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Soliman v. Commissioner: Recent Changes in the Tax Court's Treatment of the Home Office Deduction

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I. INTRODUCTION

Although many occupations require some work to be done at home, most people recognize that this alone does not entitle them to a tax deduction for the expenses attributable to their home offices. In fact, the deductibility of home office expenses is a complex matter that is currently the subject of a major controversy between the courts and the Internal Revenue Service (IRS).

Section 280A(a) of the Internal Revenue Code (Code) provides, as a general rule, that no deduction shall be allowed with respect to the use of a taxpayer's residence. An exception to the general rule, section 280A(c), permits the deduction of home office expenses if a portion of the home is used exclusively on a regular basis as the taxpayer's principal place of business; a place where the taxpayer meets with patients, clients, or customers in connection with his business; or is a separate structure unattached to his residence. This Note focuses on the first of these conditions: namely, the principal place of business exception.

Since 1980, the Tax Court has defined a taxpayer's principal place of business as the place that is the "focal point" of his business activities. The "focal point" is defined as the location where goods and services are provided to customers and revenues are generated. Although the Tax Court has applied the focal point test consistently, the circuit courts have reversed the Tax Court's findings under this test on three occasions. In each of these cases, the circuit courts emphasized the significant amount of the taxpayer's total working time spent at home.

4. Meiers v. Commissioner, 782 F.2d 75 (7th Cir. 1986); Weissman v. Commissioner, 751 F.2d 512 (2d Cir. 1984); Drucker, 715 F.2d 67 (2d Cir. 1983); see also infra text accompanying notes 40-62.
5. Meiers, 782 F.2d at 79 ("a major consideration ought to be the length of time the taxpayer spends in the home office"); Weissman, 751 F.2d at 517 (eighty percent of each working week spent at home office); Drucker, 715 F.2d at 69 (more than half of work week spent at home office).
In *Soliman v. Commissioner*, the Tax Court responded to these appellate decisions by severely limiting the applicability of the focal point test and broadening its interpretation of a principal place of business. The court held that the principal place of business test can be met when: (1) a taxpayer's home office is essential to his business; (2) the taxpayer spends substantial time there; and (3) there is no other location available in which to perform the office functions of the taxpayer's business.

The IRS responded swiftly to *Soliman* by issuing an information release stating that it will not follow the Tax Court's decision. The IRS cautioned taxpayers not to rely on the decision, proclaiming that the opinion is contrary to the law and creates an unclear standard.

This Note analyzes the Tax Court's decision in *Soliman* and discusses potential problems with the court's interpretation of the principal place of business exception. First, this Note provides a brief overview of the tests that the Tax Court previously has used to determine the deductibility of home office expenses. Next, in the context of these decisions, it provides a critical analysis of the court's opinion in *Soliman* and identifies specific weaknesses in its rationale. Finally, this Note proposes an objective test in which the time spent and the nature of the activities performed at the home office are compared to the time spent at other business locations to determine whether a taxpayer's home office is the taxpayer's principal place of business.

II. BACKGROUND

A. Enactment and Early Interpretation of Section 280A

Deductions are a matter of legislative grace. As such, Congress has granted taxpayers deductions for their business expenses, and denied similar deductions for personal living expenses. This seemingly simple dichotomy between business and personal expenses is complicated when a taxpayer uses part of

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7. Id. at 29.
9. Id. The IRS filed a motion for reconsideration of the opinion, which was denied on April 13, 1990.
11. I.R.C. § 162 (1988) (allows a deduction for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business”).
12. Id. § 262(a) (“except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses”).
his residence for business purposes. In accordance with its overall scheme of disallowing deductions, Congress generally has viewed home office expenses as personal, unless the taxpayer can satisfy certain statutory provisions.

Prior to the enactment of section 280A, deductions for home office expenses were governed by sections 16213 and 16714 of the Code. Pursuant to these sections, and within the constraints of section 262,15 the Tax Court formerly permitted a deduction for home office expenses if the home office was “appropriate and helpful” to the taxpayer in performing his duties.16 Under this standard, home office deductions were permitted if the home office was more practical than the work office, even when the employer provided a suitable work office.17

Predictably, this liberal standard for distinguishing business and personal use soon engendered attempts by taxpayers to deduct personal living expenses under the guise of ordinary and necessary business expenses.18 In response, the Tax Court recognized the superiority of the section 262 disallowance provision over section 162 and refined the appropriate and helpful standard. In Sharon v. Commissioner,19 the court stated that, after determining whether expenses were appropriate and helpful to the taxpayer’s employment, it then had to balance all the facts in the case, and disallow any expenses that were essentially personal or merely for the con-

13. Id. § 162; see also supra note 11 and accompanying text.
14. Id. § 167(a) (provides for a deduction for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income).
15. Id. § 262; see also supra note 12 and accompanying text.
16. Newi v. Commissioner, 28 T.C.M. (CCH) 686 (1969), aff’d, 432 F.2d 998 (2d Cir. 1970). In Newi, the taxpayer was a salesman of television time who maintained an area in his apartment that he used exclusively for viewing television advertisements, reviewing notes, and studying various research materials and ratings for approximately three hours per night. The appellate court affirmed the Tax Court’s allowance of the taxpayer’s home office deduction as an ordinary and necessary business expense. The court also reasoned that the maintenance of the office was “appropriate and helpful” to the taxpayer’s business and returning to his work office at night would have been impractical. Newi, 432 F.2d at 1000.
17. Id.
18. Sharon v. Commissioner, 66 T.C. 515 (1976), aff’d per curiam, 591 F.2d 1273 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979); Bodzin v. Commissioner, 60 T.C. 820 (1973), rev’d, 509 F.2d 679 (4th Cir. 1975), cert. denied, 423 U.S. 825 (1975). Bodzin was an attorney who maintained an office in his home, although his work office was available and nearby. The Tax Court allowed the deduction under the appropriate and helpful standard. The appellate court reversed and held that the expense was a personal expense, which was nondeductible pursuant to section 262. Bodzin, 509 F.2d at 681.
19. 66 T.C. 515, 525 (1976), aff’d per curiam, 591 F.2d 1273 (9th Cir. 1978) (with facts very similar to those in Bodzin, the Tax Court disallowed the deduction based on a finding that the expenses were essentially personal).
convenience of the taxpayer.\textsuperscript{20}

Congress reacted to the uncertainty in the classification of home and business expenses by enacting section 601 of the Tax Reform Act of 1976,\textsuperscript{21} which added section 280A to the Code. Section 280A provides as a general rule that home office expenses are not deductible, except to the extent that they are specifically permitted within that section.\textsuperscript{22} Section 280A(c)(1) designates three exceptions to this rule of nondeductibility.\textsuperscript{23} Pursuant to these exceptions, home office expenses are deductible if a portion of the home is used exclusively on a regular basis as: (1) the principal place of business of the taxpayer;\textsuperscript{24} (2) a place where the taxpayer meets with patients, clients, or customers; or (3) a separate structure unattached to the taxpayer's residence.\textsuperscript{25}

Section 280A effectively rejected the Tax Court's appropriate and helpful test by restricting the deductibility of home office expenses to three discrete exceptions and eliminating any consideration of the taxpayer's convenience. This stricter standard for the deductibility of home office expenses was intended to prevent what Congress considered to be the widespread deduction of otherwise nondeductible personal living expenses, simply because the taxpayer performed some portion of his business activities in his per-

\textsuperscript{20} Sharon, 66 T.C. at 524-25.
\textsuperscript{22} I.R.C. § 280A(a) (1988).
\textsuperscript{23} Specifically, this section provides:
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 his trade or 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 in the preceding sentence is for the convenience of his employer.
Id. § 280A (c)(1).
\textsuperscript{24} As originally enacted, section 280A(c)(1)(A) read "as the taxpayer's principal place of business." I.R.C. § 280A (c)(1)(A) (1988). The Tax Court interpreted this language as indicating that a taxpayer could have more than one principal place of business if he had more than one trade or business. Curphey v. Commissioner, 73 T.C. 766 (1980). The IRS expressed its disagreement with the court's decision stating that a taxpayer could only have one principal place of business. Priv. Ltr. Rul. 80-30-024 (1980). Congress settled this debate in favor of the Tax Court by amending section 280A(c)(1)(A) to its current form. Pub. L. No. 97-119, § 113, 95 Stat. 1635, 1642 (1981).
Congress expected that section 280A would provide the courts and taxpayers with definitive rules in order to resolve the conflict that existed between the courts' decisions under the appropriate and helpful test and the IRS's more conservative position as to the correct standard governing the deductibility of expenses attributable to the business use of a taxpayer's residence. Despite this stated objective, Congress failed to provide any guidance as to the scope of the phrase "principal place of business" as used in section 280A(c)(1)(A).

B. The Focal Point Test

In Baie v. Commissioner, the Tax Court responded to Congress's omission by developing the "focal point" test to determine the location of a taxpayer's principal place of business. In Baie, the taxpayer operated a food stand less than a mile from her home. As her business expanded, she required more space to prepare her products than the food stand provided. Consequently, she used space in her kitchen at home to prepare, store, and package food for her business. In addition, the taxpayer used a second bedroom in her home exclusively for office space. The Tax Court disallowed her home office deduction because it found the stand, not the home office, to be the focal point of her activities. The court noted that the sale of the food was what generated income, and these sales occurred at the food stand, not at her home.

The focal point is the place where goods or services are provided to customers or clients, and where income is produced. The number of hours spent on various activities and in different loca-
tions is not controlling in determining the taxpayer's focal point.\textsuperscript{37} Although the Tax Court consistently has applied the focal point test in evaluating the deductibility of home office expenses,\textsuperscript{38} on three occasions appellate courts have reversed the Tax Court's denial of the deductions.\textsuperscript{39}

In the first of these cases, \textit{Drucker v. Commissioner},\textsuperscript{40} the taxpayer was a concert musician with the New York Metropolitan Opera (Met) who used a room in his apartment exclusively as a practice studio for thirty hours per week.\textsuperscript{41} The Met did not provide the taxpayer with a practice area, and practice was essential to maintaining his position with the Met.\textsuperscript{42} The Tax Court found the Met auditorium, where performances were held, to be the focal point of the taxpayer's activities and consequently disallowed the taxpayer's home deductions.\textsuperscript{43} The Second Circuit Court of Appeals reversed the Tax Court's finding and held that his home studio was the focal point of his employment-related activities, based on the time and importance of the taxpayer's activities there.\textsuperscript{44}

Subsequently, in \textit{Weissman v. Commissioner},\textsuperscript{45} the Second Circuit solidified its stance and elaborated on \textit{Drucker}'s criticism of the focal point test. Weissman was a professor at the City University of New York. In addition to teaching, meeting with students, and grading examinations, Weissman was required to do an "unspecified amount" of research and writing in order to retain his teaching position.\textsuperscript{46} Because the office that the university provided to him was unsuitable, Weissman maintained an office at his apartment, which he used exclusively for work-related research and writing.\textsuperscript{47} He spent eighty percent of each working week at his

\begin{itemize}
\item \textsuperscript{37} See Green v. Commissioner, 78 T.C. 428, 433 (1982), rev'd, 707 F.2d 404 (9th Cir. 1983); Jackson v. Commissioner, 76 T.C. 696, 700 (1981).
\item \textsuperscript{38} See, e.g., Lopkoff v. Commissioner, 45 T.C.M. (CCH) 256, 258 (1982) (focal point of Veterans Administration administrative assistant is hospital); Trussel v. Commissioner, 45 T.C.M. (CCH) 190, 191-92 (1982) (focal point of judge is the courtroom); Moskovit v. Commissioner, 44 T.C.M. (CCH) 859 (1982) (focal point of teacher is school).
\item \textsuperscript{39} See Meiers v. Commissioner, 782 F.2d 75 (7th Cir. 1986); Weissman v. Commissioner, 751 F.2d 512 (2d Cir. 1984); Drucker v. Commissioner, 715 F.2d 67 (2d Cir. 1983).
\item \textsuperscript{40} 715 F.2d 67 (2d Cir. 1983).
\item \textsuperscript{41} \textit{Id.} at 68.
\item \textsuperscript{42} \textit{Id.} at 69.
\item \textsuperscript{43} \textit{Drucker}, 79 T.C. at 613.
\item \textsuperscript{44} \textit{Drucker}, 715 F.2d at 69. The court noted that less than half of the taxpayer's working time was spent at the auditorium. \textit{Id.}
\item \textsuperscript{45} 751 F.2d 512 (2d Cir. 1984).
\item \textsuperscript{46} \textit{Id.} at 513 (quoting \textit{Weissman}, 47 T.C.M. (CCH) 520, 521 (1983)).
\item \textsuperscript{47} \textit{Id.}
home office. The Tax Court applied the focal point test and found that the school was Weissman's principal place of business.

The Second Circuit rejected the Tax Court's use of the focal point test and held that Weissman's home office was his principal place of business, based on the time spent and the importance of the activities performed there.

The court found that, although the focal point test may be helpful in many cases, it is not appropriate in all cases. Specifically, when a taxpayer's occupation involves two very distinct yet related activities, such as practice and performance or writing and teaching, the focal point approach creates a risk of shifting attention to the place where a taxpayer's work is more visible, instead of the place where the "dominant portion" of his work is accomplished.

The court stated that in each case the determination of a taxpayer's principal place of business depends on three factors: (1) the nature of his business activities; (2) the attributes of the space in which these activities can be conducted; and (3) the practical necessity of using a home office to carry out these activities.

In Meiers v. Commissioner, the Seventh Circuit Court of Appeals echoed the sentiments expressed by the Second Circuit in Weissman and Drucker, and rejected the application of the focal point test. In Meiers, the taxpayer, Meiers, owned and operated a self-service laundromat. As manager of the laundromat, she retained five part-time employees to assist customers. Meiers's responsibilities consisted of collecting money from machines, filling change machines, maintaining books and records, and drafting work schedules. She spent approximately one hour each day at the laundromat and two hours a day at a home office that she used solely for her business. The Tax Court held that the laundromat, not the home office, was the focal point of Meiers's activities and consequently disallowed the deduction of her home office expenses.

The Seventh Circuit reversed the Tax Court and permitted the

48. Id.
49. Weissman, 47 T.C.M. (CCH) at 522.
50. Weissman, 751 F.2d at 516.
51. Id.
52. Id. at 514-15.
53. 782 F.2d 75 (7th Cir. 1986).
54. Id. at 76.
55. Id.
56. Id.
57. Id.
58. Id. at 79.
The appellate court stated that the focal point test is not fair to taxpayers and fails to carry out Congress's apparent intent in enacting section 280A in the most appropriate way. The court noted that Meiers spent most of her time in her home office; it considered this an important factor in determining deductibility. The court stated, however, that this indicator is not necessarily dispositive, but is weighed with other factors, such as the importance of the business functions performed at home, the business necessity of maintaining a home office, and the taxpayer's expenditures in establishing a home office.

Not all circuits, however, have rejected the focal point test. In a recent case, Pomarantz v. Commissioner, the Ninth Circuit Court of Appeals affirmed the Tax Court's holding that denied the taxpayer a home office deduction based on the focal point test. Pomarantz was a physician who spent thirty-three to thirty-six hours per week at one hospital. Approximately one-half of that time was spent treating patients; the remainder was spent completing charts, following up on patient care, reading, and writing. Although he had access to a shared work area at the hospital, he had no private office there. Pomarantz maintained a home office, which he used to write, read medical journals, and keep business records and patient charts. He spent 150-250 hours per year in his home office and, on average, spent more time per week at the hospital than at home.

The appellate court affirmed the denial of Pomarantz's home office deduction, based on its finding that the Tax Court's decision was not clearly erroneous. The court noted the tests applied by the Second and Seventh Circuits, but stated, without adopting

59. Id.
60. Id. Congress hoped to provide "definitive rules" relating to home office deductions and to preclude the deduction of nondeductible personal expenses as business expenses. Sen. Rep. No. 938, 94th Cong., 2d Sess. 144, 147 (1976).
61. Meiers, 782 F.2d at 79.
62. Id.
63. 867 F.2d 495 (9th Cir. 1988).
64. Id. at 495.
65. Id.
66. Id.
67. Id. at 495-96.
68. Id.
69. Id. at 497. The court explained its application of the clearly erroneous standard of review by stating that the determination of a principal place of business was essentially factual, and that the expertise of the Tax Court warranted deference. Id.
70. Although these courts articulated their standards slightly differently, both courts focused on the time spent at the home office and the importance of the activities performed there. See Meiers, 782 F.2d at 79; Weissman, 751 F.2d at 514.
any specific standard for itself, that it was satisfied that Pomarantz's home office did not qualify as his principal place of business under any of the tests.\textsuperscript{71} The court noted that the essential income-generating activity of his business was the hands-on treatment of patients, which he did only at the hospital, and not the studying or writing that he did at home.\textsuperscript{72}

Although the Ninth Circuit explicitly avoided the issue of the focal point test, its extreme deference to the Tax Court could be read as a tacit acceptance of that test. When viewed in light of the Second and Seventh Circuits' explicit rejection of the focal point test, \textit{Pomarantz} accentuates the uncertainty surrounding the deductibility of home office expenses.

\textbf{III. DISCUSSION}

\textit{A. The Majority Opinion}

In \textit{Soliman v. Commissioner},\textsuperscript{73} the Tax Court reevaluated its focal point test and attempted to reconcile the appellate court decisions by adopting a new standard to determine whether a taxpayer's home office is his principal place of business. Soliman was an anesthesiologist who worked at three different hospitals.\textsuperscript{74} He earned income by administering anesthesia to patients before surgery, caring for patients immediately after surgery, and treating patients for pain.\textsuperscript{75} He spent thirty to thirty-five hours per week at the three hospitals, with eighty percent of that time spent at one of the hospitals.\textsuperscript{76} Soliman did not have an office at any of the hospitals.\textsuperscript{77}

Soliman used a spare bedroom of his three bedroom apartment as an office, where he kept office furniture, a filing cabinet, patient records, billing records, correspondence with patients, names of surgeons and insurance companies, medical journals and texts, and collection agency records.\textsuperscript{78} In his office, Soliman made business-related telephone calls, contacted hospitals to arrange for admission of his patients, maintained billing records, read medical books and journals, and prepared for specific patients.\textsuperscript{79} He spent two to

\begin{itemize}
\item \textsuperscript{71} \textit{Pomarantz}, 867 F.2d at 497.
\item \textsuperscript{72} \textit{Id.} at 497-98.
\item \textsuperscript{73} 94 T.C. 20 (1990).
\item \textsuperscript{74} \textit{Id.} at 21.
\item \textsuperscript{75} \textit{Id.}
\item \textsuperscript{76} \textit{Id.}
\item \textsuperscript{77} \textit{Id.}
\item \textsuperscript{78} \textit{Id.}
\item \textsuperscript{79} \textit{Id.} at 22.
\end{itemize}
three hours each day in his home office, but never treated patients there.\textsuperscript{80} Soliman attempted to deduct the expenses attributable to his home office pursuant to section 280A(c)(1)(A), but the IRS disallowed the deduction.\textsuperscript{81}

The Tax Court concluded specifically that Soliman’s home office was not the focal point of his activities, since it was not the site where goods or services were provided to customers and income was generated.\textsuperscript{82} In addition, the court stated that, although Soliman’s home office activities were essential to his medical practice, they were ancillary to the primary income-generating services that he performed at the hospitals.\textsuperscript{83} Despite these findings, the court disagreed with the IRS and permitted the deduction.\textsuperscript{84}

The \textit{Soliman} court held that it will no longer apply the focal point test when: (1) a taxpayer’s home office is essential to his business; (2) he spends substantial time there; and (3) there is no other location available to perform the office functions of his business.\textsuperscript{85} In such cases, the court will look to the “facts and circumstances” to determine whether the home office is the principal place of business under section 280A.\textsuperscript{86}

The \textit{Soliman} court explained its rejection of the focal point test by observing, that in addition to the “principal place of business” exception,\textsuperscript{87} Congress provided an exception to the general rule of nondeductibility by allowing deductions for home office expenses if the office was used for meeting patients, clients, or customers.\textsuperscript{88} Because the requirements of the focal point test can only be achieved if the taxpayer meets with customers or clients in his home, the court reasoned that the focal point test has the practical effect of merging the principal place of business exception into the meeting clients exception.\textsuperscript{89} Thus, the court found that, if the principal place of business exception is to have meaning independent of the meeting clients exception, the focal point test should give way to an analysis of all the facts and circumstances in order to deter-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{80} \textit{Id.}
\item \textsuperscript{81} \textit{Id.; see also} I.R.C. § 280A(c)(1)(A) (1980).
\item \textsuperscript{82} \textit{Id.} at 25.
\item \textsuperscript{83} \textit{Id.}
\item \textsuperscript{84} \textit{Id.} at 29.
\item \textsuperscript{85} \textit{Id.}
\item \textsuperscript{86} \textit{Id.} at 26.
\item \textsuperscript{87} I.R.C. § 280A(c)(1)(A) (1988).
\item \textsuperscript{88} \textit{Id.} § 280A(c)(1)(B).
\item \textsuperscript{89} \textit{Soliman}, 94 T.C. at 25; \textit{see also} Drucker v. Commissioner, 79 T.C. 605, 623 (1982) (Wilbur, J., dissenting).
\end{enumerate}
\end{footnotesize}
mine most accurately the taxpayer's principal place of business. 90

The Tax Court further stated that time spent in the home office is an important consideration, but not necessarily the predominant factor, in assessing deductibility under section 280A. 91 The court asserted that although Soliman spent more time at the hospitals than at his home office, this time comparison was misleading because the activities performed at the locations were different. 92 In support of its position, the court cited proposed regulations that permit principal place of business treatment for home offices of salespeople who have no other office space and spend substantial time at their home offices. 93

The Tax Court distinguished its decision in Pomarantz v. Commissioner, which it described as only "superficially similar" to Soliman. 94 The court stated that the taxpayer in Pomarantz spent an insubstantial amount of time in his home office. 95 In contrast, Soliman spent thirty percent of his working time in his home office, which the court considered a significant differentiating factor. 96

B. The Dissenting Opinions

Judge Nims dissented from the opinion of the majority and stated that he would deny Soliman's home office deduction based on the focal point test. 97 Judge Nims noted that in the three cases in which appellate courts had reversed Tax Court decisions under the focal point test, the most important factors in the reversals were the time spent and the importance of the work performed at the home office. 98 He asserted that each of those cases involved unusual situations in which, despite the unfavorable result of the focal point test, the taxpayer's true focal point was his home

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90. Soliman, 94 T.C. at 25. The court stated that 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. Id. The court explicitly found that Soliman's medical practice was headquartered at his home office. Id. at 29.
91. Id. at 26.
92. Id. The court added that a time comparison can be meaningful only if the activities in the home office are similar to the activities at another place of business. Id.
94. Soliman, 94 T.C. at 27.
95. Id.
96. Id.
97. Soliman, 94 T.C. at 32-33 (Nims, C.J., dissenting).
98. Id. (Nims, C.J., dissenting).
In addition, Judge Nims commented that the majority's adoption of a "facts and circumstances" inquiry has the undesirable effect of returning the court to the situation that existed before Congress took what it hoped would be the remedial action of enacting section 280A. Judge Nims opined that, in effect, the majority has substituted the phrase "important place of business" for the phrase "principal place of business." In a companion dissenting opinion, Judge Ruwe also took issue with the majority's decision. Judge Ruwe would have denied Soliman's home office deduction and adopted the test employed by the Second and Seventh Circuits, which identifies a taxpayer's principal place of business as the place where the "dominant portion" of his work is accomplished. Judge Ruwe emphasized that a taxpayer can have only one principal place of business for each business in which he is engaged. When a taxpayer has two or more places of conducting business, the court must compare the importance of the activities performed and the time spent at the locations to determine which site constitutes the taxpayer's principal place of business.

Judge Ruwe harshly criticized the majority for taking what he considered the highly unusual step of overruling precedent in the Tax Court on the basis of appellate court opinions and then disregarding the test articulated by those same appellate courts. He pointed to the court's fundamentally different treatment of the crucial consideration of time spent at each location. More specifically, Judge Ruwe noted that the majority's position, that a comparison of the time spent at the home office and the time spent at the other place of business cannot be meaningful if the activities performed at the locations are of different types, is inconsistent with the Second Circuit's holding in Weissman v. Commissioner. He stated that Professor Weissman's campus activities were not similar to his home office activities, yet the appellate court specifi-

99. Id. (Nims, C.J., dissenting).
100. Id. (Nims, C.J., dissenting).
101. Id. at 33 (Nims, C.J., dissenting).
102. Id. at 34 (Ruwe, J., dissenting).
103. Id. (Ruwe, J., dissenting).
104. Id. at 35 (Ruwe, J., dissenting).
105. Id. at 41 (Ruwe, J., dissenting).
106. Id. at 35 (Ruwe, J., dissenting).
107. Id. at 36 (Ruwe, J., dissenting) (citing Weissman v. Commissioner, 751 F.2d 512 (2d Cir. 1984)); see also supra notes 45-52 and accompanying text.
cally compared the time spent at the two locations.\(^{108}\)

In addition, Judge Ruwe was not swayed by the majority’s distinction of Pomarantz.\(^{109}\) He noted that, contrary to the majority’s contention, neither the Tax Court nor the Ninth Circuit found the time spent by Pomarantz at his home office to be insubstantial.\(^{110}\) In fact, the Tax Court found that, in certain weeks, Pomarantz actually spent more time at his home office than at the hospital. In light of these facts, Judge Ruwe found Pomarantz indistinguishable from Soliman.\(^{111}\)

Judge Ruwe concluded his dissent by reminding the court that, although it may seem unfair to deny deductions for home office expenses that are essential to a taxpayer’s business, deductions are a matter of legislative grace and there is simply no provision for deduction of expenses that are “essential” or “substantial.”\(^{112}\) He noted that when Congress enacted section 280A it certainly was aware that, along with the intended result of providing definitive rules and alleviating administrative burdens, section 280A would also deny deductions to some taxpayers despite the business necessity of their home offices.\(^{113}\) This result, however, does not empower the Tax Court to disregard a specific, albeit sometimes harsh, statutory restriction on the deductibility of home office expenses.\(^{114}\)

### C. Soliman’s Aftermath

The tenor of the dissenting opinions foreshadowed the IRS’s reaction to Soliman. In a highly unusual public statement three months after the decision, the IRS announced that it would not follow the Tax Court’s ruling in Soliman.\(^{115}\) The IRS warned taxpayers not to rely on the decision and indicated that it had filed a motion for reconsideration with the Tax Court.\(^{116}\) IRS officials noted the strong dissenting opinions in the case and stated that the

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\(^{108}\) Soliman, 94 T.C. at 36 (Ruwe, J., dissenting). Judge Ruwe also noted that, in Meiers, the Seventh Circuit clearly found that the taxpayer’s activities at her home office and at the laundry were different, but of equal importance; therefore, the comparison of the time spent at the respective places became the deciding factor. Id. n.3 (Ruwe, J., dissenting).

\(^{109}\) Id. at 40 (Ruwe, J., dissenting).

\(^{110}\) Id. (Ruwe, J., dissenting).

\(^{111}\) Id. (Ruwe, J., dissenting).

\(^{112}\) Id. (Ruwe, J., dissenting).

\(^{113}\) Id. at 41 (Ruwe, J., dissenting).

\(^{114}\) Id. (Ruwe, J., dissenting).


\(^{116}\) Id. The motion for reconsideration was denied on April 13, 1990.
opinion is contrary to legislative intent and creates an unclear standard.\textsuperscript{117} Although it is clear that the IRS's concerns run deeper than simply preserving congressional intent, its strong public reaction to Soliman indicates serious problems in the court's decision.\textsuperscript{118} Indeed, it is no small detail that by rejecting the focal point test, the court effectively overruled ten years of precedent and opened up the potential for home office deductions to "gadzillions" of taxpayers.\textsuperscript{119}

IV. ANALYSIS

A. Soliman's Lack of Wisdom

Soliman's majority opinion is well-founded to the extent that it rejects the focal point test for determining a taxpayer's principal place of business. As the court correctly pointed out, this test merges the principal place of business exception into the meeting clients exception, and essentially eliminates the principal place of business exception from section 280A.\textsuperscript{120} Indeed, it is difficult to conceive of a scenario under which a home office could satisfy the focal point test's requirement that goods or services be transferred to customers or clients at the home office, and not simultaneously satisfy the exception accorded taxpayers who meet clients, customers, or patients at the home office.\textsuperscript{121} This overlapping of exceptions clearly was Congress's intent in enacting section 280A.

The Tax Court's new test, however, also fails to accommodate the congressional intent to provide definitive rules governing the deductibility of home office expenses. By holding that a taxpayer's home office can be considered his principal place of business when

\begin{itemize}
  \item \textsuperscript{117} The IRS is in favor of retaining the focal point test. \textit{Id.}
  \item \textsuperscript{118} Significantly, the Tax Court does not intend to retreat from its decision in Soliman. Indeed, in a decision filed on the very same day as \textit{Soliman}, the court applied the \textit{Soliman} test in favor of another taxpayer. Kahaku v. Commissioner, 58 T.C.M. (CCH) 1247 (1990). In Kahaku, the taxpayer was a professional guitarist who maintained a home office that he used exclusively for his business as a musician. Kahaku practiced thirty hours per week in his home office and maintained his business records there. He performed eight to twelve hours per week in a restaurant during the years in question. Kahaku deducted his automobile depreciation and expenses on business trips between his home office, the restaurant, music stores, and audition sites. Judge Nims wrote the majority opinion which found, under the facts and circumstances inquiry set out in \textit{Soliman}, that Kahaku's home office was his principle place of business and accordingly allowed the deductions. \textit{Id.} at 1249.
  \item \textsuperscript{119} Stout, \textit{IRS Warns It Opposes Tax Ruling}, Wall St. J., March 28, 1990, at 1, col. 3.
  \item \textsuperscript{120} Soliman v Commissioner, 94 T.C. 20, 25 (1990).
  \item \textsuperscript{121} I.R.C. § 280A(c)(1)(A) (1988).
\end{itemize}
it is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of his business, the Soliman court distorted the plain meaning of the statutory phrase "principal place of business" into something closer to "essential place of business." In fact, this return to a "facts and circumstances" inquiry blatantly frustrates Congress's stated purpose in enacting section 280A. 122

The primary weakness in the majority's new approach is that it focuses exclusively on the taxpayer's home office without undertaking any comparison with the taxpayer's other places of business. The statute mandates that a deduction will be allowed if the taxpayer's home office is his principal place of business. 123 The word "principal" requires a comparison between the taxpayer's home office and any other place where the taxpayer conducts a particular trade or business. The Soliman test, however, ignores this fact. For example, if one slightly alters the language of the test, by substituting "place of business" for "home office," 124 both the hospital where Soliman spent the majority of his time and his home office would qualify as his principal place of business. Clearly, the Soliman test is incongruous with the plain meaning of the statutory language.

Another failing in the court's new scheme is that it does not provide for any analysis of the types of activities performed at the home office. The court implies that the type of activity is irrelevant. Instead, the court focuses on whether the activity performed at the home office is essential to the taxpayer's business. Many activities are essential to the operation of a business for profit, but this fact alone cannot convert the locale of the performance of an activity into one's principal place of business. In the present case, Soliman's home office activities consisted primarily of administrative tasks. Although these tasks may have been essential to the maintenance of his medical practice, they certainly were not income-generating. When no income-generating activities are performed at the home office, it would be absurd to conclude that the home office is the principal place of business.

124. The test would then state: "Where a taxpayer's [place of business] is essential to his business, he spends substantial time there and there is no other location available to perform the functions performed at that [place of business], the court will consider all of the facts and circumstances to determine whether the [place of business] is his principal place business." See Soliman, 94 T.C. at 26, 29.
Furthermore, the court's new approach is too ambiguous to provide any guidance to taxpayers. By using the word "substantial" to describe the amount of time a taxpayer must spend at his home office, the court has compounded the uncertainty of its new standard. This fact was illustrated aptly by the court's cursory distinction of the time spent by Pomarantz in his home office compared to the time spent by Soliman. By simply stating in a conclusory fashion that one was substantial and the other was not, the court demonstrated the discretionary nature of its substantial time requirement. The inevitable result of this nebulous approach is that the case law interpreting the standard will be inconsistent. Consequently, taxpayers will be unable to determine with any confidence whether their home office expenses are deductible.

Similarly, Judge Ruwe's criticisms of the majority, although well-founded, also fail to suggest a workable alternative. Judge Ruwe proposed that the court adopt the tests used by the Second and Seventh Circuits, which essentially call for a determination of where the "dominant portion" of the taxpayer's work is accomplished. This is a comparative approach, taking into consideration the time spent at the home office, the importance of the business functions performed at home, the business necessity of maintaining a home office, and the taxpayer's expenditures to establish the home office. Although these are relevant factors that should be considered in identifying a taxpayer's principal place of business, the application of this standard still entails a case-by-case balancing of facts and circumstances. Practically, the factors that the court will consider are all that differentiate Judge Ruwe's test and the majority's test. Both tests, however, contravene the congressional intent of providing definitive rules for this deduction and serve to reintroduce the facts and circumstances inquiry that existed before Congress took the remedial action of enacting section 280A.

B. Proposal

It is apparent from Soliman and its predecessors, that the IRS, the courts, and taxpayers would benefit from an objective test to determine a taxpayer's principal place of business under section 280A. An objective test would promote the stated congressional intent of providing definitive rules for the deductibility of home

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office expenses, provide predictability in the application of the deduction provision, and alleviate the administrative burden on the IRS and the courts. To be consistent with section 280A, the test should employ a comparative approach to its examination of the home office, and the results should comport with the common understanding of the phrase “principal place of business.”

This proposal satisfies both of these objectives. The time spent at the home office and the nature of the business activities performed at the home office are the focus of this two branch test.¹²⁷

Under the first branch of this proposed test, the amount of time that the taxpayer spends at the home office is compared to the aggregate time spent at all other places of business. If the taxpayer spends the majority of his total work time at his home office, the home office is his principal place of business. If this is the case, there is no need to continue on to the second branch of the test. This initial branch of the proposed test reflects the overall importance of time as a factor in identifying a principal place of business, as well as the practical reality that a taxpayer who spends the majority of his work time at his home office is generally considered to be “working out of his home.”

If the taxpayer spends less than a majority of total work time at his home office, then, under the second branch of the test, the taxpayer’s home office activities are examined more closely. Specifically, the second branch of the proposed test focuses only on home office activities that are “income-generating.”¹²⁸ The purpose of this restriction is to eliminate the section 280A deduction for those taxpayers who maintain home offices primarily for their own convenience. In addition, by limiting the analysis of time spent at the home office in this way, the comparison of home office time with time spent at other individual business locations will not lend itself to manipulation by taxpayers.

¹²⁷ The time spent at the home office and the importance of the activities performed there are the two most significant factors considered by the Second and Seventh Circuits. See supra text accompanying notes 44, 50, 62.

¹²⁸ The performance of income-generating activities traditionally has been considered important in identifying a principal place of business. Although Soliman rejected the focal point test, neither the Soliman court nor the Second and Seventh Circuits expressly criticized the second prong of the focal point test, which includes within its definition the site where income is generated. Furthermore, this aspect of the focal point test did not contribute to what the majority found to be its fatal flaw: namely, the merging of the principal place of business and the meeting clients exceptions. The classification of home office activities as income or nonincome-generating serves to assess objectively the “importance” of the activities performed at the home office as emphasized by the Second and Seventh Circuits.
For the purpose of this branch of the proposed test, income-generating activities are those that result directly in compensation to the taxpayer, such as the sale of goods or the performance of services. In addition, home office activities which are inextricably linked to the primary income-generating activity of the taxpayer, such as preparing food to be sold or practicing for paid performances, are also considered income-generating for the purpose of this test. However, purely administrative activities, such as billing, maintaining records, or corresponding with clients or patients, are not income-generating. In addition, activities performed primarily to enhance or to improve the taxpayer’s performance of income-generating activities, such as reading medical journals, are not income-generating activities. Note that although an activity may be essential, it is not necessarily income-generating.

Once the taxpayer’s home office activities have been categorized in this manner, the percentage of the taxpayer’s working time spent at his home office performing income-generating activities must be determined. Finally, the time spent at the home office performing income-generating activities is compared to the time spent at each of the taxpayer’s other business locations in order to determine whether the home office qualifies as the principal place of business. There are three possibilities under this inquiry.

First, if the taxpayer spends more time at any one business location than the income-generating time that he spends at his home office, then the home office will not be considered his principal place of business for the purpose of section 280A. This result would be applicable in a case such as Soliman; Soliman’s activities in his home office were not income-generating, and he spent approximately twenty-eight hours per week at one hospital. Soliman’s home office, therefore, was not his principal place of business under the proposed test.

129. Note that an occupation may consist of more than one income-generating activity. Such activities are not necessarily the most visible activities of a taxpayer. For example, if a professor is employed by a university to teach classes as well as write and publish an unspecified amount of material, the research and writing activities would constitute income-generating activities.

130. See supra text accompanying note 126. In this regard, it is helpful to think of income-generating activities as analogous to billable, as opposed nonbillable, time for a professional. For example, an attorney reading a law journal article for general informational purposes would not be performing an income-generating activity, just as reading the article would not be billable. However, if the attorney were reading the article in the course of research for a specific client matter, this would be an income-generating activity, just as it would be billable to the client.

Second, if the taxpayer spends more income-generating time at his home office than at each other business location, his home office will be considered his principal place of business. For example, assume that the taxpayer is a plumber whose only office is his home office, which he maintains to perform administrative tasks and receive phone calls requesting his services. The time spent receiving phone calls is income-generating, since it entails business solicitation and thus is inextricably linked to the performance of his primary income-generating activity. If the time spent at each other business location, such as the homes in which he repairs plumbing, does not exceed the income-generating time in his home office, then the home office qualifies as his principal place of business.

Third, if the taxpayer spends an equal amount of income-generating time at his home office and at another business location, then his home office will not be considered his principal place of business. For example, if a taxpayer spends eighteen hours of income-generating time at home, eighteen hours at another business location, and four hours at a third location, his home office would not be his principal place of business. While at first blush this result might seem harsh, it is consistent with the statutory presumption against the deductibility of home office expenses.132

As with any objective standard, this test will in some circumstances seem harsh or unfair. But as Judge Ruwe reminded the majority in Soliman, deductions are a matter of legislative grace,133 and Congress did not grant courts the power to allow deductions in cases that are compelling due to the business necessity of the home office. Adoption of the proposed standard would enable every taxpayer to determine with certainty whether he was in fact entitled to a deduction for his home office expenses.

V. Conclusion

Prior to the enactment of section 280A in 1976, courts permitted taxpayers to deduct ordinary and necessary home office expenses to the extent that the home office was appropriate and helpful. Section 280A changed this standard by generally denying the deductibility of these expenses, but allowing a deduction when the home office is the taxpayer's principal place of business. Since 1980, the Tax Court has identified the taxpayer's principal place of business as the place where goods and services are provided to customers

133. Soliman, 94 T.C. at 40 (Ruwe, J., dissenting); see also supra text accompanying note 112.
and revenues are generated. Although the Tax Court applied this “focal point” test consistently, appellate courts have reversed the Tax Court’s findings under this test on three occasions.

In Soliman v. Commissioner, the Tax Court addressed these appellate court decisions and limited the applicability of the focal point test. The court held that a home office can be a principal place of business when it is essential to the taxpayer’s business, the taxpayer spends substantial time there, and there is no other location available to perform the office functions of his business.

This holding fails to adopt the tests suggested by the appellate courts and does not provide a definitive rule for determining deductibility. Therefore, an objective test should be adopted that compares the time spent and the nature of the business activities at the home office with the time spent at other business locations. Under the test proposed by this Note, home office deductions would be allowed when the majority of the taxpayer’s total work time is spent at his home office or when the taxpayer spends more income-generating time at his home office than at any other business location.

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