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for the approval and control of closing attorneys that will reduce the risks that irresponsible or unqualified attorneys will misappropriate, misuse, or mishandle closing funds. Finally, if the purchaser insists on retaining his or her own attorney, regardless of approval by the insurer, the title-insurance carrier shall advise the purchaser of the risk of attorney misappropriation, and indicate that it is a risk that is or may be covered by the title-insurance policy.

The court realized that these directives were new, and that the matters addressed were complex, controversial, and relatively unsettled. Therefore, the court directed the Supreme Court's Committee on Civil Practice to confer with experts in the legal profession and the real estate field, to review and study the espoused directives and to provide the court with its recommendations. ♦

Joyce E. Raupp

Physician Cannot Deduct Home Office That Is Not Principal Place of Business

In *Commissioner v. Soliman*, 113 S.Ct. 701 (1993), the United States Supreme Court held that a self-employed physician was not entitled to tax deductions for a home office which did not qualify as his principal place of business. The Court, in reversing the Court of Appeals for the Fourth Circuit, limited the definition of a principal place of business to that location where the physician spent the most time providing actual medical treatment.

Physician's Use of Home Office

Nader E. Soliman, an anesthesiologist, spent thirty to thirty-five hours per week administering anesthesia and post-operative care in three hospitals. None of these hospitals provided him with an

office. In addition, he spent two to three hours per day at home working in a room used exclusively as an office. While Soliman did not meet with patients in this office, he performed a variety of business tasks there, including preparation, billing, professional phone contacts, and continuing education.

In 1983, Soliman claimed federal income tax deductions for the portion of his household expenses attributable to his home office. The Internal Revenue Service Commissioner (Commissioner) disallowed these deductions, ruling that the home office was not Soliman's principal place of business under 26 U.S.C. Section 280A(c)(1)(A).

Soliman petitioned the Tax Court for review of the Commissioner's decision. The Tax Court reversed, holding that Soliman's home office qualified as his principal place of business. In so doing, the court abandoned the "focal point" test which identified the place where services were performed and income generated as the principal place of business. The Court of Appeals for the Fourth Circuit affirmed, adopting the Tax Court's test. This test involved evaluating the home office as the principal place of business in terms of its essential functions to the taxpayer's business, the amount of time the taxpayer spent there, and the availability of other locations for performing the business office functions.

The Commissioner appealed this ruling to the United States Supreme Court. Due to the different interpretations of the statute among circuits, the Court granted *certiorari* in order to address the issue of whether a home office qualifies as a taxpayer's principal place of business under 26 U.S.C. Section 280A(c)(1)(A).

Principal Place of Business Requires a Comparative Analysis

The Supreme Court first looked to the language of the revenue statute. Section 162(a) of the Internal Revenue Code allows a taxpayer to deduct all ordinary and necessary business expenses. However, Section 280A(c)(1)

qualifies this provision, prohibiting deductions attributable to the taxpayer's residence. To deduct expenses attributable to the business use of the their homes, taxpayers must qualify for one of the three exceptions contained in Section 280A(c)(1). Section 280A(c)(1)(A) allows for a deduction if the home office qualifies as the taxpayer's principal place of business. In examining the statute, the Court noted that the applicable language does not refer to the principal office. Instead, it refers to the principal location, suggesting a comparative analysis of all the places where business is transacted.

The Court rejected the application of an objective formula, known as the focal point test, for deciding whether a home office is the principal place of business. The focal point test determines the principal place of business as that place where business contacts occur. Nevertheless, the Court found this test misleading as it did not consider all of the relevant facts on a case by case basis.

The Court recommended two primary considerations in deciding whether a taxpayer's home office is his principal place of business. In making its decision, the trier of fact must consider the relative importance of the functions performed at each business location, as well as the amount of time spent at each location.

The Court stated that the first consideration requires a comparative analysis of functions performed at each business location. The site where goods are delivered and services rendered is necessary, but not sufficient, in determining whether the home office is the principal place of business. Furthermore, if the nature of the business requires that the services be rendered or the goods be delivered at a facility with unique or special characteristics, additional weight is given to the facility as the principal place of business.

Second, the Court stated that if the comparative analysis yielded no definitive answer as to the principal place of business, the factfinder should compare the amount of time spent at the

home office with the time spent at each of the other locations where business is transacted. If the comparative analysis required by the statute proves inconclusive, the Court cautioned the trier of fact against finding the home office to be the principal place of business by default.

In Soliman's case, the Court maintained that the nature of Soliman's anesthesiology practice required actual treatment at hospitals that contained the special facilities to accommodate the demands of his practice. The fact that the functions performed in the home office were necessary to Soliman's professional activities was not controlling. Further, the Court found that the unavailability of alternative office space was not a consideration in determining whether the home office was the principal place of business. While acknowledging that Soliman planned and studied at his home office in advance of performing treatment, the Court declared the actual treatment in the hospitals was the essence of the professional service. Therefore, the home office activities were comparatively less important to Soliman's anesthesiology practice than the treatment of his patients at the hospitals. Moreover, a comparison between time spent at his home office (ten to fifteen hours per

week) and time spent at the three hospitals (thirty to thirty-five per week) did not sustain a finding that Soliman's home office was his principal place of business.

In reversing the Fourth Circuit, the Supreme Court criticized the court for its failure to perform a comparative analysis of both the relative importance of the functions performed and time spent at each business location. The Court, in making such an analysis, concluded that Soliman's home office did not qualify as his principal place of business. As a result, the Court held that Soliman's home office deduction was not allowed under 26 U.S.C. Section 280A(c)(1)(A).

Concurrences Question Clarity of Home Office Deduction Determination

Justice Blackmun, joining the Court's opinion, noted that the language of the statute, as written, currently bars a home office deduction for anything other than the principal place of business. Blackmun invited Congress to change the statute's language if it desired a different result.

Justice Thomas, joined by Justice Scalia, concurred with the holding. However, he criticized the Court for failing to provide a determinative test

for evaluating the principal place of business. Thomas stated that the two-part comparative analysis test announced by the Court complicated rather than clarified the nature of the principal place of business. He advocated utilizing the focal point test which pinpoints a taxpayer's principal place of business as that place where goods or services are rendered.

Dissent Argues That Majority Denied Taxpayers a Benefit

In his dissent, Justice Stevens criticized the majority's misreading of the term "principal place of business" contained in Section 280A. Stevens stated that the Court's reading deviated from congressional intent and denied benefits to taxpayers. He reasoned that the principal place of business exception, by omitting any reference to meeting with clients, intended to include deductions for a home office where the taxpayer would not ordinarily have this contact. Stevens concluded that when there is no demonstrated abuse of the statute, a home office deduction should be allowed, because it encourages a self-employed person to make efficient use of her resources. ♦

Rosaire M. Hall

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