary and necessary" in carrying on the taxpayer’s trade or business. Prior to 1976, the home office deduction was taken largely by self-employed individuals, investors, and other employees who maintained home offices in connection with their duties as employees.

The courts and the Internal Revenue Service were faced with the task of developing standards and limitations for the allowance of the home office deduction in light of § 262, § 162(a), and Treasury Regulation § 1.262-1(b)(3). As a result, competing views regarding the limitations of the deduction developed. The Internal Revenue Service took the position that expenses incurred in relation to an employee’s home office were deductible only when that office was
required by the employer as a condition of employment and
was regularly used for the performance of the employee’s
duties.17 Certain courts advocated a more liberal stance and
held that expenses were “necessary” within the allowance
provision of § 162(a) when “appropriate and helpful” to the
employee’s business.18

With the liberal disposition of the courts, the more
stringent stance of the IRS, and the basic need to increase
revenue, Congress responded with the Tax Reform Act of
1976.19 In adopting this Act, Congress sought to achieve four
goals: (1) tax reform improving the equity of the income tax
at all income levels, (2) tax simplification, (3) continued tax
reductions, and (4) overall improvement of the administra­
tion of the tax laws.20 Within the goal of tax reform, Congress
intended to restrict, to some extent, business-related individual income tax provisions vis-a-vis a limita­ tion on deductions for use of the home.21

Through the enactment of § 601 of the Tax Reform Act,
Congress added § 280A to the Code. The IRS advocated the
restriction that a home office must be main­ tained for the convenience of the employer in order for an employee to take the deduction. Congress recognized this restriction and adopted it in the Act.22 This was in large part a response to the more liberal “appropriate and helpful” standard employed by the courts. Through § 280A, Congress expressly rejected the judicially-created “appropriate and helpful” standard.23 Such a liberal and subjective standard presented the taxpayer with the opportu­ nity to convert otherwise nondeductible personal expenses into deductible business expenses as a result of the business use of his home even though the taxpayer incurred no additional expense.24

In order to provide definitive rules, case the
administration of the deduction, and prevent the conversion
of personal expenses into business expenses, Congress,
through § 280A, promulgated the general rule that no
deduction would be allowed for the business use of a personal
residence “unless specifically excepted from this new sec­
tion and otherwise allowable.”25 The House Bill proposing
the legislation drew an express distinction between taxpayers
who are employees and those who are not. For a taxpayer
other than an employee, an allocable portion of ordinary and
necessary expenses paid or incurred by the taxpayer in
connection with trade or business use of the taxpayer’s
dwelling is allowed as a deduction if used exclusively and on
a regular basis as the taxpayer’s (1) principal place of
business or 2) place of business used to meet or deal with
patients, clients, or customers in the normal course of his
trade or business.26

Employees, on the other hand, are entitled to deduct only
that portion of ordinary and necessary expenses paid or
incurred in connection with the performance of services
which are attributable to the business use of the residence
“only if, in addition to satisfying the exclusive use and
regular basis tests, the use is for the convenience of his
employer. If the use is merely appropriate and helpful, no
deduction attributable to such use will be allowable.”27

The Senate concurred as to these first two exceptions and
the incorporation of the distinction between employees and
non-employees.28 The conference agreement followed the
definitive rules of the House Bill “but include[d] the excep­
tion under the Senate amendment for a separate structure
exclusively used on a regular basis in connection with the
taxpayer’s trade or business.”29

As enacted, the statute clearly sets forth the threshold
qualifying requirements for the deduction, “exclusivity”30
and “on a regular basis.”31 Once these initial requirements
are met, the taxpayer’s home office must fall within one of
the three enumerated statutory exceptions: (1) the home
office is the principal place of business for any trade or
business of the taxpayer (the “principal place of business” exception), (2) the home office is the place of busi­ ness which is used by patients, clients, or customers in
meeting or dealing with the taxpayer in the normal course of business (the “meeting with clients” exception), or (3) the home office is a separate structure which is not
attached to the dwelling unit but is used in connection with the taxpayer’s trade or business (the “separate structure” excep­ tion).32 Employees must also use the home
office for the convenience of the employer.33 “Convenience of the employer” is inter­ preted as meaning a condition of employ­ ment, regularly used for the performance of the employee’s duties, and not just
ordinary and helpful in performing the duties as an
employee.34

Since the enactment of § 280A in 1976, the Tax Court
and the federal courts of appeal have adjudicated numerous
disputes between taxpayers and the Internal Revenue Ser­
vice involving the principal place of business exception.35
Beyond the statutory language, Congress failed to provide
any further guidance regarding the scope of this exception.36
Thus, the courts were left with the dubious responsibility of
filling the void. Unfortunately for the taxpayers, the courts
formulated their interpretations purely on guesswork.

In Bailey v. Commissioner,37 the Tax Court, noting the
lack of legislative guidance as to the scope of “principal
place of business” in the context of § 280A, arbitrarily
concluded that “what Congress had in mind was the focal
point of a taxpayer’s activities . . . .”38 As a general
proposition, the “focal point” is the place where goods or
services are provided to customers or clients where
income is generated.39

In Baie, the taxpayer operated a street side hot dog stand. She prepared the majority of the food at home in her kitchen and maintained business records in a spare bedroom. The Tax Court disallowed the claimed deduction for expenses incurred at home, concluding that the hot dog stand itself was the “focal point” of the taxpayer’s activities, i.e. the place where her income was generated.40

After Baie the Tax Court consistently implemented the “focal point” test in determining whether a home office constituted the principal place of business. However, on appellate review, the federal courts of appeals continually questioned the application of the test and on several occasions reversed the Tax Court’s decisions.41

In Drucker v. Commissioner,42 the Tax Court held that the taxpayer, a violinist employed by the New York Metropolitan Opera (the “Met”), had his principal place of business or “focal point” of his business activities at the performance hall and not his home studio where he practiced thirty to thirty-two hours a week.43 The Tax Court concluded that the number of hours worked at the various locations is a consideration, but it is not the controlling factor. Other factors include the nature of the taxpayer’s business, the various activities of which it constituted, and the locations where those activities were carried out.44 In addition, because the taxpayer was an employee, the Tax Court examined these factors from the viewpoint of the employer and concluded that the focal point of the Met’s business was its performances at the hall.45

The Second Circuit disagreed and instead emphasized “time” and “importance” of the activities performed at home. Great weight was also given to the fact that the employer did not provide the employee with practice facilities even though the employee was expected to practice individually off the premises. Based on these factors, the Second Circuit found that the home practice studio was the focal point of the taxpayer’s employment-related activities, and, thus, was the taxpayer’s principal place of business within § 280A.46

This holding, the court said, did not frustrate the legislative intent of § 280A. Although Congress intended to provide clearer standards for the deduction and to prevent the conversion of personal expenses into business expenses, the court reasoned that Congress did not direct such changes to a taxpayer-musician for whom a home practice area was essential.47 Furthermore, because the home practice sessions were essential to the employee’s business activities as a musician and were truly for the convenience of the employer, the home studio was not “purely a matter of personal convenience, comfort, or economy.”48 The court cautioned that indeed this was a rare case where an employee’s principal place of business was different from his employer’s.49

It was such a rare case, indeed, that two years later the Second Circuit reached the same conclusion. In Weissman v. Commissioner,50 the Tax Court disallowed a home office deduction claimed by a university professor. The taxpayer argued that his home office which was used exclusively for research and writing purposes, duties required of him as a professor, was maintained for the convenience of the employer.51 The Tax Court concluded that the taxpayer’s principal place of business was the university and reasoned that the focal point of any educator’s business is generally the educational institution.52 The fact that research and writing was an important part of the taxpayer’s duties as a professor did not operate to shift the focal point to the home.53 Unlike the Second Circuit’s decision in Drucker, the Weissman Court stated that this is not a situation where an employee’s principal place of business would be different from his employer’s.54

The Second Circuit reversed, focusing on its holding and rationale in Drucker. It stated that instances where “a taxpayer’s occupation involves two very distinct yet related activities . . . , the focal point approach creates a risk of shifting attention to the place where the dominant portion of his work is accomplished.”55 Therefore, attention should be given to “the nature of [the] business activities, the attributes of the space in which such activities are conducted, and the practical necessity of using a home office to carry out such activities.”56

The commissioner argued that the legislative history of § 280A reflects a specific intent that when such expenses are merely appropriate and helpful Congress clearly did not intend to allow the deduction of such expenses.57 In rejecting this argument, the Second Circuit stated that the legislative intent “merely reflects [a] general concern that the home office be used exclusively for business purposes, [not casually or occasionally], and, in the case of an employee, . . . for the convenience of [the] employer.”58 The Second Circuit reasoned that because the taxpayer conducted the majority of his work at home, and, more importantly, because the home office was essential to the performance of his employment-related activities, the practical necessity of the home office negated any claim that the office was used as a matter of personal convenience.59

In Meiers v. Commissioner,60 the taxpayers owned and operated a self-service laundromat. They maintained an office in a spare bedroom of their residence in which employee work schedules were drafted and bookkeeping was performed.61 The Tax Court found that the facts, holding, and rationale of its earlier decision in Baie controlled and,
therefore, the focal point of the taxpayers's business was the place where income was generated and services rendered, i.e. the laundromat.62

The Seventh Circuit reversed and again criticized the application of the focal point test. The test, the court stated, "places undue emphasis upon the location where goods or services are provided to customers and income is generated, not necessarily where work is predominantly performed."63 Although the court conceded that the focal point test was easy to apply and relatively objective compared to pre-§ 280A standards, those benefits were outweighed by the unfairness of the test and its failure to carry out the "apparent intent" of Congress.64 Instead, the court applied other factors, such as the length of time the taxpayer spends in his home office, the importance of business functions performed there, the business necessity of maintaining a home office, and the cost of establishing the home office. By using this approach, the court sought to "carry out the purpose of Congress to prevent taxpayers from converting non-deductible personal expenses into deductible business expenses while ensuring that taxpayers retain their entitlement to deduct necessary business expenses."65

In response to this criticism, the Tax Court took a step back and recognized the need to re-examine the "focal point" test. In Pomarantz v. Commissioner,66 the Tax Court did not attempt to reconcile the federal courts of appeals decisions since the case could be disposed of under any standard.67 In Pomarantz, the taxpayer, a physician, was a sole proprietor who contracted with an area hospital and provided emergency medical care services thirty-three to thirty-six hours a week.68 Under any test, it was clear that the taxpayer did not conduct activities in his home office of "sufficient importance" to render it his principal place of business.69

The Ninth Circuit affirmed the Tax Court's decision and endorsed its rationale.70 The court pointed out that the taxpayer consistently spent more time at the hospital since the essence of his profession was the "hands-on" treatment of patients at the hospital and his income was generated at the hospital.71

In Soliman v. Commissioner,72 the Tax Court "revisited" the focal point test and its own interpretation of § 280A in light of the federal courts of appeals decisions "for cases in which administration of the taxpayer's business is essential and the only available office space is the taxpayer's home."73 It concluded that, in essence, the focal point test merges the principal place of business exception with the meeting of clients exception.74

In order to resuscitate the exception, the Tax Court adopted the "facts and circumstances" test.75 Soliman, a self-employed anesthesiologist, worked at three Washington, D.C. area hospitals. Because none of the hospitals provided him with an office, he maintained an office at his home in which he performed administrative and organizational activities. After examining all the facts and circumstances, the Tax Court allowed the taxpayer the deduction which under the old "focal point" test would have been denied.76 The court explained:

A principal place of business is not necessarily where goods and services are transferred to clients or customers but is frequently the administrative headquarters of a business. Furthermore, where no other suitable office is provided for essential organizational activities of a business, the fact that goods and services are delivered elsewhere should not per se require a conclusion that a home office is other than the principal place of business. The inquiry is appropriately into the surrounding facts and circumstances.77

The Tax Court's "facts and circumstances" test approach was criticized by one commentator as distorting the plain meaning of the "principal place of business" into something more like the "essential place of business."78 In addition, through the failure of the Tax Court to set forth a comparative analysis of both the time spent at the home office and the activities performed there as compared with other business locations, the Tax Court implied that such other business activities were irrelevant.79

On appeal, the Fourth Circuit affirmed the Tax Court's decision and endorsed the "facts and circumstances" test.80 It noted the significance of factors such as the essential nature of the home office to the taxpayer's business, the amount of time the taxpayer spends there, and the availability of another location available for the performance of the office functions of the business.81 The court rejected the commissioner's argument that this new test renders § 280A meaningless by creating a new loophole for every taxpayer who works at home.82 The court supported its position on the ground that the Tax Court justifiably relied on Proposed Treasury Regulation § 1.280A-2(b)(3).83 Although it recognized that the regulation is not binding on the Tax Court or itself, the Fourth Circuit found that the proposed regulation represents the "spirit" of § 280A by allowing deductions for legitimate home offices.84 The court concluded that the facts and circumstances test merely "replaces the inflexible and potentially unjust 'focal point' test...[and] more accurately reflects the purposes and requirement of § 280A..."85

The Supreme Court granted certiorari and reversed.86 In Commissioner v. Soliman,87 the Court expressly rejected the

The primary factor to consider is the relative importance of the activities conducted at each business location...
Fourth Circuit’s facts and circumstances test because it failed to undertake a comparative analysis of the taxpayer’s various business locations. The Court reached this conclusion relying solely on the “ordinary, everyday sense” of the word “principal” as it is used in § 280A(c)(1)(A). Because the dictionary meaning of “principal” is “most important, consequential, or influential,” it, therefore, “suggests that a comparison of locations must be undertaken.” The Supreme Court made only a brief reference to the legislative history of § 280A. It referred only to the “apparent purpose of § 280A, which is to provide a narrower scope for the deduction . . . .”

Justice Kennedy, the author of the Soliman opinion, set forth a dual standard comparative analysis for determining whether a home office is the principal place of business of the taxpayer. The primary factor to consider is the relative importance of the activities conducted at each business location, taking into account the nature of the taxpayer’s business and those tasks which generate income. Furthermore, in determining the place where the most important functions are performed, great weight is given to the point of delivery of goods and services. If no business location is deemed “principal” under the initial inquiry, then the second factor, the time spent at each business location, “assumes particular significance.” The fact that the taxpayer has no alternative office space or that the activities performed at the home office are essential is irrelevant to the inquiry.

The comparative analysis only answers the question whether the home office qualifies as the principal place of business of the taxpayer. It does not define which location is the principal place of business. Therefore, the Court cautioned the courts and the commissioner not to strain to conclude that a home office qualifies simply because no other location does, for “[t]he taxpayer’s house does not become a principal place of business by default.”

Applying these principles to the facts of Soliman, the Court determined that the home office activities of the doctor were “less important to the business of the taxpayer than the tasks he performed at the hospital.” Furthermore, because the doctor spent only ten to fifteen hours a week at the home office as compared to the thirty to thirty-five hours a week he spent at the three hospitals, the time spent at home was not significant enough to render the home office his principal place of business. Therefore, in light of all the circumstances, the taxpayer’s home office did not qualify as the principal place of business for purposes of the deduction.

In his concurring opinion, Justice Blackmun agreed that the language of the statute requires the comparative analysis enunciated by Justice Kennedy. If Congress intended a different result as a matter of tax policy, then Congress should change the language of the statute.

Justices Thomas and Scalia, although concurring in the result, cautioned that the Soliman comparison test is too subjective and would be difficult to apply. They endorsed the focal point test because it provides a clear and reliable method for determining the principal place of business of the taxpayer.

Commissioner v. Soliman is the final word on the home office deduction. The complexity and subjectiveness of the comparative analysis test set forth in Soliman, however, frustrates the intent of Congress to provide “definitive rules” governing the standards for taking a home office deduction. Justice Stevens, author of the only dissenting opinion, believed that, based on a comparison of the Soliman opinion and the legislative goals of the statute, the majority misread the statute and deviated from the congressional purpose of § 280A.

Congress sought to increase the objectivity and ease of administration of the home office deduction with the enactment of § 280A. The two prong test set forth in Soliman, however, requires a unique factual determination on a case-by-case basis. Such a test is too subjective and creates uncertainty as to how to apply and weigh these factors. For example, it is unclear how the Court would have held if Dr. Soliman had spent only ten to fifteen hours a week at the three hospitals but thirty to thirty-five hours a week in his home office. Justice Thomas pointed out in his concurrence, “[the Supreme Court] granted certiorari to clarify a recurring question of tax law that has been the subject of considerable disagreement.

Unfortunately, the issue is no clearer today than it was before [the Court] granted certiorari.

In addition, the Court failed to give the “principal place of business” exception any independent significance. By placing “great weight” on the “point of delivery of goods and services,” the Court created the “focal point” dilemma recognized by the Tax Court in its Soliman decision. Furthermore, the home office can be considered the principal place of business only when those goods and services are rendered at the home office, thus merging once again the meeting clients exception and the principal place of business exception. This surely is contrary to the intent of Congress to give the “principal place of business” exception independent significance by enacting not two but three exceptions.

Most importantly, Soliman is just bad tax policy. The decision creates the danger of treating similarly situated taxpayers differently. For example, assume Taxpayer A and Taxpayer B are self-employed anesthesiologists who contract their services out to area hospitals. Taxpayer A builds
a small one-room structure in his large, suburban backyard. Taxpayer B lives in a three room condominium in the city. None of the hospitals provides offices for the taxpayers. Each spends approximately thirty hours a week at the hospitals and fifteen hours a week at his home offices taking care of the administration of his business. Taxpayer A takes the home office deduction falling neatly within the separate structure exception pursuant to § 280A(c)(1)(B). Taxpayer B, on the other hand, does not take the deduction because of the Soliman decision.108

The inherent fallacy of Soliman is evident. In assessing the availability of the deduction, it is illogical to analyze the activities which the taxpayer performs at home in relation to activities performed elsewhere. The taxpayer who can construct a separate structure gets the deduction ipso facto regardless of the activities performed in the structure. The Soliman test thus creates an inequity.

As evidenced by the legislative history of § 280A, Congress clearly intended to curb the abuse of the “appropriate and helpful” standard by employees. However, Congress did not intend to unfairly deny a benefit to the self-employed, which Soliman operates to do.109 Furthermore, the facts of Soliman dealt with a self-employed taxpayer for whom no alternative office space existed at the three other business locations and for whom the home office was essential. Surely, Congress did not intend the statute to compel the self-employed to rent office space. Instead, a self-employed person’s efficient use of his resources should be encouraged by tax policy.110 Justice Stevens concluded that a self-employed taxpayer should qualify for the deduction when his home office is “the only place of his trade or business.”111

In response to the subjective comparison set forth in Soliman, two commentators suggest careful planning in order to qualify prospectively for the deduction.112 A taxpayer can simply locate his office outside the home and avoid the ugly Soliman comparison altogether or use a separate structure on his residential property for his home office, thereby falling into the separate structure exception.113 These suggestions, however, are financially impractical for those taxpayers who are trying to decrease overhead expenses by locating their offices in their homes.114 The best strategy, the commentators suggest, is for the taxpayer to design his business to allow the taxpayer to meet patients, clients, and customers at the taxpayer’s home. In that way, the taxpayer fits neatly into the meeting with clients exception and, again, avoids Soliman altogether.115

As a result of the Supreme Court decision in Soliman, it is unclear whether the principal place of business debate will continue. It is clear, however, that Congress is responsible for any further clarification or definition. The change mandated by Soliman is simple. The legislative history provides the necessary objective standards in determining the allowance of a home office deduction. All taxpayers, employees and non-employees, engage in the
definitive standard for the allowance of the home office deduction. In doing so, Congress sought to curb excessive claims by employees who found it personally convenient to take work home. Congress did not intend to deny the benefit which existed prior to 1976 for those self-employed taxpayers.

The recent interpretation by the Supreme Court of the principal place of business exception clearly frustrates the intent of Congress by setting forth a complex and subjective standard which has the potential to deny tax equity to similarly situated taxpayers rather than a definitive and objective standard. The only remedy to this judicial malady is legislative action. Until any such action takes place, taxpayers must either creatively design their home offices to comply with the statute in light of the Soliman decision or take steps to avoid the statute altogether.

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Endnotes:
1See I.R.C. § 262 (1986). Compare I.R.C. § 24 (a)(1) (1939). The statute states as follows: “Except as otherwise provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.” I.R.C. § 262. Deductions are a matter of legislative grace and it is within the power of Congress to grant or deny them. Max Sobel Wholesale Liquors v. Commissioner, 630 F.2d 670 (9th Cir. 1980). (Unless otherwise indicated, all references are to the Code as amended in 1986).

2See I.R.C. § 162(a) (1986). Compare I.R.C. § 162(a) (1954). The statute provides: “There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred by the taxpayer during the taxable year in carrying on any trade or business . . . .” I.R.C. § 162(a). This section was primarily intended to allow recovery for recurring expenditures where the benefit derived from the payment is realized and exhausted within the same taxable year. Stevens v. Commissioner, 388 F.2d 298 (6th Cir. 1968).


4I.R.C. § 280A (1986). Section 280A states in pertinent part: (a) General Rule - Except as otherwise provided in this section in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence. (c) Exceptions for certain business or rental use; limitation on deduction for such use.- (1) Certain business use.- Subsection (a) shall not...
apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis:

(A) [as] the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to is for the convenience of his employer. Id.

3U.S. Dep't of Treas., Pub. No. 587, Business Use of Your Home, at 4-5. Landscaping and lawn care costs are expressly nondeductible expenses. Id.
4Id. at 3. Also, the IRS suggests that if all the rooms in the home are approximately the same size, then a taxpayer can simply divide the total expenses by the total number of rooms in order to calculate the deductible expenses. Id.
5Id. at 5. Through the Tax Reform Act of 1986, Congress clarified what it meant by gross income. Gross income equals gross revenues derived from the home office business minus the "direct" expenses, e.g., secretarial, telephone, copy machine, and facsimile expenses. For example, if a taxpayer has derived $3,000 in gross revenues from his business in one taxable year and has incurred $2,000 in direct expenses, his gross income is $1,000 and, therefore, his home office deduction is limited to $1,000 for that taxable year. This prevents taxpayers from creating a net business loss through the implementation of the home office deduction. However, the Code does currently allow the taxpayer to carry over the disallowed portion of the home office deduction to the following taxable year. See Price Waterhouse, The Price Waterhouse Guide to the New Tax Law 173-77 (1986).
7I.R.C. § 262 (1954). See also supra note 1 and accompanying text.
8I.R.C. § 162(a) (1954). See also supra note 2 and accompanying text.
9Treas. Reg. § 1.262-1(b)(3) (1992). The regulation states in full: Expenses of maintaining a household, including amounts paid for rent, water, utilities, domestic service, and the like, are not deductible. A taxpayer who rents a property for residential purposes, but incidentally conducts business there (his place of business being elsewhere) shall not deduct any part of the rent. If, however, he uses part of the house as his place of business, such portion of the rent and other similar expenses as is properly attributable to such place of business is deductible as a business expense. Id.
13Blackmer v. Commissioner, 70 F.2d 255, 256 (2d Cir. 1934). See also Newi v. Commissioner, 432 F.2d 998, 1000 (2d Cir. 1970). Although the IRS complained that such a construction "would open the doors for a business deduction to any employee who would voluntarily choose to engage in an activity at home which conceivably could be helpful to his employer's business . . ." the Second Circuit responded, "[t]his case opens the doors just long enough to enable this [t]axpayer to pass through it into his cloistered study to pursue his business." Newi, 432 F.2d at 1000.
14The projected revenue effect of § 601 of the Tax Reform Act of 1976 was $207 million in 1977, increasing progressively by 1981 to $305 million in additional tax revenue. Section 601 enacted several changes to the Code relating to business-related individual income tax deductions, including the home office deduction, for expenses attributable to homes, rental homes, or vacation homes, etc. Tax Reform Act of 1976, supra note 4.
16Id. at 157.
19H.R. Rep. No. 658, supra note 9, at 160. S. Rep. No. 938, supra note 9, at 147-148. In support thereof, the House and Senate reports accompanying the proposed legislation cite and discuss at some length Bodzin v. Commissioner, 60 T.C. 820 (1973), rev'd, 509 F.2d 679 (4th Cir. 1975). Bodzin, an attorney-advisor employed by the Interpretive Division of the Office of Chief Counsel, Internal Revenue Service, claimed a business deduction for the small office which he maintained in his apartment. Although his employer provided him with an office close to home, the taxpayer found it convenient to work at home in the evenings and on the weekends. The Tax Court held that the statute did not require a strict interpretation that the employer require that the employee provide his own work facilities. Instead, the Tax Court held that the applicable test for determining the appropriateness of the deduction in an employee's residence is "whether . . . the maintenance of an office in the home is appropriate and helpful under all circumstances." 60 T.C. at 825 (emphasis added)(citations omitted).

The Court of Appeals for the Fourth Circuit reversed the Tax Court decision concluding that the expenses incurred by the taxpayer at home were personal expenses which were not deductible and, therefore, it followed that an inquiry into the "appropriateness" and "helpfulness" of those expenses was not necessary. 509 F.2d at 681. However, the court suggested that the outcome of Bodzin might have been different if the taxpayer-employee could have demonstrated that his office provided for him by his employer was not available at all times or that his employer's office was not suitable in light of the duties required of the employee. Id.
Rev. Rul. 62-180, supra note 9, at 148. In addition to the two exceptions proposed and later approved by Congress, the Senate amendment proposed three other allowable deductions for the portion of a dwelling which is used exclusively and on a regular basis (a) if the dwelling is the sole fixed location of the taxpayer's trade or business of selling goods or services at retail or wholesale and is used in connection with the sale of goods or services, (b) if a separate structure which is not attached to the dwelling unit is used in connection with the taxpayer's trade or business, or (c) if the employer provides no office or fixed location for the use of the employee in the employer's trade or business (in connection with such trade or business). Id. Why the Conference Committee rejected the first and third exceptions proposed by the Senate is unclear.

That portion of the residence must be used by the taxpayer for business purposes on a regular basis. Any incidental or occasional use for personal purposes as well, the exclusivity test is not met. H.R. Rep. No. 658, supra note 9, at 148-49. Two exceptions to the "exclusivity" requirement are (1) less than exclusive storage of inventory which the taxpayer intends to sell at wholesale or retail and (2) a separate structure which is not attached to the dwelling unit which is used in connection with the taxpayer's trade or business, or (c) if the employer provides no office or fixed location for the use of the employee in the employer's trade or business (in connection with such trade or business). Id. Why the Conference Committee rejected the first and third exceptions proposed by the Senate is unclear.


Exclusive use means that a taxpayer must use a specific part of his residence solely for the purpose of carrying on his trade or business. Therefore, where that portion is used by the taxpayer for personal purposes as well, the exclusivity test is not met. H.R. Rep. No. 658, supra note 9, at 161. S. Rep. No. 938, supra note 9, at 148 (emphasis added). Two exceptions to the "exclusivity" requirement are (1) less than exclusive storage of inventory which the taxpayer intends to sell at wholesale or retail and (2) a taxpayer who uses the home office as a day care facility. U.S. Dep't of Treas., supra note 6, at 3.

That portion of the residence must be used by the taxpayer for business purposes on a regular basis. Any incidental or occasional use for business purposes of an exclusive portion of the dwelling unit renders the deduction disallowed. H.R. Rep. No. 658, supra note 9, at 161. S. Rep. No. 938, supra note 9, at 148-49.

I.R.C. § 280A(c)(1)(A)-(C). See also supra note 5.


Section 280A(c)(1)(A) was amended in 1981. This amendment substituted the current language of the statute, "the principal place of business for any trade or business of the taxpayer" for "as the taxpayer's principal place of business." Pub. L. No. 97-119, 95 Stat. 1642 (1981).

74 T.C. 105 (1973).

Id. at 109. (emphasis added). After a brief discussion of the legislative history of § 280A, the Tax Court posits, "Nothing in the legislative history of section 280A or the commissioner's regulations furnishes any guidance as to the scope of the 'principal place of business' concept in the context of § 280A. We therefore take it that what Congress had in mind was the focal point of a taxpayer's activities . . . ." Id. Without any support or authority, such a conclusion was clearly arbitrary. The focal point does, however, provide an objective and workable standard for making the determination of whether a home office qualifies as the principal place of business. Id. See also Meiers v. Commissioner, 782 F.2d 75, 78 (7th Cir. 1986).

Baie, 74 T.C. at 105-06, 109.

See cases cited supra note 35.


79 T.C. at 609.

Id. at 612 (citations omitted).

Id. at 613-14. Since the Met's business depended upon the quality of its performers, the retention of the taxpayer's job really depended upon his performance at the Met rehearsals and public performances. Id. at 614.


Id. at 69-70.

Id. at 70 (quoting Sharon v. Commissioner, 69 T.C. 515, 523 (1976)).

Id. at 69.

47 T.C.M. (CCH) 520, rev'd, 751 F.2d 512 (2d Cir. 1984).

47 T.C.M. at 522. Although the professor was provided with office space on campus, he was forced to share it with other faculty members and no typewriter was provided him. Id. at 521.

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the Tax Court’s Treatment of the Home Office Deduction, 7
hospitals, not his home office. The focal point test his principal place of business would be the
three hospitals and those activities generated his income, under
761d. The court explained: “Goods and services could be trans-
fered to customers and clients at the taxpayer’s home, the ‘focal
point,’ only if the taxpayer meets clients or customers in his
home.”

Therefore, the home office was essential to the performance of the
duties required of this university professor. Id. at 513.

Meiers v. Commissioner, 782 F.2d 78, 79 (emphasis added)
(citing Weissman v. Commissioner, 47 T.C.M. (CCH) 520 (1983),
rev’d, 751 F.2d 512, 514). See supra notes 55-56 and accompa-
nying text.

Meiers, 782 F.2d at 79.

Id. (citations omitted).

52 T.C.M. (CCH) 599 (1986), aff’d, 867 F.2d 495 (9th Cir.
1988).

52 T.C.M. at 602.

Id. at 600.

Id. at 602.


Id. at 497-98. See also 52 T.C.M. at 602.


Id. at 25.

Id. The court explained: “Goods and services could be trans-
ferred to customers and clients at the taxpayer’s home, the ‘focal
point,’ only if the taxpayer meets clients or customers in his
home.” Id.

Id.

Id. Because Soliman rendered the majority of his services at the
three hospitals and those activities generated his income, under
the focal point test his principal place of business would be the
hospitals, not his home office.

Id. at 25-26 (citations omitted).

Kathleen Low, Soliman v. Commissioner: Recent Changes in
the Tax Court’s Treatment of the Home Office Deduction, 22 Loy.

Id. at 291. In place of the facts and circumstances test, the
commentator proposes an objective two prong test. First, if the
taxpayer spends the majority of time at the home office, then the
taxpayer takes the deduction. If the taxpayer spends less than the
majority of his time at the home office, then the court looks to the
location where the “income generating” tasks are performed. If
they take place at home, then the taxpayer can take the deduction.
If the taxpayer simply performs administrative duties at home
which the commentator does not consider “income generating,”
then the taxpayer’s home office would not qualify as a principal
place of business. Id. at 292-95.


Id. at 54.

Id.

Id. at 54-55 (citing Proposed Treas. Reg. § 1.280A-2(b)(3), 45
Fed. Reg. 52,399 (as amended in 1983). The regulation states in
pertinent part:

(3) Determination of principal place of business. When
a taxpayer engages in a single trade or business at more
than one location, it is necessary to determine the
taxpayer’s principal place of business in light of all the
facts and circumstances. Among the facts and circum-
stances to be taken into account in making this determi-
nation are the following:

(i) The portion of the total income from the business
which is attributable to activities at each location.

(ii) The amount of time spent in activities related
to that business at each location; and

(iii) The facilities available to the taxpayer at each
location for purposes of that business. Id.

Id. at 54.

Id. at 55. The only “purpose” to which the Fourth Circuit refers
is the prevention of abuse of the deduction by taxpayers for
expenses which are “appropriate and helpful.” Id. at 53-54.


113 S.Ct. at 703-04.

Id. at 705-06 (citing Malat v. Riddell, 383 U.S. 569, 571 (1966)
(per curiam) (quoting Crane v. Commissioner, 331 U.S. 1, 6
(1947))).

Id. at 706 (emphasis added).

Id. at 705.

Id. at 706. Although this is quite reminiscent of the “focal
point” test, the Court cautioned that the “metaphorical quality”
of the phrase can be misleading and that no one test is determi-
native in every case. The Court still regards the point of delivery
as “an important indicator of the principal place of business.” Id.

Id. at 707.

Id.

Id. at 707-08.

Id.

Id. at 708.

Id.

Id.

Id. at 709 (Blackmun, J., concurring).

Id. at 709-11 (Thomas & Scalia, JJ., concurring).

See supra note 9 and accompanying text.
103 S.Ct. at 711 (Stevens, J., dissenting).
104 See supra note 9.
105 S.Ct. at 711 (Thomas & Scalia, J.J., concurring).
106 Id. at 710 (Thomas & Scalia, J.J., concurring).
107 See supra note 92. See also supra notes 72-74 and accompanying text.
108 Taxpayer B is advised against taking the deduction because of the similarity of this position to that of the taxpayer in Soliman. Because his more important activities are performed at the hospital and he spends less than a substantial amount of time at his home office, the deduction, under Soliman, would be denied.
109 S.Ct. at 711 (Stevens, J., dissenting).

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