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# The Continuing Saga of the Home Office Deduction

## *Commissioner v. Soliman*<sup>1</sup>

### I. INTRODUCTION

The deductibility of expenditures associated with home offices is an issue of great concern to many taxpayers. Unfortunately, the standards that have evolved to determine the deductibility of home office expenses are anything but clear. In *Commissioner v. Soliman*, the Supreme Court was presented with the opportunity to add a degree of certainty to this area of tax law. This Note will examine the Court's decision in *Soliman* and conclude that the Court did not take advantage of the opportunity presented to it. This Note will also assess the relative merits of several tests used for determining the deductibility of home office expenses and recommend a test that would give this area of the law a degree of certainty.

### II. FACTS AND HOLDING

Nader Soliman, a self-employed anesthesiologist, was a sole proprietor from January 1, 1983 to August 31, 1983.<sup>2</sup> He incorporated on August 6, 1983, and the corporation, Nader Soliman, M.D., P.C., began its fiscal year on September 1, 1983.<sup>3</sup> "During 1983, [he] worked as an anesthesiologist at Suburban Hospital in Bethesda, Maryland, Shady Grove Hospital in Rockville, Maryland, and Loudon Memorial Hospital in Leesburg, Virginia."<sup>4</sup> He administered anesthesia to patients before surgery, cared for them immediately after surgery, and treated them for pain.<sup>5</sup> All of these services were performed in the hospitals.<sup>6</sup> His work at the hospitals totaled thirty to thirty-five hours per week.<sup>7</sup> Approximately eighty percent of that time was spent at Suburban Hospital, and most of the remaining time was spent at Loudon

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1. 113 S. Ct. 701 (1993).

2. *Soliman v. Commissioner*, 94 T.C. 20, 21 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

Memorial Hospital.<sup>8</sup> Soliman was not provided with an office at any of the three hospitals.<sup>9</sup>

During 1983, Soliman lived in a condominium in McLean, Virginia.<sup>10</sup> He used one bedroom exclusively as an office.<sup>11</sup> He spent two to three hours per day in the bedroom office performing such tasks as "contacting patients, surgeons, and hospitals by telephone; maintaining billing records and patient logs;" preparing for specific patients; preparing monthly presentations for post anesthesia care nurses; "satisfying continuing medical education requirements; and reading medical journals and books."<sup>12</sup> "[H]e did not meet patients in the home office."<sup>13</sup>

Soliman claimed deductions on his 1983 federal income tax return, under section 280A of the Internal Revenue Code (hereinafter "I.R.C."),<sup>14</sup> for the portion of the condominium fees, utilities, and depreciation allocable to the home office.<sup>15</sup> These deductions were disallowed upon audit, based on the Commissioner's "determination that the home office was not Soliman's principal place of business."<sup>16</sup>

The Tax Court ruled that the deductions for Soliman's home office were allowable because it was his principal place of business.<sup>17</sup> In reaching its holding, the court abandoned the focal point test it had enunciated in *Baie v. Commissioner*<sup>18</sup> for determining a taxpayer's principal place of business under I.R.C. section 280A(c)(1)(A).<sup>19</sup> In its place, the court opted for an inquiry into the surrounding facts and circumstances.<sup>20</sup> Using this approach, the court found that Soliman's home office was essential to his business, that he spent substantial time there, and that no other location was available to

8. *Id.*

9. *Id.*

10. *Soliman*, 113 S. Ct. at 704.

11. *Id.*

12. *Id.*

13. *Id.*

14. I.R.C. § 280A (1988). See *infra* note 77 for the text of § 280A.

15. *Soliman*, 113 S. Ct. at 704.

16. *Id.*

17. *Soliman*, 94 T.C. at 29.

18. 74 T.C. 105 (1980).

19. *Soliman*, 94 T.C. at 24-25. As will be seen *infra*, the focal point test used to determine a taxpayer's principal place of business concentrates on the place where revenues are generated and goods and services are provided to customers. See *Drucker v. Commissioner*, 79 T.C. 605, 613-14 (1982), *rev'd on other grounds*, 715 F.2d 67 (2d Cir. 1983).

20. *Soliman*, 94 T.C. at 25.

perform the office functions of the business.<sup>21</sup> Based on these factors, the court held that Soliman's home office was his principal place of business.<sup>22</sup>

The United States Court of Appeals for the Fourth Circuit affirmed the Tax Court's decision.<sup>23</sup> The court rejected the Commissioner's argument that the Tax Court's decision rendered I.R.C. section 280A(c)(1)(A) meaningless.<sup>24</sup> Instead, the court decided that the Tax Court's facts and circumstances test "more accurately reflect[ed] the purposes and requirements of section 280A."<sup>25</sup> The court further held that the following factors weigh heavily in finding that a home office is a principal place of business: "(1) the office in the home is essential to the taxpayer's business; (2) [the taxpayer] spends a substantial amount of time there; and (3) there is no other location available for performance of the office functions of the business."<sup>26</sup>

The United States Supreme Court reversed.<sup>27</sup> The Court reasoned that to determine a taxpayer's principal place of business, a comparative analysis of his business locations must be undertaken because "principal," by definition, means "most important, consequential, or influential."<sup>28</sup> Since the test espoused by the Court of Appeals failed to consider which business location of the taxpayer is most significant, that test was overturned.<sup>29</sup> The Court

21. *Id.* at 29.

22. *Id.* For cases applying the *Soliman* test see *Hamacher v. Commissioner*, 94 T.C. 348 (1990); *Kahaku v. Commissioner*, 58 T.C.M. (CCH) 1247 (1990); *Shore v. Commissioner*, 59 T.C.M. (CCH) 762 (1990). See also J. Martin Burke & Michael K. Friel, *The Home Office Deduction: Redefining the Principal Place of Business*, 14 REV. TAX'N INDIVIDS. 373 (1990); Henri C. Pusker, *Home Office Deductions: Some Good News*, 18 J. REAL EST. TAX'N 24 (1990); John C. Zimmerman, *Abandonment of the Focal Point Test for Office-in-Home Deductions*, 68 TAXES 434 (1990); Mark Levine, Note, *Home Office Deductions: Deserving Taxpayers Finally Get a Break*, 45 TAX LAW. 247 (1991); Kathleen Low, Note, *Soliman v. Commissioner: Recent Changes in the Tax Court's Treatment of the Home Office Deduction*, 22 LOY. U. CHI. L.J. 277 (1990).

23. *Soliman v. Commissioner*, 935 F.2d 52, 55 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

24. *Id.* at 54. The Commissioner presumably was contending that using a facts and circumstances inquiry in lieu of a comparative analysis of the taxpayer's business locations makes the word "principal" in § 280A superfluous.

25. *Id.* at 55.

26. *Id.* at 54. Cf. *Pomarantz v. Commissioner*, 867 F.2d 495 (9th Cir. 1988) (no deduction under § 280A(c)(1)(A) where physician was provided access to a work area at a hospital).

27. *Soliman*, 113 S. Ct. at 708.

28. *Id.* at 706 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1802 (1971)).

29. *Id.*

noted that no precise formula exists to determine whether a home office is the taxpayer's principal place of business.<sup>30</sup> Further, some situations may exist in which there is no principal place of business.<sup>31</sup> The Court then held that "two primary considerations" should underlie the requisite comparative analysis used to decide whether a home office is a taxpayer's principal place of business: (1) The relative importance of the activities performed at each business location; and (2) the time spent at each location.<sup>32</sup>

### III. LEGAL BACKGROUND

#### A. *The Status of the Home Office Deduction Prior to Section 280A*

Under I.R.C. section 162(a), a taxpayer is entitled to a deduction for ordinary and necessary business expenses.<sup>33</sup> The Tax Court determined the deductibility of home office expenses under section 162(a) in *Newi v. Commissioner*.<sup>34</sup> In *Newi*, the petitioner and his wife had rented a three

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30. *Id.*

31. *Id.* at 707.

32. *Id.* at 706.

33. I.R.C. § 162(a) (1988). The text of § 162(a) reads as follows:

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

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

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

*Id.*

34. 28 T.C.M. (CCH) 686 (1969), *aff'd*, 432 F.2d 998 (2d Cir. 1970). See Mortimer M. Caplin & Richard M. Lent, *Deducting Expenses Pertaining to Out-of-*

room apartment for a portion of the year and a four room apartment for the remainder of the year.<sup>35</sup> Each of these apartments had a room, separated from the rest of the apartment by partitions and doors, that was used as a study by the petitioner.<sup>36</sup>

The petitioner's occupation involved selling television time for the American Broadcasting Company (ABC).<sup>37</sup> Each night, he would spend about three hours in the study reviewing notes on his daily sales activities, studying research materials and ratings, planning activities for the next day, and viewing television advertisements of ABC and its competitors.<sup>38</sup> The study was not used for personal television viewing or entertainment.<sup>39</sup> ABC did not ask petitioner to use a portion of his home as an office; in fact, ABC's offices were open for his use in the evening.<sup>40</sup>

The petitioner deducted the rent, cleaning, and lighting expenses allocable to his study on his federal income tax return for the calendar year.<sup>41</sup> The Commissioner disallowed these deductions because they did not constitute ordinary and necessary business expenses under section 162(a).<sup>42</sup> The Commissioner made this determination because the petitioner was not required by his employer to maintain the home office, and an alternative office was available for his use during the evening hours.<sup>43</sup>

The Tax Court overruled the Commissioner.<sup>44</sup> The court held that the term "ordinary," as used in section 162(a), distinguishes between expenses that are currently deductible and those that are capital expenditures.<sup>45</sup> The court

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*Town Residences Used as Business Accommodations*, 58 J. TAX'N 270 (1983), for a discussion of the relationship between § 162(a) and § 280A. See also *Moller v. United States*, 721 F.2d 810 (Fed. Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984) (home office deduction not allowed when taxpayer's activities did not rise to the level of a trade or business under § 162(a)); *Curphey v. Commissioner*, 73 T.C. 766 (1980) (§ 280A requires that the taxpayer's activities constitute a trade or business under § 162). For a discussion of the tests for deductibility of home office expenditures prior to § 280A see *O'Connell v. Commissioner*, 31 T.C.M. (CCH) 837 (1972), *cert. denied*, 423 U.S. 825 (1975).

35. *Newi*, 28 T.C.M. (CCH) at 688.

36. *Id.*

37. *Id.* at 687.

38. *Id.* at 688.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* See *supra* note 33 for the text of § 162(a).

43. *Newi*, 28 T.C.M. (CCH) at 691.

44. *Id.*

45. *Id.* The Court cited *Commissioner v. Tellier*, 383 U.S. 687, 688-90 (1966) in support of this proposition. For a consideration of the amount to be allowed as a

then noted that the rent, cleaning, and lighting expenses were clearly not capital in nature.<sup>46</sup> The term "necessary" in section 162(a) was deemed by the court to impose "only the minimal requirement that the contested expenditure be 'appropriate and helpful' to the taxpayer's business."<sup>47</sup> Since the petitioner's home office was used for business purposes, the "appropriate and helpful" standard set forth by the court was met.<sup>48</sup> The court noted that it would have reached the same result even if the home office had been used for nonbusiness purposes on "rare and isolated occasions."<sup>49</sup>

The United States Court of Appeals for the Second Circuit affirmed the decision of the Tax Court.<sup>50</sup> The Second Circuit attempted to clarify the scope of the Tax Court's decision in addressing the Commissioner's argument that the "appropriate and helpful" test posited by the Tax Court "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."<sup>51</sup> The court noted that it would have been "wholly impractical" for the taxpayer to return in the evening to his employer's place of business because of the travail of nighttime travel in Manhattan.<sup>52</sup> The court then said that using the study was probably the best method available to accomplish the taxpayer's business objectives.<sup>53</sup> However, the court did not specify whether its finding that the home office was the best method of achieving the taxpayer's business goals was a prerequisite to deductibility; it merely found the Tax Court's decision to be reasonable.<sup>54</sup>

As a result of *Newi*, a liberal standard for the deductibility of home office expenses was put into play.<sup>55</sup> Most, if not all, business related activities are "appropriate and helpful" to the taxpayer's business; otherwise, they would not

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home office deduction see *Gino v. Commissioner*, 538 F.2d 833 (9th Cir. 1976), *cert. denied*, 429 U.S. 979 (1976); *Curphey v. Commissioner*, 73 T.C. 766 (1980); *Browne v. Commissioner*, 73 T.C. 723 (1980).

46. *Newi*, 28 T.C.M. (CCH) at 691. A capital expenditure is one that is "properly attributable, through amortization, to later tax years when the capital asset becomes income producing." *Commissioner v. Idaho Power Co.*, 418 U.S. 1, 16 (1974).

47. *Newi*, 28 T.C.M. (CCH) at 691. The Court cited *Tellier*, 383 U.S. at 690, as support.

48. *Newi*, 28 T.C.M. (CCH) at 691.

49. *Id.*

50. *Newi v. Commissioner*, 432 F.2d 998, 1000 (2d Cir. 1970).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. See *Levine*, *supra* note 22, at 250.

be undertaken. Further, the Second Circuit's affirmance did little to narrow the holding of the Tax Court. As most commuters can attest, travel to and from the work site can be time consuming. Frequently, it will be more efficient to work at home in the evening rather than make a second trip to the office. The Second Circuit's emphasis on the extensive travel time required<sup>56</sup> rings of an efficiency standard. Thus, any time a taxpayer could show that business related activities conducted at home were "appropriate and helpful" and time efficient with respect to travel, the expenses would be deductible under the standard declared by the Second Circuit.

The Tax Court broadened the reach of the "appropriate and helpful" test in *Bodzin v. Commissioner*.<sup>57</sup> In *Bodzin*, the petitioner was employed as an attorney by the Internal Revenue Service.<sup>58</sup> Although he was not required to work overtime by the Service, he frequently found it desirable to do so in order to perform his work to the best of his abilities.<sup>59</sup> He used a room in his apartment as an office, in which he worked on matters assigned to him and read about recent developments in tax law.<sup>60</sup> He found it more convenient to work in his home office than to travel to and from work in the evening.<sup>61</sup> On his federal income tax return, petitioner claimed the portion of the rent allocable to his home office as a deduction under section 162(a).<sup>62</sup> The Commissioner disallowed this deduction.<sup>63</sup>

The Tax Court overturned the Commissioner<sup>64</sup> and held that even though "the maintenance of the home office can be characterized as 'a matter of convenience' due to the existence of duplicate employer-provided facilities," the home office deduction may still be warranted.<sup>65</sup> If, however, personal convenience is the primary reason for maintaining the office or if the taxpayer is seeking to manufacture a deduction (*i.e.*, acts in bad faith), the deduction will be denied.<sup>66</sup> Otherwise, if the deduction is appropriate and helpful, it will be allowed.<sup>67</sup>

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56. *Newi*, 432 F.2d at 1000.

57. 60 T.C. 820 (1973), *rev'd*, 509 F.2d 679 (4th Cir. 1975), *cert. denied*, 423 U.S. 825 (1975).

58. *Id.* at 821.

59. *Id.* at 822.

60. *Id.* at 823.

61. *Id.*

62. *Id.* at 824.

63. *Id.*

64. *Id.* at 826.

65. *Id.* at 825-26.

66. *Id.* at 826.

67. *Id.*



The United States Court of Appeals for the Fourth Circuit reversed.<sup>68</sup> The court noted that the Internal Revenue building was always open and was not a long distance from Bodzin's home.<sup>69</sup> It then held that the rental expense was a personal expense within the meaning of section 262<sup>70</sup> and not an ordinary and necessary business expense under section 162(a).<sup>71</sup> The court thus found it unnecessary to reach the issue of whether the expenses were "appropriate and helpful."<sup>72</sup> The court did not explain the reasoning used in reaching its holding. However, it appears probable that it doubted the sincerity of the taxpayer in claiming the deduction. The court likely believed that since an office was readily accessible to him in the evening, there was really no purpose in performing the work at home. The propriety of the "appropriate and helpful" test was not questioned.

### *B. The Legislative Intent Behind Section 280A*

The "appropriate and helpful" test used in determining the availability of the home office deduction was "so fuzzy a standard [that] taxpayers could claim the deduction on the flimsiest of grounds with no fear of a fraud penalty, and thus could pocket a tax savings except in the unlikely event of an audit."<sup>73</sup> Under that test, nondeductible personal expenses could be converted into deductible business expenses if it was "appropriate and helpful" to perform some work related activities at home.<sup>74</sup> Congress believed that a more concrete standard was necessary to eliminate the potential for frivolous deductions.<sup>75</sup> The Senate Report accompanying section 280A stated that "the 'appropriate and helpful' test increases the inherent administrative problems because both business and personal uses of the residence are involved and

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68. *Bodzin v. Commissioner*, 509 F.2d 679 (4th Cir. 1979), *cert. denied*, 423 U.S. 825 (1975).

69. *Id.* at 680.

70. I.R.C. § 262(a) (1988) provides:

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

*Id.*

71. *Bodzin*, 509 F.2d at 681. See *supra* note 33 for the text of § 162(a).

72. *Bodzin*, 509 F.2d at 681.

73. *Cadwallader v. Commissioner*, 919 F.2d 1273, 1275 (7th Cir. 1990), *aff'g* 57 T.C.M. (CCH) 1030 (1989).

74. S. REP. NO. 938, 94th Cong., 2d Sess. 147 (1976), *reprinted in* 1976 U.S.C.A.N. 3438, 3579-80.

75. *Id.*

substantiation of the time used for each of these activities is clearly a subjective determination."<sup>76</sup>

As a result of these considerations, Congress decided to discard the "appropriate and helpful" test. In its place, Congress enacted section 280A.<sup>77</sup> Under section 280A, no deduction is allowed with respect to a dwelling unit used by the taxpayer during the year as a residence.<sup>78</sup> However, an exception to this rule exists if a portion of the dwelling unit is used exclusively and on a regular basis as (1) the taxpayer's principal place of business,<sup>79</sup> or (2) a place of business used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of business.<sup>80</sup>

The language of section 280A,<sup>81</sup> coupled with the legislative history,<sup>82</sup>

76. *Id.*

77. Tax Reform Act of 1976, Pub. L. No. 94-455, § 601, 90 Stat. 1520, 1569-72 (1976) (codified at I.R.C. § 280A (1988)). The pertinent portion of § 280A provides:

(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 DEDUCTIONS 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) 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 the employer.

*Id.*

78. I.R.C. § 280A(a) (1988).

79. *Id.* § 280A(c)(1)(A).

80. *Id.* § 280A(c)(1)(B). Cf. *Green v. Commissioner*, 707 F.2d 404 (9th Cir. 1983) (no deduction under § 280A(c)(1)(B) when home office used to receive incoming phone calls from clients but no actual meetings with clients occurred in home office).

81. See *supra* note 77 for the text of § 280A.

indicate that Congress intended to constrict the availability of the home office deduction.<sup>83</sup> The terms "exclusively" and on a "regular basis" appear self-explanatory and have not caused courts any consternation. However, the meaning of "principal place of business" is not readily apparent and the legislative history does not define this term.<sup>84</sup> Thus, the task of defining this term has been left to the courts. As will be seen, judicial interpretations of the term "principal place of business" have hardly been models of clarity.

### C. Judicial Application of Section 280A

The Tax Court adopted the "focal point" test in *Baie v. Commissioner*<sup>85</sup> to determine if a home office was a taxpayer's principal place of business. The petitioner in *Baie* operated a hot dog stand approximately seven-tenths of a mile from her residence.<sup>86</sup> Because there was no room at the stand for food preparation, she prepared the food at home. She also used a spare bedroom in her home exclusively to perform paperwork.<sup>87</sup>

The Tax Court disallowed a deduction for the home office expenses.<sup>88</sup> The court held that by "principal place of business," Congress had in mind the focal point of the taxpayer's activities.<sup>89</sup> The focal point of the business is the place where goods or services are delivered.<sup>90</sup> Petitioner's principal place of business, therefore, was the hot dog stand, not her home office.<sup>91</sup>

Under the focal point test, the place where goods or services are delivered is dispositive. No allowance is made for taxpayers who spend the majority of their working hours in their home offices, yet provide services or generate

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82. See *supra* notes 74-80 and accompanying text.

83. See Edward J. De Guardioli, *Home Office Deductions Under the New Section 280A of the Internal Revenue Code*, 6 FLA. ST. U. L. REV. 129 (1978); Linda Moore Kaplan, *Home Office Deductions for "Vacation Homes" Under the Tax Reform Act of 1976*, 63 A.B.A. J. 1302 (1977); Michael B. Lang, *When a House is Not Entirely a Home: Deductions Under Internal Revenue Code §280A for Home Offices, Vacation Homes, Etc.*, 1981 UTAH L. REV. 275; Neil M. Goff, Comment, *Commingleing Business and Personal Use of Real Property: Severe Restrictions Under the 1976 Tax Reform Act*, 13 GONZ. L. REV. 493 (1978).

84. S. REP. NO. 938, *supra* note 74, at 147, reprinted in 1976 U.S.C.C.A.N. 3579-80.

85. 74 T.C. 105 (1980).

86. *Id.*

87. *Id.* at 106.

88. *Id.* at 111.

89. *Id.* at 109. See *Jackson v. Commissioner*, 76 T.C. 696, 700 (1981) (principal place of business is focal point of business activity).

90. *Baie*, 74 T.C. at 109.

91. *Id.*

revenues elsewhere. *Drucker v. Commissioner*<sup>92</sup> is illustrative. In *Drucker*, the Tax Court denied a home office deduction to a concert musician who used a room in his apartment exclusively for practicing his skills, even though he spent more time practicing at home than he did on stage.<sup>93</sup> The court noted that although the petitioner was required to practice to maintain his skills, it was not a "condition of employment."<sup>94</sup> Under the focal point test, the concert stage was where "services" were provided.<sup>95</sup> Thus, the court held that the place where the taxpayer performed as a musician was his principal place of business.<sup>96</sup>

The Second Circuit reversed the Tax Court's holding.<sup>97</sup> The Second Circuit reasoned that the home office was the focal point of the taxpayer's business both in time and importance because the performances were made possible only by the practice at home.<sup>98</sup> Because the place of performance was irrelevant so long as he was prepared and most of his preparation occurred at home, his home office was his principal place of business under section 280A.<sup>99</sup>

The Second Circuit did not overrule the focal point test, it merely refined it by adding a new component—time. Under this version of the focal point test, the taxpayer's principal place of business is the place where goods or services are provided or, if elsewhere, the place where most of the work is performed, provided the work is essential to the taxpayer's business. The Second Circuit revisited this version of the focal point test in *Weissman v. Commissioner*.<sup>100</sup>

In *Weissman*, the taxpayer was a professor at City College of the City University of New York.<sup>101</sup> He spent twenty percent of his working hours at the university and eighty percent at his home office.<sup>102</sup> His home office was used exclusively for research and writing.<sup>103</sup> Although he was provided with an office on campus, he had to share it with several other professors, and it did not have a typewriter.<sup>104</sup>

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92. 79 T.C. 605 (1982), *rev'd*, 715 F.2d 67 (2d Cir. 1983).

93. *Id.* at 615.

94. *Id.* at 607-08.

95. *Id.* at 614.

96. *Id.* at 613-14.

97. *Drucker v. Commissioner*, 715 F.2d 67, 70 (2d Cir. 1983).

98. *Id.* at 69.

99. *Id.*

100. 751 F.2d 512 (2d Cir. 1984), *rev'g* 47 T.C.M. (CCH) 520 (1983).

101. *Id.* at 513.

102. *Id.*

103. *Id.*

104. *Id.*

The Tax Court ruled that the focal point of the taxpayer's activities, and thus his principal place of business, was at the university.<sup>105</sup> The court reasoned that the taxpayer provided services, *i.e.*, taught, met with students, and graded examinations, at the university.<sup>106</sup> Thus, even though he actually spent more time at home, his principal place of business was at the university.<sup>107</sup>

The Second Circuit rejected the Tax Court's application of the focal point test to Weissman.<sup>108</sup> The court said that "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 the work is performed."<sup>109</sup> Nevertheless, the court did not discard the focal point approach. It recognized that the focal point test may be appropriate in many cases,<sup>110</sup> but "when a taxpayer's occupation involves two very distinct yet related activities, such as . . . writing and teaching," the focal point test should not be used.<sup>111</sup>

Although the Second Circuit purported to reject the focal point test as it applied to the facts in *Weissman*,<sup>112</sup> in actuality it applied the refined version of that test it developed in *Drucker*.<sup>113</sup> Under this test, the taxpayer's principal place of business is where goods or services are provided. If, however, the majority of the taxpayer's time is spent at a location other than where goods or services are provided, the principal place of business is where the majority of the work essential to the business is performed. In determining the importance of the work performed at this location, the following

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105. *Weissman v. Commissioner*, 47 T.C.M. (CCH) 520, 522 (1983). *See also* *Dudley v. Commissioner*, 860 F.2d 1078 (6th Cir. 1988) (mem.) (no deduction for a college professor who was provided with office space on campus); *Cousino v. Commissioner*, 679 F.2d 604 (6th Cir. 1982), *cert. denied*, 459 U.S. 1038 (1982) (home office not principal place of business when used by teacher to grade papers); *Weightman v. Commissioner*, 42 T.C.M. (CCH) 104 (1981) (college professor's home office was not principal place of business when used for research activities). *Cf.* *Cadwallader v. Commissioner*, 919 F.2d 1273 (7th Cir. 1990) (although professor's home office was his principal place of business, it was not used for the employer's convenience and a § 280A deduction was denied). *See generally* Paul E. Fiorelli, *The Home Office Deduction after Weissman: New Hope for Faculty?* 24 AM. BUS. L.J. 377 (1986).

106. *Weissman*, 47 T.C.M. (CCH) at 522.

107. *Id.*

108. *Weissman*, 751 F.2d at 514.

109. *Id.*

110. *Id.*

111. *Id.*

112. *See supra* note 108 and accompanying text.

113. *See supra* text following note 99.

factors should be considered: (1) the nature of the business activities; (2) the attributes of the space in which such activities can be conducted; and (3) the practical necessity of using a home office to carry out such activities.<sup>114</sup>

The Seventh Circuit adopted this version of the focal point test in *Meiers v. Commissioner*.<sup>115</sup> In *Meiers*, the taxpayers operated a self-service laundromat.<sup>116</sup> Mrs. Meiers managed the laundromat,<sup>117</sup> and spent approximately one hour per day at the laundromat and two hours a day in a home office used exclusively for business purposes.<sup>118</sup> The Tax Court applied the focal point test as stated in *Baie*<sup>119</sup> and determined that the focal point of the taxpayers' business was at the laundromat.<sup>120</sup>

In reversing the Tax Court, the Seventh Circuit said that "the focal point test as applied by the Tax Court 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."<sup>121</sup> The court held that the time spent in the home office should be a major consideration in determining if it is a taxpayer's principal place of business.<sup>122</sup> The court also held that time is not necessarily the only factor to consider.<sup>123</sup> In appropriate cases, the following factors may "weigh in the balance:" (1) The importance of the functions performed in the home office; (2) the business necessity of the home office; and (3) the expenditures made to establish a home office.<sup>124</sup> These factors, like those used by the Second Circuit,<sup>125</sup> apparently are used to determine the importance of the home office. The court did not reject the focal point test entirely; rather, it added components to it in order to effect what it thought was a proper result. The version of the focal point test used by the court in *Meiers* is virtually indistinguishable from the test used by the Second Circuit.<sup>126</sup>

114. *Weissman*, 751 F.2d at 514-15.

115. 782 F.2d 75 (7th Cir. 1986), *rev'g* 49 T.C.M. (CCH) 136 (1984).

116. *Id.* at 76.

117. *Id.* Her duties as manager included drafting work schedules, collecting money from the machines, assisting customers, and performing bookkeeping and other similar tasks. *Id.*

118. *Id.* It was undisputed that the taxpayers had made a legitimate business decision not to have office space in the laundromat. *Id.*

119. *See supra* notes 89-91 and accompanying text.

120. *Meiers*, 782 F.2d at 79.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *See supra* note 114 and accompanying text.

126. *See text following* note 99.

As is clear from the preceding discussion, case law under section 280A developed two tests for determining a taxpayer's principal place of business. The Tax Court continued to adhere to the focal point test it promulgated in *Baie*.<sup>127</sup> The Second and Seventh Circuits expounded a second test, dubbed by one commentator as the "dominant portion of the work test."<sup>128</sup> These two tests were primarily applied to allow deductions to taxpayers who ran businesses from their homes<sup>129</sup> and to employees who did most of their work at home.<sup>130</sup> It was unclear whether these tests precluded deductions by taxpayers who were not provided with offices by their employers, who performed a significant amount (although not a majority) of work in their home offices, and whose home offices were essential to their businesses. Arguably, the congressional intent<sup>131</sup> behind section 280A is not contravened by allowing the deductions in such situations, because the potential for abuse inherent in the "appropriate and helpful" standard is not present.<sup>132</sup>

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127. See *supra* notes 85-99 and accompanying text for a discussion of *Baie*. The Tax Court did not abandon the focal point test until it decided *Soliman*. See *Soliman*, 94 T.C. at 25-26. See also *Proskauer v. Commissioner*, 46 T.C.M. (CCH) 679 (1983) (court intimated, but did not hold, that a home office was not the principal place of business under the focal point test because separate office space was maintained); *Trussel v. Commissioner*, 45 T.C.M. (CCH) 190 (1982) (housing court judge's home office was not his principal place of business even though he had no office at the courthouse); *Anderson v. Commissioner*, 44 T.C.M. (CCH) 1305 (1982) (under the focal point test, a nurse-anesthetist's home office was not the principal place of business within the meaning of § 280A).

128. Levine, *supra* note 22, at 253-54. As stated earlier, this test essentially is the focal point test with an exception being made if the taxpayer spends the majority of his time in the home office. See *supra* text following note 97. See also Eugene A. Gargaro Jr., *Does Your Law Office At Home Satisfy the Business Use Tests Under I.R.C. Sec. 280A?*, 63 MICH. ST. B.J. 570 (1984); Paula W. Kretschmar & James G. Bond, *Home Office Deductions: Second Circuit Relaxes Standard*, 63 TAXES 435 (1985); John Malloy and Lambert Blank Jr., *The Increasing Availability of the Home Office Deduction and the Related Implications of the Tax Reform Act of 1986*, 65 TAXES 233 (1987); Timothy M. Mulligan, *The Tax Ramifications of the Business Use of a Home*, 55 PA. BAR ASS'N Q. 105 (1984); John P. Napoli, *Home Office Deductions: Recent Decisions Make Up a Mixed Bag for Taxpayers*, 10 REV. TAX'N INDIVIDS. 228 (1986); Stanley Rier, *Tax Ideas: A House is a Home is an Office*, 15 REAL EST. L.J. 157 (1986).

129. See, e.g., *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986); *Baie v. Commissioner*, 74 T.C. 105 (1980).

130. See, e.g., *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984); *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983).

131. See *supra* notes 74-80 and accompanying text for a discussion of the legislative history of § 280A.

132. See *Newi*, 28 T.C.M. (CCH) at 691, for a discussion of the "appropriate and

## IV. INSTANT DECISION

## A. Majority

The majority<sup>133</sup> first considered the use of the phrase "principal place of business" in section 280A.<sup>134</sup> The Court noted that when Congress enacted section 280A, it intended to narrow the scope of the home office deduction.<sup>135</sup> Since "principal" is defined as "most important, consequential, or influential,"<sup>136</sup> a comparison of the taxpayer's business locations must be undertaken.<sup>137</sup> The Court of Appeals was therefore incorrect in suggesting that section 280A allows a deduction whenever a home office can be characterized as legitimate.<sup>138</sup>

Under the Court of Appeals' test, a home office is a taxpayer's principal place of business whenever it is essential to the taxpayer's business, no alternative space is available, and the taxpayer spends a substantial amount of time there.<sup>139</sup> This test is similar to the "appropriate and helpful" test because it ignores whether the home office is more significant to the taxpayer's business than every other place of business.<sup>140</sup> Since section 280A refers to a taxpayer's "principal place of business," as opposed to "principal office," the Court ruled that the Fourth Circuit's test must be rejected.<sup>141</sup>

Two primary considerations exist in determining whether a taxpayer's home office is the principal place of business: (1) The relative importance of the activities performed at each business location; and (2) the time spent at each location.<sup>142</sup> The Court did not announce an objective formula to apply to all cases.<sup>143</sup> It noted that the facts in each case will vary, making it difficult to develop a bright line test.<sup>144</sup>

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helpful" standard. See also Levine, *supra* note 22, at 259.

133. Justice Kennedy wrote for the majority, and was joined by Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, and Souter.

134. *Soliman*, 113 S. Ct. at 705-06.

135. *Id.*

136. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1802 (1971).

137. *Soliman*, 113 S. Ct. at 706.

138. *Id.* See *Soliman*, 935 F.2d at 54-55.

139. See *supra* note 26 and accompanying text.

140. *Soliman*, 113 S. Ct. at 706.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*



Determining the relative importance of the activities performed at each business location first requires an objective description of the business in question.<sup>145</sup> In each particular business, a pattern is likely to develop in which certain activities are of more significance than others.<sup>146</sup> The place where client contact or delivery of goods or services occurs is likely to be an important indicator of the taxpayer's principal place of business.<sup>147</sup> The Court noted that although these factors were similar to the focal point test, they are not determinative in every case.<sup>148</sup> Although the Court declined to adopt the focal point test, it said that the place where goods and services are delivered should be "given great weight" in assessing the importance of the business functions performed.<sup>149</sup>

This reasoning is strengthened when one considers that section 280A(c)(1)(B) allows a home office deduction whenever it is used exclusively and on a regular basis "by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business."<sup>150</sup> Since a deduction is allowed in these circumstances regardless of whether the home office is the taxpayer's principal place of business, Congress intended for these factors to have significance in determining the nature and function of the business.<sup>151</sup> The Court concluded, however, that these factors were not dispositive.<sup>152</sup>

The time spent at each business location is to be considered in conjunction with an analysis of the importance of the activities performed at each business location.<sup>153</sup> Time is of particular importance when the analysis of the activities performed at each business location does not give a clear answer to the principal place of business inquiry.<sup>154</sup> An example of such a situation is when income-generating activities are performed both at the home office and at another business location.<sup>155</sup>

The Court did not regard the necessity of the functions performed at home as having much weight in determining whether a home office deduction should be allowed.<sup>156</sup> In all businesses that consist of a series of integrated

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145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* See *supra* note 77 for the text of § 280A.

151. *Soliman*, 113 S. Ct. at 707.

152. *Id.*

153. *Id.* at 707-08.

154. *Id.* at 707.

155. *Id.*

156. *Id.*

transactions, each step is essential.<sup>157</sup> Necessity should be used to assess the relative importance of the functions performed at each business location; it should not be controlling in and of itself.<sup>158</sup>

Whether a home office is the only location available to perform particular business functions has no bearing on the principal place of business inquiry.<sup>159</sup> Under section 280A, this factor is relevant only in determining if an employee's use of a home office is "for the convenience of the employer."<sup>160</sup> Conversely, if the comparative analysis points to a home office as the principal place of business, the existence of other office space is irrelevant.<sup>161</sup>

The Court next considered the relative importance of the business functions performed by Soliman at each of his business locations.<sup>162</sup> The Court determined that treating patients was the essence of Soliman's profession.<sup>163</sup> Although the home office activities were necessary to Soliman's profession, they were of less importance than treating patients.<sup>164</sup> Further, he spent substantially less time in his home office than he did treating patients.<sup>165</sup> Based on these considerations, the Court reversed the judgment of the Fourth Circuit and held that Soliman's deduction for his home office was not allowed under section 280A.<sup>166</sup>

### B. Concurrences

Justice Blackmun joined the majority's opinion, but wrote separately to emphasize that deductions are a matter of legislative grace, not of right.<sup>167</sup> Justice Blackmun agreed that the term "principal" in section 280A compelled

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157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* The Court was referring to the portion of § 280A which disallows an employee's home office deduction unless it is "for the convenience of the employer." See *supra* note 77 for the text of § 280A.

161. *Soliman*, 113 S. Ct. at 707.

162. *Id.* at 708.

163. *Id.*

164. *Id.*

165. *Id.* Soliman spent ten to fifteen hours per week in his home office and thirty to thirty-five hours per week in his business office. *Id.*

166. *Id.*

167. *Id.* (Blackmun, J., concurring). He cited *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958) and *Commissioner v. Tellier*, 383 U.S. 687, 693 (1966) in support of this statement.

the comparative analysis required by the majority.<sup>168</sup> He concluded that if tax policy demands a different result, Congress should change the wording of section 280A.<sup>169</sup>

Justice Thomas, joined by Justice Scalia, also concurred in the holding reached by the majority.<sup>170</sup> He believed, however, that the "two-factor inquiry" announced by the majority did not provide "clear guidance" to lower courts.<sup>171</sup> Justice Thomas concluded that the focal point test was adequate in the vast majority of cases, including the one under consideration.<sup>172</sup> Justice Thomas said that the two-factor inquiry announced by the majority should be used "only in the small minority of cases where the home office is one of several locations where goods or services are delivered, and thus also one of the multiple locations where income is generated."<sup>173</sup>

Although "principal" does suggest "most important," Justice Thomas argued that the comparative analysis used by the majority is not necessary in all cases.<sup>174</sup> Instead, if a single location exists at which goods or services are delivered, it should be assumed that that location is the taxpayer's principal place of business.<sup>175</sup> When the focal point test does not yield a single principal place of business, the comparative analysis announced by the majority should then be used to resolve the issue.<sup>176</sup>

### C. Dissent

Justice Stevens dissented.<sup>177</sup> He concluded that the relevance given by the majority to the place where goods or services are delivered rendered section 280A(c)(1)(B) superfluous.<sup>178</sup> Because section 280A(c)(1)(B) allows a home office deduction whenever it is used for meeting patients in the ordinary course of business,<sup>179</sup> this factor is irrelevant in determining if a home office is a taxpayer's principal place of business under section 280A(c)(1)(A).<sup>180</sup> Instead, Justice Stevens believed that "[t]he only place

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168. *Soliman*, 113 S. Ct. at 708-09 (Blackmun, J., concurring).

169. *Id.* at 709.

170. *Id.* (Thomas, J., concurring).

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 711 (Stevens, J., dissenting).

178. *Id.*

179. See *supra* note 77 for the text of § 280A(c)(1)(B).

180. *Soliman*, 113 S. Ct. at 713-14 (Stevens, J., dissenting).

where a business is managed is fairly described as its 'principal' place of business."<sup>181</sup> Furthermore, "a principal place of business is a place maintained by or (in the rare case) for the business."<sup>182</sup> Applying section 280A to Soliman, Justice Stevens concluded that Soliman's home office was his only place of business; therefore it was his principal place of business.<sup>183</sup>

## V. COMMENT

The legislative history is silent as to the meaning of the phrase "principal place of business" in section 280A, as discussed earlier.<sup>184</sup> Nevertheless, Congress expressly for intended section 280A to provide a definite standard for the deductibility of home office expenses<sup>185</sup> and to narrow the scope of the deduction by eliminating the "appropriate and helpful" standard.<sup>186</sup> Further, section 280A is structured so that deductions are not allowed for home office expenses, generally.<sup>187</sup> Section 280A(c)(1) provides an exception to the general rule of nondeductibility by listing three instances in which home office expenses can be deducted.<sup>188</sup> Congress' delineation of a limited number of exceptions to the general rule of nondeductibility leads to the conclusion that the phrase "principal place of business" should not be given an expansive interpretation. Giving wide latitude to this phrase would frustrate Congress' intent to provide a narrow exception to the nondeductibility of home office expenses.

The test for determining a taxpayer's principal place of business under section 280A should comport with Congress' intent and with the language of the statute. Placing the qualifier "principal" in the phrase "principal place of business" was Congress' way of restricting the availability of the home office deduction. As noted by the Court, "principal" means "most important, consequential, or influential."<sup>189</sup> Thus, a taxpayer's principal place of business under section 280A is the place where the most important business activities occur. Because the most important function of any business is to earn a profit, the place where profit-generating activities occur should be the taxpayer's principal place of business. A business earns profits by providing goods or services. Therefore, under section 280A, the place where goods or

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181. *Id.* at 715.

182. *Id.*

183. *Id.*

184. *See supra* note 84 and accompanying text.

185. *See supra* note 75 and accompanying text.

186. *See supra* note 77 and accompanying text.

187. *See supra* note 77 for the text of § 280A.

188. *See supra* note 77 for the text of § 280A(c)(1).

189. *See supra* note 136 and accompanying text.

services are provided should be the taxpayer's principal place of business. If the taxpayer provides goods or services at more than one location, the principal place of business should be the place where the most time is spent because that location is likely to be the most important (otherwise, more time would be spent elsewhere since businesses seek to maximize profits). The Supreme Court was therefore correct in overturning the Fourth Circuit's facts and circumstances test for determining whether a home office is a taxpayer's principal place of business. The Court was also correct when it noted that the facts and circumstances test is quite similar to the pre-section 280A "appropriate and helpful" standard.

Under the Fourth Circuit's approach, a home office is a taxpayer's principal place of business whenever it is essential to the business, no alternative space is available, and substantial time is spent there.<sup>190</sup> The only substantive difference between this approach and the "appropriate and helpful" standard is that the availability of alternative space is not a consideration under the latter.<sup>191</sup> Whether a home office is essential to a taxpayer's business depends on whether the work undertaken there is essential to the business. It is a safe assumption that nearly all work performed in home offices is essential to the business.<sup>192</sup> Most taxpayers are not inclined to work at home unless their occupation compels it. The same reasoning applies to the "appropriate and helpful" standard: a taxpayer probably will not work in a home office if it is not "appropriate and helpful" to his business.<sup>193</sup>

Although the "appropriate and helpful" standard does not explicitly require that substantial time be spent in the home office, it will nearly always be the case that substantial time is in fact spent there (or is claimed to have been spent there) if the taxpayer claims a home office deduction. If an insignificant amount of time is spent in a home office, the dollar amount of the deduction will be negligible.<sup>194</sup> The Fourth Circuit did not define "substantial time" as used in its facts and circumstances test. It is not difficult to imagine a slew of litigation on this issue. Moreover, even if a standard did

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190. See *supra* note 139 and accompanying text.

191. See *Newi*, 28 T.C.M. (CCH) at 691, for a discussion of the "appropriate and helpful" standard.

192. See *supra* note 157 and accompanying text.

193. See text following note 54.

194. For example, Soliman spent 750 hours during 1983 in his home office, and the amount of his deduction was \$1,259, for an average of \$1.68 per hour. Under § 67(a), home office expenses of an employee are subject to a floor of 2% of adjusted gross income (AGI). For an individual with an AGI of \$50,000, the deduction must exceed \$1,000 to be allowed (approximately 600 hours), hardly an insignificant amount.

exist, it would be quite simple for taxpayers to simply "fudge" the amount of time actually spent in the home office.<sup>195</sup>

Because the Fourth Circuit's approach took into account the availability of alternative office space,<sup>196</sup> the effect of its holding is to allow a home office deduction whenever the work performed there is "appropriate and helpful" to the taxpayer's business and no other office space is available. This approach violates Congress' intent in enacting section 280A. Congress attempted to eliminate the "appropriate and helpful" standard<sup>197</sup> with no intention of retaining it in situations where no alternative office space is available. Thus, the Supreme Court properly rejected the Fourth Circuit's approach.

Although the Court correctly discerned the shortcomings in the approach used by the Fourth Circuit,<sup>198</sup> it promulgated a comparative test which effectively is a variation of the "dominant portion of the work" test.<sup>199</sup> The comparative test consists of two prongs: (1) assessing the relative significance of the work performed at each business location; and (2) comparing the time spent at each business location.<sup>200</sup>

In determining the relative significance of the work performed at each location, the Court said that the place where goods or services are delivered must be "given great weight."<sup>201</sup> It qualified this statement by adding that no one test is determinative in each case.<sup>202</sup> It strains the imagination, however, to conceive of a business location that has more significance than the place where goods or services are delivered.<sup>203</sup> Thus, the most significant business location under the first prong of the Court's test will always be the place where goods or services are exchanged for income. Despite its disavowals,<sup>204</sup> the Court actually adopted the focal point test for measuring

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195. For example, a time log could be kept in which the hours worked in the home office were entered to neatly correspond with whatever judicial definition of "substantial time" existed.

196. See *supra* note 139 and accompanying text.

197. See *supra* note 77 and accompanying text.

198. See *supra* notes 135-41 and accompanying text for the Court's rejection of the Fourth Circuit's approach.

199. See *supra* text accompanying note 114 and notes 121-26 and accompanying text for a discussion of the "dominant portion of the work" test.

200. *Soliman*, 113 S. Ct. at 706.

201. *Id.*

202. *Id.*

203. See *supra* text following note 189.

204. *Soliman*, 113 S. Ct. at 706.

the relative significance of the work performed at each location. The dominant portion of the work test includes this very component.<sup>205</sup>

The second prong of the comparative test is the time spent at each business location.<sup>206</sup> Although not mentioned by the Court, it is implicit that the time spent at each business location be essential to the business, which it nearly always will be.<sup>207</sup> Similarly, the dominant portion of the work test includes a consideration of time, provided that the time spent at each location is essential to the taxpayer's trade or business.<sup>208</sup> Thus, the comparative test promulgated by the Supreme Court consists of essentially the same components as the dominant portion of the work test.

The only difference between the comparative test and the dominant portion of the work test is in how the components interrelate. As illustrated in *Weissman*, a taxpayer's principal place of business under the dominant portion of the work test is the place where goods or services are provided *unless* more time is spent at another business location and that time is essential to the business.<sup>209</sup> In such a case, the latter is the taxpayer's principal place of business.

Under the comparative test, a taxpayer's principal place of business is the place where goods or services are provided *and* where the most time is spent.<sup>210</sup> Unlike the dominant portion of the work test, under which the relationship between delivery of goods/services and time is disjunctive,<sup>211</sup> the Court linked these two components conjunctively.<sup>212</sup> In this particular case, the test worked because *Soliman* spent most of his time at the hospitals and provided services there. However, this test has an inherent flaw because it contains no mechanism to resolve a situation in which the taxpayer provides goods or services at one location but spends more time at the home office.<sup>213</sup> In such situations, lower courts and taxpayers are presented with no guidance and the deductibility of home office expenses is once again up in the air.

While the Supreme Court's desire to apply section 280A as it was written is appropriate, the *Soliman* decision will only obfuscate the area of home office deductions. The comparative test is a variation of the dominant portion

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205. See *supra* text following note 113.

206. *Soliman*, 113 S. Ct. at 706.

207. See *supra* note 157 and accompanying text.

208. See *supra* text following note 113.

209. See *supra* text following note 113.

210. *Soliman*, 113 S. Ct. at 706.

211. See *supra* text following note 113.

212. See *supra* note 209 and accompanying text.

213. See *Soliman*, 113 S. Ct. at 710-11 (Thomas, J., concurring). Cf. *Weissman v. Commissioner*, 47 T.C.M. (CCH) 520 (1983), *rev'd*, 751 F.2d 512 (2d Cir. 1984); and *Drucker v. Commissioner*, 79 T.C. 605 (1982), *rev'd*, 715 F.2d 67 (2d Cir. 1983).

of the work test. The dominant portion of the work test, in turn, is a variation of the focal point test.<sup>214</sup> Ascertainable standards should guide this area, not case-by-case litigation.<sup>215</sup>

The Court should have adopted the standard advocated by Justice Thomas. Under that standard, a taxpayer's principal place of business is the place where goods or services are provided, *i.e.*, the focal point test.<sup>216</sup> If the focal point inquiry yields more than one principal place of business, the comparative analysis declared by the majority is used to resolve the conflict.<sup>217</sup> The advantages of this approach, as well as the weaknesses of the comparative test and the dominant portion of the work test, will be demonstrated by the following example, which is a slight variation of the facts in *Soliman*.

Assume Soliman spent sixty percent of his time in his home office. He used the home office exclusively and on a regular basis for business functions. Assume also that he spent thirty percent of his time at Hospital 1 and ten percent of his time at Hospital 2.

Under the dominant portion of the work test, Soliman's home office is his principal place of business. Although he provides services elsewhere, he spends the majority of his time in his home office performing work that is essential to his business. As can be seen, the dominant portion of the work test attaches too much weight to time. His business is performing anesthesiology. He practices his profession at the hospitals, and he is paid there. If he did not work at the hospitals, he would not get paid. Thus, it is quite reasonable to conclude that one of the hospitals, not his home office, is truly his principal place of business.

Under the comparative test, Soliman's principal place of business cannot be determined. The first prong of the test, assessing the relative significance of the work performed at each location (*i.e.*, the focal point test), suggests that one of the hospitals is his principal place of business. The second prong, time spent at each location, indicates that his home office is his principal place of business because he spends more time there than at both hospitals combined. The Court did not set forth any escape hatch to resolve this dilemma. Thus, a facts and circumstances inquiry, with all of its attendant uncertainties, is necessary.

Under Justice Thomas's approach, Soliman's principal place of business is Hospital 1. The initial step in the inquiry is to apply the focal point test. That test results in a finding that services are provided at Hospital 1 and Hospital 2. Since two potential principal places of business exist, a compara-

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214. See *supra* text following note 113.

215. See, *e.g.*, Levine, *supra* note 22, at 281 n.7.

216. *Soliman*, 113 S. Ct. at 710-11 (Thomas, J., concurring).

217. *Id.*



tive analysis is performed. Because the relative importance of the work performed at each location has already been assessed by the focal point test, the only remaining consideration is the time spent at each location. Three times as much time is spent at Hospital 1 than at Hospital 2. Therefore, Hospital 1 is Soliman's principal place of business.

## VI. CONCLUSION

Although the focal point test provides a rigid standard for the deductibility of home office expenses, it has the advantage of predictability. Moreover, it is beyond peradventure that "deductions are a matter of [legislative] grace and Congress can, of course, disallow them as it chooses."<sup>218</sup> When it enacted section 280A, Congress intended to provide definitive standards so as to narrow the scope of the home office deduction.<sup>219</sup> The focal point test is consistent with that intent. When the taxpayer provides goods or services at more than one location, the approach recommended by Justice Thomas<sup>220</sup> easily resolves the conflict. The majority opinion in *Soliman* will only lead to more piecemeal litigation on the deductibility of home office expenses.<sup>221</sup> Taxpayers deserve a bright-line standard for determining when home office expenses are deductible. Since the Supreme Court is unable to provide such a standard, Congress should define the phrase "principal place of business" in section 280A to eliminate the uncertainty surrounding home office deductions.

J. PATRICK SULLIVAN

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218. *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958).

219. S. REP. NO. 938, *supra* note 74, at 147, *reprinted in* 1976 U.S.C.C.A.N. 3577-80.

220. *Soliman*, 113 S. Ct. at 709 (Thomas, J., concurring).

221. For the understandably nonplused reaction of practitioners to the *Soliman* decision, see Michael M. & Susan L. Megaard, *Supreme Court Narrows Home Office Deductions in Soliman*, 78 J. TAX'N 132 (1993) (concluding that the state of the law remains in flux after *Soliman*). For planning considerations, see I.R.S. Notice 93-12, 1993-8 I.R.B. 46; Sandra K. Miller, *Com. v. Soliman: Supreme Court Unduly Restricts Home Office Deductions*, 71 TAXES 152 (1993).