

COMMENT

THE WISDOM OF *SOLIMAN* : CONSTRUING “PRINCIPAL PLACE OF BUSINESS” UNDER I.R.C. SECTION 280A

In modern society the idea of heading off to work may entail no more than simply walking into another room in one's own home. The use of a home for business purposes, whether by an employee or by the owner of a business, is by no means a novel concept, yet there is a growing body of litigation over the deductibility of the expenses involved in the business use of a personal residence. The distinction between personal and business expenses lies at the heart of a taxpayer's ability to take a deduction for the business use of his or her own home. Generally speaking, a taxpayer who operates a business is entitled to take advantage of certain deductions for the expenses incurred in the operation of that business.¹ If the taxpayer's business is operated out of a personal residence, however, the deduction of those same expenses is markedly more difficult. Home office expenses typically come under much closer scrutiny by the Internal Revenue Service (IRS) than expenses incurred in a more traditional business setting.²

The disagreement over when to allow a deduction for home business expenses becomes very apparent when surveying the diversity of opinions to be found on what should be the correct interpretation and application of section 280A of the Internal Revenue Code (Code). Section 280A(a) provides as a general rule that no deduction will be allowed for expenses incurred in the use of a taxpayer's residence.³ However, this general rule is qualified by some exceptions, in particular, that which is found in section 280A(c)(A). This exception allows a deduction for home

1. I.R.C. § 162 (1991).

2. Robert E. Reetz, Jr., *IRS Rejects Tax Court Standards For Home Office Deduction*, Fed. Tax Dig. (MB) No. 18, at 153 (Apr. 26, 1990).

3. I.R.C. § 280A(a) (1991).

business expenses only if an ascertainable area of the home is used exclusively and on a regular basis as the taxpayer's "principal place of business."⁴ This provision reflects the intent of Congress that personal expenses should not be deductible, while legitimate business expenses should be permitted as deductions.⁵

This Comment focuses on determining the intended meaning, as expressed by Congress, of the term "principal place of business" found in section 280A(c)(A), and will discuss how that meaning is reflected in the various tests of the Tax Court and the Federal Courts of Appeals. This Comment will also suggest that the new "facts and circumstances" test proffered by the Tax Court in *Soliman v. Commissioner*,⁶ and later adopted as the law in the Fourth Circuit,⁷ reveals the most accurate definition of a taxpayer's "principal place of business" in light of the legislative history of section 280A.⁸ In order to properly analyze the meaning of any term or phrase included in legislation, but left undefined by Congress, it is necessary to look at the circumstances that created the need for the legislation in the first place.⁹ In light of this, special emphasis is placed on understanding the purpose behind section 280A, and how the courts have adhered to and strayed from this intended purpose in their application of this provision.

While the deduction provided for in section 280A normally involves only a minimal tax benefit to the taxpayer,¹⁰ it is important to remember and to reiterate at this point what the late Thomas Cooley once wrote about the power to tax:

When one considers how vast is this power [to tax], how readily it leads to passion, excitement, prejudice or private schemes, and to what incompetent hands its execution is usually committed, it seems unreasonable to treat as unimportant, any stretch of power - even the slightest - whether it be on the part of the legislature which orders the tax, or

4. *Id.* § 280A(c)(A).

5. See S. REP. No. 938, 94th Cong., 2d Sess. 144, 147, reprinted in 1976 U.S.C.C.A.N. 3439, 3576, 3579; H.R. REP. No. 658, 94th Cong., 2d Sess. 157, 160, reprinted in 1976 U.S.C.C.A.N. 2897, 3050, 3053.

6. 94 T.C. 20 (1990).

7. *Soliman v. Commissioner*, 94 T.C. 20 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), cert. granted, 1992 WL 53341, at *1 (U.S. Mar. 23, 1992) (No. 91-998).

8. Tax Reform Act of 1976, Pub. L. No. 94-455, §601, 90 Stat. 1520 (1976) (codified as amended at I.R.C. § 280A (1988)).

9. *Green v. Commissioner*, 707 F.2d 404, 405 (9th Cir. 1983).

10. See I.R.C. § 280A(c)(5) (1991) (limiting the deduction to the excess of the gross income derived from business use over the sum of the deductions).

of any of the officers who undertake to give effect to the order.¹¹

Such a powerful statement serves as an appropriate stepping stone, not to a condemnation of Congress, nor to the repeated meandering of the various courts, and likewise not to the often times unfair pressures imposed by the IRS upon citizens to retreat from taking a deduction allowed by law, but instead to begin this analysis of what legal meaning should be attached to the "principal place of business" provision in section 280A.

I. PRIOR CASES INTERPRETING I.R.C. SECTION 280A

Prior to the enactment of section 280A, the law governing the deduction of home office expenses was found in sections 162 and 262 of the Code. Section 262 then provided, as it does today, the general rule that personal expenses are not deductible unless expressly provided for under the Code.¹² The Code did allow, however, for the deduction of certain expenses involved in maintaining a personal residence in section 162, provided that the expenses be incurred while carrying on a trade or business.¹³ The standard established for granting the deduction under section 162 required that the expenses be "ordinary and necessary" in the carrying on of a trade or business.¹⁴ Most of the litigation concerning this deduction involved employees who would bring some work home from the office and then attempt to take a deduction for the alleged expense involved.¹⁵ The Tax Court based the decision to allow an employee to take a deduction for home office expenses solely on whether the use of the home as an office was "appropriate and helpful" in the operation of a business.¹⁶ This test provided taxpayers with an easy claim to the home office deduction available under section 162, since almost any use was at least helpful.

11. THOMAS M. COOLEY, A TREATISE ON THE LAW OF TAXATION at iv (1903).

12. I.R.C. § 262 (1991).

13. I.R.C. § 162 (1991). *See also* § 212, allowing deduction where residence held for the production of income.

14. I.R.C. § 162 (1991).

15. *See, e.g.,* *Newi v. Commissioner*, 28 T.C.M. (CCH) 686 (1969), *aff'd*, 432 F.2d 998 (2d Cir. 1970); *Hall v. United States*, 387 F. Supp. 612 (D.N.H. 1975); *Gill v. Commissioner*, 34 T.C.M. (CCH) 10 (1975); *Bodzin v. Commissioner*, 60 T.C. 820 (1973), *rev'd*, 509 F.2d 679 (4th Cir.), *cert. denied*, 423 U.S. 825 (1975).

16. *Newi v. Commissioner*, 28 T.C.M. (CCH) 686, *aff'd*, 432 F.2d 998 (2d Cir. 1970); *Bodzin v. Commissioner*, 60 T.C. 820 (1973), *rev'd*, 509 F.2d 679 (4th Cir.), *cert. denied*, 423 U.S. 835 (1975).

The House Report of section 280A discloses congressional disapproval of the "appropriate and helpful" test; the Tax Court's use of the test in *Bodzin v. Commissioner* is cited as being too liberal a standard.¹⁷ In *Bodzin*, the taxpayer was ironically an attorney for the IRS, and worked within the Interpretation Section of that agency. Mr. Bodzin wished to take a \$100 deduction from his \$2100 per month rental expense, claiming that the \$100 was deductible because he often brought work home to a small study in his apartment. The Commissioner denied the deduction because the home office was merely a personal convenience and not a condition of his employer. The Tax Court, however, found for the taxpayer, reasoning that a deduction should not be disallowed merely because it could be deemed a convenience as long as the office was "appropriate and helpful."¹⁸ The potential for abuse under such a test was obvious, for it would be very easy for a taxpayer to bring a little work home and change a personal expense into a deductible business expense. The dissent noted that "it was never the intent of section 162 to change the personal expenditure of a taxpayer for a home for himself and his family into a business expense merely because that taxpayer is sufficiently interested in the work in which he engages to do some work in his home."¹⁹ The Fourth Circuit reversed the Tax Court's decision in *Bodzin*, describing the expense as personal and therefore nondeductible. In the opinion of the appellate court, the taxpayer would have had to show that the use of his home as an office was actually necessary because the employer's facilities were neither offered nor available to Mr. Bodzin to fully perform his job.²⁰

The Tax Court changed its position on the "appropriate and helpful" test the year following the Fourth Circuit's reversal of *Bodzin* in *Sharon v. Commissioner*.²¹ The Tax Court's opinion recognized the shortfalls of such a test, and adopted a more restrictive standard which would examine whether the expenses attempted to be deducted were in fact business expenses rather than merely disguised personal ones.²²

17. H.R. REP. NO. 658, *supra* note 5, at 160, reprinted in 1976 U.S.C.C.A.N. at 3053-54 (discussing shortfalls of the "appropriate and helpful" test).

18. *Bodzin*, 60 T.C. at 825.

19. *Id.* at 827 (Scott, J., dissenting).

20. *Bodzin v. Commissioner*, 509 F.2d 679, at 681 (4th Cir. 1975).

21. 66 T.C. 515 (1976), *aff'd per curiam*, 591 F.2d 1273 (9th Cir. 1978), *cert. denied*, 442 U.S. 941 (1979).

22. *Id.* at 523-25.

In early decisions such as *Bodzin*,²³ the business use of the taxpayer's home office was required to be "appropriate and helpful" to get a deduction under section 162, but as the Fourth Circuit pointed out, the facts dictate whether a taxpayer's expense is personal. If there is no indication that such an expense is required or necessary to the carrying on of the taxpayer's business, then the expense is likely to be personal in nature.²⁴ Legislators were not content to let the Tax Court struggle with the application of the home office deduction as it existed under section 162. In 1976, Congress endeavored to eliminate some of the uncertainty from the home office deduction by proposing a bill that would provide a more "definitive standard" for the determination of a home office deduction.²⁵

II. THE ENACTMENT OF I.R.C. SECTION 280A

Congress was well aware of the problems confronting the courts and the IRS in distinguishing personal nondeductible expenses²⁶ from deductible business expenses.²⁷ In attempting to provide a more definitive standard for the determination of the home office deduction, Congress was charged with the very difficult task of providing for the availability of an otherwise legitimate business expense, while at the same time preventing its exploitation.²⁸ The House Report addressed the problems of distinguishing between personal and business expenses in the use of a home and the great difficulties encountered in the application of section 162. Congress concluded that the business use of a home should be treated separately from the rules governing deductions for a freestanding business; the end result was the passage of section 280A,²⁹ which remained virtually unchanged on its path through Congress.³⁰

23. 60 T.C. 820 (1973).

24. *Bodzin*, 509 F.2d at 680-81. See *Newi v. Commissioner*, 28 T.C.M. (CCH) at 691, in which the Tax Court interpreted the meaning of "ordinary and necessary" as being that which is "appropriate and helpful," relying on the Supreme Court's opinion in *Commissioner v. Tellier*, 383 U.S. 687 (1966).

25. H.R. 10612, 94th Cong., 2d Sess. (1976).

26. I.R.C. § 262 (1991).

27. *Id.* § 162 (1991).

28. H.R. REP. No. 658, *supra* note 5, at 160, reprinted in 1976 U.S.C.C.A.N. at 3054 (discussing the possible deduction of personal expenses).

29. Pub. L. No. 94-455, 90 Stat. 1520 (1976) (codified as amended at I.R.C. § 280A (1988)).

30. S. REP. No. 938, *supra* note 5, at 149, reprinted in 1976 U.S.C.C.A.N. at 3582.

Section 280A(a) begins with the general rule that no deductions will be allowed for business expenses incurred in the use of a taxpayer's personal residence.³¹ This of course leaves intact the deductions available elsewhere in the Code for nonbusiness related use of a home.³² A blanket disallowance such as this would seem to suggest that no deduction will be allowed, even for legitimate business expenses incurred in the use of a home. However, just as with most of the seemingly harsh provisions within the Code, there are exceptions to the general rule. Section 280A(c) contains four exceptions to section 280A(a),³³ and two limitations on the amount of the deductions available to taxpayers through them.³⁴ The focus of this Comment is on the circumstances required to meet the exception in section 280A(c)(1)(A).³⁵ This exception allows a taxpayer to take a deduction for the expenses incurred in the use of an allocable portion of his or her home if used exclusively, and on a regular basis, as the taxpayer's "principal place of business."³⁶

The legislative history is the first logical place to discover the intended meaning of ambiguous terms contained within section 280A.³⁷ Interestingly, the House Report expressly included definitions for the terms "exclusive use" and "regular basis," but failed to provide a definition for "principal place of business."³⁸ According to the House committee, the portion of a taxpayer's home is "exclusively used" as the "principal place of business"

31. I.R.C. § 280A(a) (1991).

32. *Id.* § 280A(b).

33. *Id.* § 280A(c)(1)-(4). See generally *Feldman v. Commissioner*, 84 T.C. 1 (1984), *aff'd*, 791 F.2d 781, 783 (9th Cir. 1986).

34. § 280A(c)(5),(6).

35. *Id.* § 280A(c)(1) provides:

(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 the 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.

36. *Id.*

37. *Green v. Commissioner*, 707 F.2d 404, at 405 (9th Cir. 1983).

38. H.R. REP. No. 658, *supra* note 5, at 161-62, *reprinted in* 1976 U.S.C.C.A.N. at 3054-55.

only when that portion of the home so designated is used "solely for the carrying on of his trade or business."³⁹ Likewise, the House Report provides that the portion of the home dedicated to business use must be used on a "regular basis," defining regular as not being "incidental or occasional trade or business use."⁴⁰ It is unlikely then, in light of these specific definitions to such key conditions as exclusivity and regularity, that Congress would fail to provide for the meanings of other terms essential to the correct application of the provision.

In the absence of an express definition of "principal place of business," the court applying section 280A must exercise its discretion in defining the term in such a way as to accomplish the intent of Congress. It is clear after an overview of the various court opinions and of the legislative history itself, that the intent of Congress was to prevent the conversion of an otherwise nondeductible personal expense into a deductible business expense.⁴¹ The "appropriate and helpful" test used by the Tax Court prior to section 280A failed to accomplish this task because it allowed employees to bring work home from their jobs, complete the work in a personal use area of the home, and then claim a deduction for a home office even though suitable work facilities were provided by the taxpayer's employer.⁴² The exclusion of these unwarranted deductions was the primary concern of Congress; this is evidenced by the inclusion of the qualifying sentence at the end of section 280A(c)(1), which provides that employees must show on top of exclusivity and regularity that their use of the home office is for the convenience of the employer. To prevent taxpayer abuse of the deduction, Congress provided explicitly that the portion of the home used as the taxpayer's "principal place of business," "place of meeting or dealing," or a "separate structure," must be used as such "exclusively" and on a "regular basis."⁴³

The essence of section 280A lies in the narrow definitions given to the exclusivity and regularity requirements. These two requirements mark the distinction between an essentially personal expense and that of a qualifying nonpersonal expense. Once

39. *Id.*

40. *Id.*

41. See generally Mark Levine, *Home Office Deductions: Deserving Taxpayers Finally Get A Break*, 45 TAX LAW. 247 (1991).

42. *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983); *Callawader v. Commissioner*, 919 F.2d 1273 (7th Cir. 1983).

43. I.R.C. § 280A(c)(1) (1991).

it is mandated that an area in the home must be used exclusively and on a regular basis for one's trade or business before becoming eligible for the home office deduction, it becomes impossible to turn an essentially personal den or family room into a qualifying home office. The failure of Congress to attach a specific meaning to the term "principal place of business" was necessary because that determination would depend upon the facts and circumstances of the particular taxpayer's situation.

Principal, in its ordinary sense, means that which is primary or most important.⁴⁴ Whether a place of business is the principal one is necessarily subjective, as is the determination of whether a home office is "appropriate and helpful," but what Congress succeeded in eliminating by enacting section 280A was the subjectivity found in applying the "appropriate and helpful" test. The subjective element in that analysis was the comparison between how much time was spent in the home for business reasons, and how much for personal reasons.⁴⁵ Congress eliminated this problem by establishing the requirements that the portion of the home sought to be qualified for the deduction must be used exclusively and regularly for legitimate business reasons. The remaining determination of what is the "principal place of business," however, can only be made in light of the facts and circumstances of that particular case.⁴⁶

Congress provided no list of factors to be considered when determining whether a taxpayer's place of business is the principal one. It has been suggested that the additional expense undertaken to use the home office should be viewed as a factor.⁴⁷ The legislative history uses "additional or incremental costs" incurred by the taxpayer only to characterize that expense which would be suitable for the deduction, not to determine one's "principal place of business." If there were no additional or incremental costs associated with the taxpayer's business use of the home there would be no need to reach the question of whether it was the "principal place of business," because there would be no expense to deduct. Furthermore, it is quite possible that a taxpayer might incur "additional expense" and thus potentially

44. BLACK'S LAW DICTIONARY 1192 (6th ed. 1990).

45. See H.R. REP. NO. 658, *supra* note 5, at 160, *reprinted in* 1976 U.S.C.C.A.N. at 3053-54.

46. *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983); *Soliman v. Commissioner*, 935 F.2d 52, 55 (4th Cir. 1991).

47. *Green v. Commissioner*, 707 F.2d 404, 407 (9th Cir. 1983); *Frankel v. Commissioner*, 82 T.C. 318, 327 (1984).

qualify for the allowable deduction,⁴⁸ yet still not be using his home office as his "principal place of business." Nevertheless, courts have viewed such additional expense as a factor in the principal place determination, although not a conclusive one.⁴⁹

In the aftermath of the enactment of section 280A, the IRS and the courts found the determination of a proper home office deduction no easier than before its passage. The difficulties no longer arose from analysis of what was "appropriate and helpful," but instead centered around the issue of what was the taxpayer's "principal place of business." In light of section 280A's failure to provide a more "definitive"⁵⁰ standard, the IRS and the various courts developed some interesting tests for the determination of what a taxpayer's "principal place of business" is.⁵¹

III. DEFINING "PRINCIPAL PLACE OF BUSINESS" UNDER SECTION 280A(c)(1)(A)

The Tax Court's decision in *Baie v. Commissioner* established the "focal point" test for determining a taxpayer's "principal place of business."⁵² In *Baie*, the taxpayer operated a hot dog vending business in a leased stand.⁵³ In light of its success, the taxpayer decided to expand the capacity of the operation by moving some of the preparation area into his home kitchen, and establishing a business and storage office in another room in the home.⁵⁴ In denying the taxpayer's deduction, the Tax Court said, "A taxpayer's principal place of business is where goods and services are provided to the customers or clients or where income is produced."⁵⁵ The Tax Court concluded that Congress intended that the "focal point" of the taxpayer's activity was to be the "principal place of business."⁵⁶ Since the taxpayer's home was not the place where goods or services were provided, and since

48. *Id.*

49. Frankel v. Commissioner, 82 T.C. 318, 327 (1984).

50. H.R. REP. NO. 658, *supra* note 5, at 160, reprinted in 1976 U.S.C.A.N. at 3053 (discussing the "definitive rule" that Congress sought to achieve by enacting § 280A).

51. Why would Congress leave such an important term as "principal" undefined? In light of the specific definitions given exclusivity and regularity, the failure to include a definition for "principal" leads one to assume that the meaning of that word is not particularly important in fulfilling the statute's intended purpose.

52. *Baie v. Commissioner*, 74 T.C. 105, 109 (1980).

53. *Id.* at 106.

54. *Id.*

55. *Id.*

56. *Id.* at 109.

there was no income directly produced from the activities in the home, it could not be the taxpayer's principal place of business.⁵⁷ This "focal point" test confuses the "principal place of business" and "meeting or dealing" exceptions provided in section 280A(c)(1) by requiring the principal place of business to be that in which goods or services are provided or income is produced.⁵⁸ The strict requirements placed on the taxpayer under such a test make the "principal place of business" exception virtually indistinguishable from the "meeting or dealing" provision in section 280A(c)(1)(B).⁵⁹

The Tax Court in *Baie* essentially combined the provisions of sections 280A(c)(1)(A) and (c)(1)(B)⁶⁰ to create the "focal point" test, which was then used as the "judicial definition"⁶¹ of a taxpayer's "principal place of business." Interestingly, three years after *Baie* the Tax Court attempted to apply the two provisions individually in *Green v. Commissioner*.⁶² In *Green*, the taxpayer was required by his employer to take phone calls outside the normal office hours. The Tax Court determined that Green spent an average of two hours each night with clients on the phone discussing business. Using the "focal point" test, the court denied the deduction under a "principal place of business" analysis, but then found a deduction available for the taxpayer under the "meeting or dealing" provision.⁶³ The Ninth Circuit reversed the Tax Court because under its interpretation of section 280A(c)(1)(B), there had to be physical contact with the clients, and merely engaging in conversations over the phone alone would not satisfy the "meeting or dealing" requirement.⁶⁴ The Ninth Circuit was

57. *Id.* at 109-10.

58. See *Drucker v. Commissioner*, 79 T.C. 605, at 622-23 (1982) (Wilbur, J., dissenting) ("In *Baie* we reached the right result for the wrong reason.").

59. S. REP. No. 938, *supra* note 5, at 149, reprinted in 1976 U.S.C.C.A.N. at 3582. The Senate's proposed amendment provides that the general disallowance provision of 280A(a) will not apply to the extent that the requirements of exclusivity and regularity are met: "where the dwelling unit or portion thereof is the sole fixed location of the taxpayer's trade or business of selling goods or services at retail or wholesale (but only if such portion is used in connection with such sale of such goods or services . . ."). If Congress wanted the meaning of "principal place of business" to include *only* those places where goods and services are exchanged, then they would have adopted the Senate's amendment [emphasis added].

60. *Soliman v. Commissioner*, 94 T.C. 20, at 25 (1990). See also *Drucker v. Commissioner*, 79 T.C. at 623 (Wilbur, J., dissenting).

61. *Soliman*, 935 F.2d at 53.

62. 78 T.C. 428 (1982), *rev'd*, 707 F.2d 404 (9th Cir. 1983). See also *Cousino v. Commissioner*, 41 T.C.M. (CCH) 722 (1981), *aff'd*, 679 F.2d 604 (6th Cir. 1982); Prop. Treas. Regs. § 1.280A-2(c), 45 Fed. Reg. 52399 (1980).

63. *Green*, 78 T.C. at 435.

64. *Green*, 707 F.2d at 406.

not asked to review the Tax Court's use of the "focal point" test in *Green*, but it acknowledged the existence of three distinct exceptions within section 280A(c)(1), and emphasized the taxpayer's additional expense as an indication of a legitimate deduction.⁶⁵

The Tax Court's "focal point" test soon became the means by which the taxpayer's "principal place of business" would be determined,⁶⁶ and went virtually unquestioned on appeal until the Tax Court's decision in *Drucker v. Commissioner*.⁶⁷ In *Drucker*, the court was asked to review the Commissioner's denial of a deduction under section 280A(c)(1)(A) to a concert musician who occupied a New York City apartment which contained a room used exclusively and regularly by the petitioner for practicing on his instrument.⁶⁸ The Tax Court applying the "focal point" test upheld the Commissioner's denial of the deduction, reasoning that the taxpayer's "principal place of business" was at the Lincoln Center where he provided his services.⁶⁹ The Tax Court further stated that the taxpayer was an employee of the Metropolitan Opera, and that he had failed to meet the additional requirement imposed by section 280A that the taxpayer's home practice room must be maintained for the convenience of the employer.⁷⁰

On appeal, the Second Circuit had great difficulty accepting the Tax Court's conclusions.⁷¹ In particular, the appellate court focused on the Tax Court's conclusion that the taxpayer's home practice area was not required by his employer and was therefore not for the "convenience of the employer."⁷² The Second Circuit held that the taxpayer's home practice area was both necessary and essential to his performance as a professional musician and therefore was a requirement of his employment. Since no other area was provided by the employer for the extensive practice required of the musician, the home office was maintained for the "convenience of the employer."⁷³ The requirement that the home practice area be maintained for the "convenience of the em-

65. *Id.* at 407.

66. *Baie v. Commissioner*, 74 T.C. 105, 109 (1980); *Jackson v. Commissioner*, 76 T.C. 696, 700 (1981).

67. 79 T.C. 605 (1982).

68. *Id.* at 606-07.

69. *Id.* at 613-14.

70. *Id.* at 615.

71. *Drucker*, 715 F.2d at 69.

72. *Id.* at 69.

73. *Id.*

ployer," however, is in addition to the requirement that it be used exclusively and on a regular basis as the taxpayer's "principal place of business."⁷⁴ The Court of Appeals maintained that "both in time and in importance, home practice was the "focal point" of the appellant musician's employment-related activities," and therefore the studio was the taxpayer's "principal place of business."⁷⁵

It is clear that the Second Circuit determined that the taxpayer's practice room was the "principal place of business" under an unusual fact situation. Also made clear, however, is that there are cases in which the Tax Court's rigid "focal point" test developed in *Baie* is not acceptable when applied to certain types of business activities. *Drucker* introduces the factors of time and importance into the evaluation of a taxpayer's business use of a personal residence, as well as implicitly holding that a taxpayer's "principal place of business" must be determined by looking at all the facts and circumstances of a particular taxpayer's case. One year later, the Second Circuit was again put to the task of interpreting the meaning of the statutory phrase "principal place of business" in *Weissman v. Commissioner*.⁷⁶

In *Weissman*, the Second Circuit once again reversed the Tax Court's disallowance of the taxpayer's deduction under section 280A(c)(1)(A). Looking at the factors of time and importance,⁷⁷ the court determined that the petitioner, a professor employed at City College, was provided with no suitable office space at the college and therefore used his home office as his "principal place of business" for the convenience of his employer.⁷⁸ The court went on to state that "though the Commissioner may not be persuaded, we see no reason to doubt that the research and writing are essential aspects of the activity a college philosophy professor undertakes to enhance his classroom performance."⁷⁹ These two opinions in the Second Circuit carved an exception into the otherwise strict "focal point" test favored by the Com-

74. H.R. REP. NO. 658, *supra* note 5, at 161, *reprinted in* 1976 U.S.C.C.A.N. at 3055.

75. *Id.*

76. 751 F.2d 512 (1984 2d Cir.).

77. *Id.* at 516 (petitioner was a college professor who was required as a condition of his employment to research and write, and did so in his home office an average of 80% of each working week).

78. *Id.*

79. *Id.* at 517 (the court here addressed and rejected the Commissioner's argument that the petitioners' activities of researching and writing were for personal gain and not for the benefit of the employer).

missioner and the Tax Court by allowing a deduction when the taxpayer's home office is used more frequently than the other locations utilized by the taxpayer, and where the activities performed at the home are of greater significance to the trade or business in which the taxpayer is engaged. The Court made it clear that no longer would the "focal point" be determined by where the taxpayer's activities are the most visible.⁸⁰ In effect, these opinions make the "focal point" test a facts and circumstances type of inquiry.

While the Second Circuit's opinions in *Drucker* and *Weissman* cast some doubt on the reliability of the "focal point" test under unique sets of facts, the test encountered the most serious contest as to its overall validity before the Seventh Circuit in the case of *Meiers v. Commissioner*.⁸¹ In *Meiers*, the taxpayer claimed a deduction for expenses incurred while maintaining an office in her home as an employee of a laundromat.⁸² The Tax Court applying the "focal point" test affirmed the Commissioner's denial of a deduction, stating that the "focal point" of the taxpayer's activities as an employee of the laundromat were at the laundromat and not at the home office.⁸³ The Seventh Circuit, citing the Second Circuit's recent decisions in *Drucker* and *Weissman*, rejected the Tax Court's conclusion as to the taxpayer's "principal place of business."⁸⁴ The Seventh Circuit considered where the dominant portion of the taxpayer's work was accomplished, the amount of time spent at the home office, and the importance of the tasks performed there. The Court concluded that the taxpayer's home office was the "principal place of business."⁸⁵

The Seventh Circuit placed special emphasis on the time spent in the office, although mentioning the existence of "other factors"⁸⁶ which may be used to help determine the taxpayer's "principal place of business." The court found that the "focal point" test while "easy to apply" is unfair to taxpayers, and fails

80. *Id.* at 514 (a professor's most visual activities are considered those such as teaching and grading papers, which are usually done at the college). See also *Meiers v. Commissioner*, 782 F.2d 75, at 79 (7th Cir. 1984).

81. 49 T.C.M. 136 (1984), *rev'd*, 782 F.2d 75 (7th Cir. 1984). *But see* *Pomarantz v. Commissioner*, 52 T.C.M. 599 (1986), *aff'd*, 867 F.2d 495 (9th Cir. 1988), and *Kisicki v. Commissioner*, 871 F.2d 1088 (1989) (unpublished disposition).

82. *Meiers*, 782 F.2d at 76. The taxpayers were the sole shareholders in an electing small business corporation; Mrs. Meiers acted as manager of the business.

83. *Id.*

84. *Id.* at 78-79.

85. *Id.*

86. *Id.* at 79.

to carry out "in the most appropriate way the apparent intent of Congress."⁸⁷ The court noted that even the Commissioner conceded that the taxpayer's expenses were not nondeductible personal expenses, but were in fact legitimate business expenses.⁸⁸ Particularly noteworthy in the Seventh Circuit's opinion in *Meiers* is that unlike the Second Circuit in *Drucker*, the court places no special emphasis on the uniqueness of the facts surrounding the deduction; the taxpayer's situation in *Meiers* seems to be rather commonplace. The activities the petitioner in *Meiers* performed were managerial in nature; the home office was used to perform "administrative work"⁸⁹ which was essential to the overall operation of the business.

The Tax Court acknowledged the inherent faults in the strict application of the "focal point" test and developed a new standard in *Soliman v. Commissioner*.⁹⁰ The Tax Court stated that "in cases in which a taxpayer's home office is essential to his business,⁹¹ he spends substantial time there, and there is no other location available to perform the office functions of the business," the "focal point" test will no longer be applied.⁹² The inquiry in such cases as to whether the taxpayer's home office is the "principal place of business" should be based on the surrounding facts and circumstances.⁹³

The facts in *Soliman* are quite similar to those of *Pomarantz v. Commissioner*,⁹⁴ where the Tax Court had denied the taxpayer a deduction using the "focal point" test.⁹⁵ The petitioner in *Soliman* was a self-employed anesthesiologist who until Septem-

87. *Id.* The court states that the intent of the legislature was to provide "definitive rules relating to deductions for expenses attributable to the business use of homes," and to preclude the deduction of "non-deductible personal, living and family expenses" as business expenses, citing S. REP. NO. 1236, 94th Cong., 2d Sess. 157 (1976). *Id.* at 77.

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

89. *Id.* at 76.

90. 94 T.C. 20 (1990).

91. *E.g.*, *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983); *Weissman v. Commissioner*, 751 F.2d 512, 517 (2d Cir. 1984).

92. *Soliman*, 94 T.C. at 29. This statement would seem to support the position that the "facts and circumstances" test need not be used in cases failing to fit the criteria laid out in the Tax Court's opinion.

93. *Id.* at 25.

94. 52 T.C.M. (CCH) 599 (1986), *aff'd*, 867 F.2d 495 (9th Cir. 1988). In *Pomarantz*, the petitioner was also a physician, situated similarly to Dr. Soliman. The only difference appears to be the amount of time spent in the home office. The Ninth Circuit adopted no specific standard with which to determine the taxpayer's "principal place of business" and merely acquiesced in the Tax Court's result under the "focal point" test.

95. *Id.*

ber of 1983 operated as a sole proprietorship.⁹⁶ Petitioner incorporated his business at this time and continued his work, administering anesthesia primarily at three nearby hospitals.⁹⁷ While Dr. Soliman actually treated his patients at these three hospitals, he used his home office as his base of operations.⁹⁸

The home office which Dr. Soliman maintained was located in a spare bedroom in his three bedroom apartment.⁹⁹ The room was furnished with items that would only lend themselves to use in a business office.¹⁰⁰ The activities which Dr. Soliman performed in his office included speaking with surgeons and patients over the telephone, contacting hospitals to make arrangements for his patients, maintaining billing and patient information, arranging for collection of outstanding bills through the use of a collection service, recording patient payments, reading various medical publications, and preparing for his work with specific patients.¹⁰¹ Dr. Soliman spent an average of two to three hours per day in his office, using it exclusively in furtherance of his business. The only arguably non-business related activity occurring in the room was the occasional balancing of Dr. Soliman's personal checking accounts.¹⁰²

The petitioner attempted to take a deduction for the expenses allocable to this room in his home which he used as his business office, but the Commissioner denied the deduction.¹⁰³ Upon review, the Tax Court discussed its previous holdings under the "focal point" test, and found that if it were to apply that particular test to Dr. Soliman's case the deduction would be denied.¹⁰⁴ The Tax Court looked at its strict application of the "focal point" test in previous cases,¹⁰⁵ and decided that the test was improper in some cases because too much emphasis was being focused on the place where goods and services were being transferred to a businesses patrons.¹⁰⁶ To require that goods and

96. *Soliman*, 94 T.C. at 21.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 25.

105. *E.g.*, *Drucker v. Commissioner*, 79 T.C. 605 (1982); *Weissman v. Commissioner*, 47 T.C.M. (CCH) 520 (1983); *Meiers v. Commissioner*, 49 T.C.M. (CCH) 136 (1984).

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

services must be transferred or income produced at the "principal place of business" would render that phrase void of any meaning independent from the "meeting or dealing" provision.¹⁰⁷ The court concluded 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."¹⁰⁸ In the determination of a taxpayer's "principal place of business," the inquiry "necessarily depends on the facts and circumstances of each case."¹⁰⁹

The Tax Court gathered support for its new "facts and circumstances" test from the opinions of the Second and Seventh Circuits in *Drucker*,¹¹⁰ *Weissman*,¹¹¹ and *Meiers*.¹¹² The court concluded that the intent of Congress was to prevent the conversion of nondeductible personal expenses into deductible business expenses,¹¹³ and not "to compel a taxpayer to rent office space rather than work out of his own home."¹¹⁴ The court, comparing Dr. Soliman's position to that of Professor Weissman, drew careful distinctions to avoid the Second Circuit's heavy reliance on the amount of time spent in the home office,¹¹⁵ and found that time is of more importance when comparing two office locations where the same activities are being performed.¹¹⁶ The court pointed out a proposed revenue regulation that would be rendered totally ineffectual if such emphasis on time was the "determining standard" in finding a taxpayer's "principal place of business."¹¹⁷

IV. DISAPPROVAL OF THE "FACTS AND CIRCUMSTANCES TEST"

The Tax Court's new "facts and circumstances" test, while described by some as "more accurately reflecting the purposes

107. *Id.*

108. *Id.*

109. *Id.*

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

111. *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984).

112. *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986).

113. *Soliman*, 94 T.C. at 24 (citing S. REP. NO. 938, 94th Cong., 2d Sess. 144 (1976); and *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983).

114. *Id.* at 29.

115. *Id.* at 26.

116. *Id.*

117. *Id.* at 26-27.

and requirements of section 280A,¹¹⁸ is not without its critics.¹¹⁹ The dissenting opinions of Chief Judge Nims and Judge Ruwe in *Soliman* focus on a single factor: the amount of time spent at the home office by the taxpayer.¹²⁰ This element of time, however, when read in context, was not of paramount importance in and of itself to the holdings of the various appellate courts relied upon by the *Soliman* majority.¹²¹ Time and importance of the business related activity taking place within the home office are merely factors which are characteristic of a necessary and essential requirement of a taxpayer's employment or business, and are to be weighed in the balance when determining the location of taxpayer's "principal place of business."¹²²

In *Weissman*, the Second Circuit stated that "in some circumstances the fact that a professor spends a majority of his working time in his home office will not overcome the presumption that an educator's "principal place of business" is at the college where he teaches."¹²³ The court went on to say, "But here not only was the home office the site of most of the taxpayer's work, its use was necessitated by lack of suitable working space on the campus."¹²⁴ The Second Circuit in *Weissman* cited the *Drucker* opinion, acknowledging that "*Drucker* teaches that in each case the determination of a taxpayer's "principal place of business" depends on the nature of his business activities, the attributes of the space in which such activities can be conducted, and the practical necessity of using a home office to carry out such activities."¹²⁵ When one compares the *Soliman* majority's conclusions with those of the *Drucker* opinion, it is fair to conclude that the *Soliman* majority reached the crux of the Second Cir-

118. *Soliman v. Commissioner*, 935 F.2d 52, 55 (4th Cir. 1991).

119. *E.g.*, *Cadwallader v. Commissioner*, 919 F.2d 1273, 1274 (7th Cir. 1990); 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, 290 (1990).

120. *Soliman*, 94 T.C. at 32 (Nims, C.J., dissenting); *Soliman*, 94 T.C. at 35-36 (Ruwe, J., dissenting).

121. *See, e.g.*, *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983) ("We are unable to comprehend how something can be necessary' and essential' and yet not be a requirement. . . [W]e conclude that the Tax Court's finding that the individual home practice was not a requirement or condition of employment' was clearly erroneous and that it was this error which led the Tax Court to the equally erroneous holding that petitioners' principal place of business was at Lincoln Center.").

122. *See Meiers v. Commissioner*, 782 F.2d 75, 79 (7th Cir. 1986).

123. *Weissman v. Commissioner*, 751 F.2d 512, 516 (1984).

124. *Id.*

125. *Id.* at 514-15.

cuit's ruling.¹²⁶ It is critical to recognize an important factual distinction between *Soliman* and the decisions in *Drucker* and *Weissman*. In *Soliman*, the taxpayer was both the employer as well as the employee, so that the nature of his business activities are twofold: (1) administrative duties; and (2) actually providing the services. Under this set of circumstances, the taxpayer's "principal place of business" would surely be its base of operations, the very place from which the business emanates.

In his dissenting opinion in *Soliman*, Chief Judge Nims claims that to adopt a "facts and circumstances" test would put the Tax Court "back to square one," referring to the days of the "appropriate and helpful" test.¹²⁷ Such a conclusion is far from justified, however, since the "facts and circumstances" test here is used to determine a taxpayer's "principal place of business." This determination presupposes that the requisite elements of exclusivity and regularity¹²⁸ have already been satisfied. Once regular and exclusive use as a business has been established, the danger of mischaracterizing personal expenses as business expenses no longer exists. Thus, the primary objective of section 280A is accomplished.¹²⁹

Judge Ruwe's dissenting opinion suggests that the new "focal point" should be where the dominant portion of the taxpayer's work is done.¹³⁰ Judge Ruwe follows with the statement that it is "obvious that a major factor relied upon by the circuit courts was the amount of time that a taxpayer spent at his various places of business."¹³¹ However, his opinion goes on to cite *Meiers*, which concluded that time was not the only factor to be considered, but the functions performed by the taxpayer in the home office as well.¹³² Sole reliance on time spent in the home office would render the deduction unavailable to home based lawn care businesses, for example, as well as to a wide variety of other vocations. A "dominant portion of the work"

126. See *Soliman*, 94 T.C. at 25 (1990). The majority holds that they will no longer adhere to the "focal point" test "in cases in which a taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business." But see *Soliman*, 94 T.C. at 35 (Ruwe, J., dissenting).

127. *Soliman*, 94 T.C. at 33 (Nims, J., dissenting).

128. I.R.C. § 280A(c)(1) (1991).

129. See H.R. REP. NO. 658, *supra* note 5, at 160, reprinted in 1976 U.S.C.C.A.N. at 3053-54 (discussing general reasons for changing the tax law).

130. *Soliman*, 94 T.C. at 34 (Ruwe, J., dissenting).

131. *Id.* at 35.

132. *Id.* at 37.

type of test would be blatantly unfair if applied to such taxpayers.

In *Meiers* the taxpayer used the home office to manage a laundromat, but the taxpayer was also required to perform certain tasks at the laundromat itself. The taxpayer spent an average of two out of three hours each day in the home office and spent the remaining hour at the laundromat.¹³³ If one accepts the premise of the *Soliman* dissenters that time should be the dominant factor in the home office analysis, the inescapable conclusion is that because the taxpayer's chosen business in *Meiers* required that more time be spent in the office than at the laundromat, the place where the services were provided and the income produced, that the taxpayer should be granted a deduction, while the taxpayer in *Soliman* should be denied the deduction because his business required just the opposite. The taxpayers are both entitled to the deduction, not because of the time spent in the office, but because under the facts and circumstances of each case the home office was the "principal place of business."

The doubts expressed about the new "facts and circumstances" test by the dissenters in the *Soliman* decision went virtually unaddressed by the Fourth Circuit, which affirmed the new test citing the analysis as being a more accurate reflection of the intents and purposes of 280A.¹³⁴

V. THE WISDOM OF SOLIMAN

Wisdom is the ability to discern and to understand the many problems and issues that one is confronted with, and the ability to exercise this understanding to produce a just result. The ancient Hebrews held their law in high regard because of the way King Solomon administered it.¹³⁵ It was the way in which the law was administered which made the people willing to submit themselves to the law.¹³⁶ Judges today, as in ancient times, are requested daily to exercise their wisdom in deciding the legal problems and issues that come before them in the courtroom. In our court system, a judge's wisdom and discretion

133. *Meiers v. Commissioner*, 782 F.2d 75, at 76 (7th Cir. 1986).

134. *Soliman v. Commissioner*, 94 T.C. 20 (1990), *aff'd*, 935 F.2d 52, 55 (4th Cir. 1991).

135. I *Kings* 3:28 ("And all of Israel heard of the judgment which the king had rendered; and they feared the king, for they saw that the wisdom of God was in him to administer justice.").

136. I *Kings* 3:9 ("Therefore give to Your servant an understanding heart to judge Your people, that I may discern good and evil. For who is able to judge this great people of Yours?" [King Solomon asking the Lord for wisdom]).

in applying the law is questionable only on appeal to a higher court. Even on appeal, the reviewing court will usually grant a great deal of deference to the lower court's decision, especially when the lower court is one that specializes in a particular area of law. The Tax Court is such a specialized court, and its decisions should be given a great deal of deference when being reviewed.¹³⁷

The Tax Court's decision in *Soliman v. Commissioner*, and the Fourth Circuit's affirmance of that decision, were correct in light of the legislative history of section 280A. This is not to say that the "facts and circumstances" test is the most expedient, nor is it the most objective. It does, however, when employed along with the other conditions in section 280A, allow the court to distinguish between personal and nonpersonal expenses, while at the same time allowing for the deduction of "legitimate"¹³⁸ expenses incurred in the operation of a home business. The Tax Court acknowledged that the "focal point" test has failed to provide taxpayers with a fair determination of a home office deduction under section 280A.¹³⁹

The Tax Court's decision to adopt a "facts and circumstance" test was not just an arbitrary attempt to prevent future reversals on appeal. The "facts and circumstances" approach to defining an ambiguous term or phrase in a statute is a well established method; there are some terms that can only be properly understood in such a manner. The Supreme Court in the oft-quoted case of *Commissioner v. Duberstein* commented on the need to have such a facts-based test available.¹⁴⁰ In addressing the question of what constitutes a gift, the Supreme Court placed great authority in the Tax Court as the trier of fact.¹⁴¹ Such a conclusion

137. *Pomarantz v. Commissioner*, 867 F.2d 495, 497 (9th Cir. 1986). *But see* *Cadwalader v. Commissioner*, 919 F.2d 1273, 1274 (7th Cir. 1990).

138. *Soliman*, 935 F.2d at 55.

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

140. 363 U.S. 278, 289 (1960). The Court states:

Decisions of the issue presented in these cases must be based ultimately on the application of the fact finding tribunal's experience with the mainsprings of human conduct to the totality of the facts of each case. The nontechnical nature of the statutory standard, the close relationship of it to the data of practical human experience, and the multiplicity of relevant factual elements, with their various combinations, creating the necessity of ascribing the proper force to each, confirm us in our conclusion that primary weight in this area must be given to the conclusions of the trier of fact.

141. *See also* *Pomarantz v. Commissioner*, 867 F.2d 495, 497 (9th Cir. 1988). The Ninth Circuit, affirming the Tax Court's application of the "focal point" test and denying the taxpayer's deduction under facts similar to those of *Soliman*, cites the Supreme Court's opinion in *Commissioner v. Duberstein* to establish the Tax Court's role as the

would be equally applicable in the application of the "principal place of business" exception in section 280A.

The "facts and circumstances" language is not foreign to other provisions and regulations pertaining to section 280A. The Tax Court focused on one of the proposed treasury regulations which provides the foundation for the "facts and circumstances" test.¹⁴² While it is conceded that the proposed regulation is not controlling,¹⁴³ it at least indicates that the Commissioner of the IRS saw the need to have some flexibility so that the courts might fashion a just "judicial definition" of "principal place of business."¹⁴⁴ The controlling standard, of course, is that which was intended by Congress, not what satisfies the cry of expediency. In arriving at the proper standard, the Ninth Circuit suggested that courts while interpreting the meaning of an ambiguous term within a statute should strive to interpret it in a way that is consistent with the statute as a whole.¹⁴⁵ In light of this suggestion, it should be pointed out that in section 280A(d)(2)(C) which deals with the rental use of a residence, the statute explicitly states that the term "fair rental" is to be determined by considering all the "facts and circumstances."¹⁴⁶ Of equal noteworthiness, the legislative history of section 280A demonstrates congressional intent that the amount of the deduction allocable to the use of the home office under section 280A(c)(5)

trier of fact. The Ninth Circuit expressed no opinion as to the appropriateness of any of the available tests. Its affirming opinion therefore should not be used as support of the "focal test."

142. Prop. Treas. Reg. § 1.280A-2(b)(3), 45 Fed. Reg. 52399 (1980) (as amended at 48 Fed. Reg. 33320 (1983)). This regulation provides in full:

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

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

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

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

For *example*, if an outside salesperson has no office space except at home and spends a substantial amount of time on paperwork at home, the office in the home *may* qualify as the salesperson's principal place of business. (emphasis added).

143. *Soliman v. Commissioner*, 935 F.2d 52, 54-55 (4th Cir. 1991).

144. *Id.* at 54.

145. *Green v. Commissioner*, 707 F.2d 404, 406 (9th Cir. 1983).

146. I.R.C. § 280A(d)(2)(C) (1991).

should be "based on the facts and circumstances of each case."¹⁴⁷ The presence of these two provisions within the same Code section is significant because one expressly requires the use of a facts-based approach in the text of the Code itself, and the other specifies a facts-based approach in the legislative history. It is apparent then, that Congress' failure to specify in the text of the Code every instance in which a facts-based approach should be used, does not mean that in the absence of such language a factual determination should be foregone. While it is true that these provisions do not directly apply to the "principal place of business" determination, the presence of such a standard for determinations in other provisions of section 280A suggest that some subjectivity should be retained for the proper administration of the statute.

It is true that Congress intended to make the test applied to home business deductions more definitive in section 280A than in its predecessor, section 162. This was accomplished with the addition of an exclusivity requirement, which eliminated much of the subjective inquiry.¹⁴⁸ Congress did not, however, intend to make the rule entirely objective. If that were indeed Congress' intention, it would seem ludicrous to fail to provide a thorough definition of the phrase "principal place of business." The objective "focal point" test, while appropriate in many cases, failed miserably in situations where no goods or services were provided at the home office.¹⁴⁹ Such a strict construction of the "principal place of business" is not consistent with the "meeting or dealing" and "separate structure" exceptions found in section 280A. These latter two exceptions are available on the fulfillment of the exclusive use and regular basis requirements so long as there is actual contact with the customer, or the added expenditure of maintaining a separate structure.¹⁵⁰ If Congress intended that the "principal place of business" exception would require more, the rails of logic surely would have lead them to express as much. There is no doubt that deductions "are a matter of legislative

147. See H.R. REP. NO. 658, *supra* note 5, at 162, reprinted in 1976 U.S.C.C.A.N. at 3055 (discussing the determination of the amount of the deduction).

148. See H.R. REP. NO. 658, *supra* note 5, at 160, reprinted in 1976 U.S.C.C.A.N. at 3054-55.

149. *Soliman*, 935 F.2d at 54.

150. *Green v. Commissioner*, 707 F.2d 404 (9th Cir. 1983). In *Green*, the 9th Circuit added the requirement that in order to qualify for the "meeting or dealing" exception, the taxpayer would have to come into actual physical contact with people and not just do business over the phone.

grace,"¹⁵¹ but if the "grace" of Congress is the only source of these deductions, it follows that they alone possess the power to take them away.

In the absence of a specific Congressional definition of the phrase "principal place of business," the courts should not interpret its meaning so harshly as to render the deduction void. If the purpose of Congress was to "distinguish between business and personal expenses" as is posited by Judge Ruwe in his *Soliman* dissent,¹⁵² then that purpose is substantially accomplished before reaching the "principal place of business" question. The true wisdom illustrated in *Soliman*¹⁵³ is that judges are not to distort the effect of a law prescribed by Congress through judicial construction.¹⁵⁴ They are, however, obligated to refrain from formulating restrictions which produce an effect unintended by Congress, and to discern that which was intended. Without a specific meaning attached to the phrase "principal place of business," a court should not, in the absence of any congressional intention to do so, make the test so objective that it becomes unjust in light of the facts and circumstances of a particular case.

The "facts and circumstances" test adopted by the Tax Court is the proper reading of section 280A in light of the legislative intent that undergirds that statute. The Tax Court's re-examination of the law involving the deductibility of home office expenses was warranted by the unjust results reached in its prior application of that law. The court traced the problem back to the starting point from which all legal decisions are to be made, that point being the court's obligation to discover the purpose of the law and to apply it consistently with that purpose. The design of section 280A as revealed by the legislative history is to prevent the taxpayer from converting the typically personal expenses associated with maintaining a home into the deductible expenses of maintaining a business. That purpose is ill served by the strict adherence to an objective "focal point" test. While it may be rightly asserted that the application of a facts based test would cause administrative difficulties in some cases, it would be improper to avoid such a test for no better reason than inconvenience or judicial expediency. It must be remembered that while administrative expediency was a concern of Congress while en-

151. *Soliman v. Commissioner*, 94 T.C. 3, at 40 (Ruwe, J., dissenting).

152. *Id.*

153. *Soliman v. Commissioner*, 935 F.2d 52 (4th Cir. 1991).

154. *Soliman*, 94 T.C. at 41 (Ruwe, J., dissenting).

acting section 280A, if such were Congress' primary purpose there would be no deduction allowed at all. To inflate a mere legislative concern into the realm of purpose is intellectually dishonest and obscures the true legislative purpose. The IRS's position against the application of a facts-based test is motivated by its own purpose, that being the expedient collection of revenue. To confuse the purpose of those who execute the law with those who make the law would be unjust. If greater objectivity is the desire of Congress then Congress must act, for Congress alone has been reserved the power to make such changes in the law.

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