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Joan M. Harvath, *Federal Tax Law - Home Office Deduction Narrowed: Commissioner V. Soliman*, 113 S. Ct. 701 (1993), 77 Marq. L. Rev. 179 (1993).

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NOTE

FEDERAL TAX LAW—Home Office Deduction Narrowed: *Commissioner v. Soliman*, 113 S. Ct. 701 (1993)

I. INTRODUCTION

In the taxpayers' never-ending battle with the Internal Revenue Service (IRS), *Commissioner v. Soliman*¹ has given the IRS an unexpected boost in its ongoing efforts to curb a taxpayer's ability to take the home office deduction under section 280A of the Internal Revenue Code (I.R.C.).² Under the general rule of section 280A,³ a qualifying taxpayer is permitted to deduct certain business expenses for that portion of a personal residence that is used exclusively and regularly for business purposes.⁴ Additionally, the home office must be (1) the principal place of business,⁵ (2) a place normally used by clients, patients, or customers,⁶ or (3) a structure unattached to the personal residence.⁷

Of these additional requirements, defining a taxpayer's "principal place of business"⁸ has been the focus of continuing debate, and various

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

2. I.R.C. § 280A(c)(1) (1988).

3. *Id.* The portions of I.R.C. § 280A relevant to this Note read as follows:

(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; limitations 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.

Id. § 280A.

4. *Id.* § 280A(c)(1).

5. *Id.* § 280A(c)(1)(A).

6. *Id.* § 280A(c)(1)(B).

7. *Id.* § 280A(c)(1)(C).

8. *Id.* § 280A(c)(1)(A). "Principal place of business" is not defined in the statute.

tests have been formulated to achieve equitable results. In *Soliman*, the Supreme Court significantly narrowed the scope of the home office deduction by creating a "new" comparative test to determine whether an individual's home office is his or her principal place of business.⁹ Under this comparative test, the decision-maker must first compare the taxpayer's places of business to ascertain which is the most important.¹⁰ Second, the decision-maker must consider the amount of time the taxpayer spends at each place of business.¹¹

The Supreme Court intended in *Soliman* to promote uniform decision-making¹² and to resolve lower court conflicts in the determination of a taxpayer's "principal place of business."¹³ However, the case will likely lead to inconsistent results and make it more difficult for many deserving taxpayers, particularly those who are self-employed, to take the home office deduction. Rather than settling the issue, the Court's new approach invites further litigation. Ultimately, the Supreme Court or Congress may need to provide further clarification.

This Note explores the background of the home office deduction and offers a critical analysis of the Supreme Court's decision in *Soliman*. Additionally, it assesses the ramifications of the case in light of the growing number of individuals who maintain a home office as an integral part of their trade or business. Finally, this Note presents options that Congress should consider in any re-examination of section 280A.

II. STATEMENT OF THE CASE

In 1983, Dr. Nadir Soliman claimed approximately \$2500 in home office deductions pursuant to I.R.C. section 280A(c)(1)(A),¹⁴ stating that his home office was his principal place of business. Dr. Soliman was a self-employed anesthesiologist who delivered his services at three Washington, D.C. area hospitals. Since none of the hospitals provided him with an office, he maintained a separate room in his personal residence as his business office. He spent an average of ten to fifteen hours each week in his home office, contacting patients, maintaining billing records, reading medical books, preparing to see patients, and conducting other activities exclusively related to his self-employment as an anesthesiolo-

9. *Commissioner v. Soliman*, 113 S. Ct. 701, 706 (1993).

10. *Id.*

11. *Id.*

12. *Id.* at 708.

13. *Id.* at 705.

14. I.R.C. § 280A(c)(1)(A) (1988).

gist. He spent approximately thirty to thirty-five hours per week at the hospitals.

After completing an audit on Dr. Soliman's 1983 federal income tax return,¹⁵ the Commissioner of the IRS disallowed his home office deduction, finding that his home office was not his principal place of business. On appeal, the Tax Court held otherwise, concluding that Dr. Soliman's home office was indeed his principal place of business, thus allowing him the deduction.¹⁶ In its decision, the Tax Court abandoned its use of the "focal point test."¹⁷ The focal point test was first enunciated by the Tax Court in *Baie v. Commissioner*,¹⁸ where the court found that a taxpayer's principal place of business "was the focal point of a taxpayer's activities."¹⁹ The focal point, in turn, was determined by looking at where goods and services were provided to customers and where revenues were generated.²⁰

Upon abandoning its use of the focal point test, the Tax Court adopted a broader "facts and circumstances test" to determine a taxpayer's principal place of business.²¹ Under this test, all facts and circumstances must be considered in ascertaining a taxpayer's principal place of business.²² The court listed factors that should weigh heavily in any such determination, including whether the home office is essential to the business,²³ whether there is an alternative location to perform the office functions,²⁴ and whether the taxpayer spends a substantial amount of time there.²⁵ The Fourth Circuit Court of Appeals affirmed the Tax Court's decision,²⁶ agreeing that the focal point test had led to inequi-

15. Prior to 1976, taxpayers wishing to take the home office deduction merely had to check a box on their tax form. Since then, taxpayers have been required to fill out a separate IRS form (Form 8829), which elicits information from the taxpayer regarding the home office. The separate form acts as an easy "red flag" for auditors seeking to curb perceived taxpayer abuse of the deduction.

16. *Soliman v. Commissioner*, 94 T.C. 20, 29 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

17. *Id.* at 25.

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

19. *Id.* at 109.

20. *Id.* at 109-10. In *Baie*, the taxpayer's principal place of business was determined to be her hot dog stand, despite the fact that she used a home office for administrative work and her kitchen for business-related food preparation.

21. *Soliman v. Commissioner*, 94 T.C. 20, 25 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

22. *Id.*

23. *Id.* at 28.

24. *Id.*

25. *Id.* at 27, 28.

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

ties,²⁷ and that the facts and circumstances test would better elucidate the "true headquarters"²⁸ of the taxpayer's trade or business.

However, in *Commissioner v. Soliman*,²⁹ the Supreme Court reversed the Fourth Circuit. It held that both the focal point test and the Tax Court's facts and circumstances test were inappropriate. Instead, the Court inserted its own comparative test.³⁰ Applying this new test, the Court disallowed Dr. Soliman's home office deduction by finding that his home office was not where his most important work took place.³¹ The Court further stated that the amount of time that Dr. Soliman spent in his home office was insufficient to qualify the office as his principal place of business.³²

III. BACKGROUND OF THE LAW

A. *The Home Office Deduction*

Under I.R.C. section 162, a taxpayer is allowed to deduct all ordinary and necessary expenses incurred while carrying on a trade or business.³³ Conversely, I.R.C. section 262 specifically disallows deductions for personal, living, or family expenses.³⁴ Between the two sections exists a myriad of combinations, perhaps best illustrated by the taxpayer who runs a business out of his or her own home.

Prior to 1976, Congress liberally allowed taxpayers to deduct home office expenses under the section 162 standard for "ordinary and necessary" business expenses.³⁵ Under this low hurdle of proof, "ordinary and necessary" expenses³⁶ could be deducted if they were deemed merely "appropriate and helpful" to the taxpayer.³⁷ This innocuous

27. *Id.*

28. *Id.*

29. 113 S. Ct. 701 (1993).

30. *Id.* at 706. For an explanation of the comparative test, see *supra* text accompanying notes 9-11.

31. *Id.* at 708. The Court stated that the actual treatment of patients was the "essence of the professional service" and the "most significant event" in Dr. Soliman's business. *Id.*

32. *Id.*

33. I.R.C. § 162 (1988).

34. *Id.* § 262.

35. *Soliman*, 113 S. Ct. at 705.

36. Ordinary and necessary expenses are those that are "common and accepted" within the business community to which the taxpayer belongs. *Welch v. Helvering*, 290 U.S. 111, 114 (1933). Such expenses need not be everyday occurrences, but simply those that conform to the "ways of conduct and the forms of speech prevailing in the business world." *Id.* at 115.

37. *Newi v. Commissioner*, 432 F.2d 998, 1000 (2d Cir. 1970). Under this definition, great deference was given to the taxpayer in determining what expenses were ordinary and necessary to the business. See also *Bodzin v. Commissioner*, 60 T.C. 820 (1973) (holding that an

standard led to many abuses, whereby taxpayers could easily convert otherwise nondeductible personal, living, and family expenses into deductible home office expenses.³⁸

However, with the advent of the Tax Reform Act of 1976,³⁹ Congress enacted I.R.C. section 280A, thereby making it more difficult for taxpayers to take the home office deduction.⁴⁰ Under section 280A, a taxpayer cannot deduct home office expenses unless his or her particular circumstances fit within an exception to the general rule of nondeductibility of expenses associated with a personal residence.⁴¹ The home office must be used exclusively on a regular basis for the business⁴² and be either the taxpayer's principal place of business, a place where clients meet regularly, or a separate structure.⁴³

B. *The Focal Point Test and Its Critics*

Most of the ensuing litigation regarding section 280A has dealt with the question, left unanswered by Congress in the Tax Reform Act of 1976,⁴⁴ of what constitutes a taxpayer's principal place of business.⁴⁵ In response, the Tax Court in 1980 adopted the focal point test, which deems a taxpayer's principal place of business to be that location where income is generated and where goods and services are provided.⁴⁶ The focal point test does not take into account the amount of time a taxpayer spends in the home office, the relative importance of the activities con-

IRS attorney's home office expenses were deductible as necessary even though his primary office was not in the home), *rev'd*, 509 F.2d 679 (4th Cir.), *cert. denied*, 423 U.S. 825 (1975).

38. S. REP. NO. 938, 94th Cong., 2d Sess. 147 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3580. The report also found that the "appropriate and helpful" test had become an administrative quagmire for both the IRS and the courts. *Id.*

39. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (codified as amended at 26 U.S.C. §§ 1-2000 (1988)).

40. I.R.C. § 280A (1988).

41. *Id.* § 280A(a).

42. *Id.* § 280A(c)(1).

43. *Id.* § 280A(c)(1)(A)-(C); *see discussion supra* part I.

44. *See* S. REP. NO. 938, 94th Cong., 2d Sess. 147, 148 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3580; *see also* H. REP. NO. 658, 94th Cong., 2d Sess. 157, 161 (1976). Neither legislative report provides any definition of "principal place of business."

45. I.R.C. § 280A(c)(1)(B). "Principal place of business" is not defined in the Internal Revenue Code.

46. *See Baie v. Commissioner*, 74 T.C. 105, 109-10 (1980). A woman who operated a hot dog stand and used parts of her home for business purposes was denied the home office deduction because her home was not the focal point of the business. The hot dog stand was determined to be the focal point, since generation of income and sales took place there. *Id.*; *see also supra* text accompanying notes 18-20; *Green v. Commissioner*, 707 F.2d 404, 407 (9th Cir. 1983) (denying account executive home office deduction, since the focal point of his business was where the income was earned—at his employer's premises).

ducted at the home office, the necessity of the home office, or the expenses involved in establishing the home office.⁴⁷

Many courts soon began to criticize this test, in part because it presumed that an employee's principal place of business was always the employer's principal place of business. In *Drucker v. Commissioner*,⁴⁸ the Second Circuit Court of Appeals reversed the Tax Court,⁴⁹ finding that a musician's principal place of business was his home office, even though his employer provided him with the stage on which he performed.⁵⁰

In *Weissman v. Commissioner*,⁵¹ the Second Circuit again reversed the Tax Court, finding that although section 280A was "strict," a university professor could take the home office deduction if he spent eighty percent of his time researching and writing at home.⁵² *Weissman* criticized the focal point test for giving undue weight to the more "visible" portion of an employee's job while disregarding other less visible yet equally important activities related to the employment.⁵³

Further adding to the growing chorus of opposition to the test, the Seventh Circuit Court of Appeals denounced the focal point test in *Meiers v. Commissioner*.⁵⁴ Meiers owned and operated a laundromat in Appleton, Wisconsin. She spent an average of one hour per day in the laundromat and two hours in her home office, drafting work schedules and performing bookkeeping and other general managerial duties.⁵⁵ The Seventh Circuit, reversing the Tax Court, allowed Meiers to deduct her home office expenses, concluding that the focal point test "places undue emphasis upon the location where goods or services are provided to customers and income is generated."⁵⁶

47. 6 WENDI HANGEBRAUCK ET AL., *MERTENS LAW OF FEDERAL INCOME TAXATION* § 25.143 (Martin M. Weinstein et al. eds., 1993).

48. 715 F.2d 67 (2d Cir. 1983).

49. 79 T.C. 605 (1982), *rev'd*, 715 F.2d 67 (2d Cir. 1983).

50. *Drucker*, 715 F.2d at 69. The court noted that this was an instance "in which an employee's principal place of business is not that of his employer." *Id.*

51. 751 F.2d 512 (2d Cir. 1984), *rev'g* 47 T.C.M. (CCH) 520 (1983).

52. *Id.* at 513.

53. *Id.* at 514. The Second Circuit criticized the Tax Court for not recognizing that although many professors spend the majority of their time on campus, other professors spend most of their time at home researching and writing. *Id.*

54. 782 F.2d 75 (7th Cir. 1986).

55. *Id.* at 76. The court also noted that Mrs. Meiers made a "legitimate" business decision to maintain the office in her home rather than at the laundromat, implicitly acknowledging a general bias *against* maintaining legitimate business operations in the home. *Id.*

56. *Id.* at 79. The Seventh Circuit placed great emphasis on time spent in the home office. The factor of time spent in the home office is one that courts have accorded various weight in their determinations of a taxpayer's principal place of business. Other factors that the Seventh Circuit considered important in its determination were the importance of the activities

In response to these criticisms, the Tax Court in *Soliman v. Commissioner*⁵⁷ adopted a more liberal facts and circumstances test to determine a taxpayer's principal place of business.⁵⁸ The court stated that the principal place of business is often the taxpayer's "administrative headquarters."⁵⁹ The court determined that the question of whether alternative office space was available for "essential organizational activities of a business" should weigh heavily in any determination.⁶⁰ The amount of time spent at the home office, while important, should be given less deference as a leading indicator of the importance of a taxpayer's home office, since the "activities are so different from each other."⁶¹

The Fourth Circuit Court of Appeals affirmed,⁶² holding that the new test better reflected congressional intent because it looked not to which location "generates income or client contact, but [to] which location is the true headquarters of the business."⁶³ Like the Tax Court, the Fourth Circuit did not compare the amount of time spent in the home office with time spent in other business locations, nor did it compare the relative importance of the activities conducted at each location.

conducted in the home office, the necessity of the home office, and the amount of money necessary to establish the home office. *Id.* *But cf.* *Pomarantz v. Commissioner*, 867 F.2d 495, 497 (9th Cir. 1988) (adopting no particular test and holding that emergency care physician was not entitled to home office deduction when he spent 33-36 hours per week at one hospital and an insubstantial amount of time in his home office).

57. 94 T.C. 20 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

58. *Id.* at 25. For additional historical background, see James A. Fellows, *Current Status of Home Office Deductions Needs Clarification*, 72 J. TAX'N 332 (1990) (discussing problems with the Tax Court's facts and circumstances test).

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

60. *Id.* at 26. The court stated that *both* the physician's medical *and* administrative duties were "equally essential to a successful medical practice." *Id.*

61. *Id.* The court emphasized that although time spent at the home office was not determinative, the taxpayer should spend a "substantial" amount of time there. *Id.* at 29; *see* Prop. Treas. Reg. § 1.280A-2(b)(3), 45 Fed. Reg. 52399 (1980) (as amended by 48 Fed. Reg. 33320 (1983)). The proposed regulations state that in determining a taxpayer's principal place of business, factors to be considered include the

facilities available to the taxpayer at each location for 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.

Id. Although the proposed regulation never became binding in law, it nevertheless indicated a strong inclination "to allow 'home office' deductions for taxpayers who maintain 'legitimate' home offices, even if the taxpayer does not spend a majority of his time in the office." *Soliman*, 935 F.2d at 55; *see also Soliman*, 94 T.C. at 28 (stating that "[w]hile proposed regulations have no force or effect, they do state a considered position by respondent").

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

63. *Id.*

In part because of this failure to undertake a comparative analysis,⁶⁴ and because other courts had undertaken such an analysis,⁶⁵ the Supreme Court granted certiorari⁶⁶ to resolve the conflict between the lower courts. The Court subsequently reversed the Fourth Circuit's decision in *Soliman*.

IV. EVALUATION OF THE CASE

Writing for the majority in *Soliman*,⁶⁷ Justice Anthony Kennedy signaled a sharp return to a strict interpretation of I.R.C. section 280A. Kennedy's opinion ended a two-year hiatus during which the more liberal facts and circumstances test allowed a greater number of taxpayers to take the home office deduction. The Court, in fashioning the new test, took into account criticisms of the focal point test. Additionally, it considered how various appellate courts had answered the question of what constitutes a taxpayer's principal place of business.⁶⁸

The Court admitted that the new test was ultimately a facts and circumstances test, since no objective test could be relied upon to produce a definitive answer in all cases.⁶⁹ However, it held that two factors must weigh heavily in any determination of a taxpayer's principal place of business. First, courts must undertake a comparative analysis of each of the taxpayer's business locations to determine which is the most important.⁷⁰ Second, the decision-maker⁷¹ must ascertain the amount of time spent at the home office to determine whether it is sufficient "to render the home office the principal place of business in light of all of the circumstances."⁷²

In determining which business location is the most important, the Court revived a mainstay of the focal point test, holding that "the point where goods and services are delivered must be given great weight in determining the place where the most important functions are per-

64. *Commissioner v. Soliman*, 113 S. Ct. 701, 705 (1993).

65. See *Pomarantz v. Commissioner*, 867 F.2d 495, 497 (9th Cir. 1988); *Meiers v. Commissioner*, 782 F.2d 75, 79 (7th Cir. 1986); *Weissman v. Commissioner*, 751 F.2d 512, 514-16 (2d Cir. 1984); *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983).

66. *Commissioner v. Soliman*, 112 S. Ct. 1472 (1992).

67. Justice Kennedy was joined by Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, and Souter.

68. *Soliman*, 113 S. Ct. at 705.

69. *Id.* at 706.

70. *Id.*

71. The decision-maker may be the Internal Revenue Service, the Tax Court, or an appellate court.

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

formed.”⁷³ The relative importance of each business location must be determined individually in order for a comparative analysis to be made. However, given the Court’s emphasis on where goods and services are delivered, it appears that in most instances that location will be presumed to be the most important location and, hence, the principal place of business for section 280A purposes.

The Court rejected the Fourth Circuit’s emphasis on the necessity of the home office for administrative work, finding that it was relevant but not controlling, since “in integrated transactions, all steps are essential.”⁷⁴ Further, the Court denounced the Fourth Circuit’s reliance on the unavailability of alternative office space for administrative work. The Court held that such unavailability has “no bearing on . . . whether a home office is the principal place of business.”⁷⁵

In calculating the time element of the two-part analysis, the Court noted that the amount of time spent at the home office must be compared with the amount of time spent at other business locations.⁷⁶ The Court, however, did not mandate any specific minimum percentage of time that must be spent at the home office in order to render it the principal place of business. In a statement underscoring the difficulties that courts have encountered in making the principal place of business determination, the Court noted that although “[t]here may be cases when there is no principal place of business, . . . [t]he taxpayer’s house does not become a principal place of business by default.”⁷⁷

While recognizing that no objective test could cover all situations, the Court nonetheless did not hesitate to establish a framework of rules to guide decision-makers in accomplishing the goal of a “fair and consistent interpretation”⁷⁸ of section 280A. Thus, the Court’s new rule is not entirely original. Rather, it represents an amalgam of tests previously formulated by the IRS and lower courts.⁷⁹

73. *Id.* at 706.

74. *Id.* at 707. The statement that the essentialness of the home office is relevant but not controlling begs the question of which factor is controlling. The Court itself appears to answer this question by emphasizing the importance of where goods are delivered or services are rendered. Thus, although the Court insists that no one factor is controlling, since “we cannot develop an objective formula that yields a clear answer in every case,” *id.* at 706, it basically leaves intact the focal point framework.

75. *Id.* at 707 (emphasis added).

76. *Id.*

77. *Id.*

78. *Id.* at 708.

79. As noted, the Court drew heavily from the focal point test, which defines principal place of business as the point where services are rendered or goods are delivered. The element of time spent at the home office was *not* a factor in the focal point test, but was a critical

Applying the new rules to Dr. Soliman's case, the Court determined that the doctor's treatment of patients at the three hospitals was the "essence of the professional service"⁸⁰ and the "most significant event in the professional transaction."⁸¹ Without positively determining which place *was* Dr. Soliman's principal place of business, the Court determined that his home office was *not* his principal place of business.⁸² The Court also found that the ten to fifteen hours per week he spent in the home office were "insufficient to render the home office the principal place of business."⁸³ The Court did not say how much time would be sufficient, apparently leaving such determinations to the individual judgments of future triers of fact.⁸⁴

Justice Harry Blackmun joined in the majority opinion, but also wrote a separate concurrence. He stressed that, as a general rule, the home office deduction is "a matter of grace, not of right."⁸⁵ As such, a taxpayer must clearly show that his or her circumstances fit within an exception to the general rule of nondeductibility.⁸⁶ Justice Blackmun agreed that the word "principal" in "principal place of business" compelled a comparative analysis,⁸⁷ and that under such an analysis the hospitals *must* be determined to be Dr. Soliman's principal place of business.⁸⁸ He invited Congress to change the law if it desired a different outcome.⁸⁹

element in the old facts and circumstances test. Thus, a taxpayer could deduct home office expenses if he or she spent a substantial amount of time in the home office. *Soliman v. Commissioner*, 94 T.C. 20, 26 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

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

81. *Id.*

82. *Id.* The Court did not say which hospital, if any, was his principal place of business, but only noted that his home office did *not* qualify as a home office for purposes of I.R.C. § 280A. *Id.*

83. *Id.*

84. See I.R.S. Notice 93-12, 1993-1 C.B. 46-7. The IRS provides taxpayers with a few examples that may shed some light as to what is regarded as a sufficient amount of time spent in the home office. In the three examples provided, however, the only example in which a taxpayer is allowed a home office deduction is when approximately 70% of his work time is spent in his home office. *Id.* It is unclear whether this figure will become a "bright line" rule in decision-making by the IRS.

85. *Soliman*, 113 S. Ct. at 708 (Blackmun, J., concurring) (quoting *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958)).

86. *Id.*

87. *Id.*

88. *Id.* at 709.

89. *Id.*

Justice Clarence Thomas was joined by Justice Antonin Scalia in a separate concurring opinion.⁹⁰ Both Justices agreed with the Court's result, but continued to favor the focal point test in all but a few "extraordinary cases" where income is generated at more than one location.⁹¹ In such cases, the focal point test may not lead to a determination of a principal place of business, and then the "totality of the circumstances" test could be used.⁹² The Justices questioned the use of the majority's new test as an effective rule for every case, fearing that it would lead to "full blown evidentiary hearings"⁹³ each time the Commissioner denied a home office deduction. They also criticized the majority for failing to clarify the issue once and for all.⁹⁴ Finally, the Justices criticized the majority for failing to identify which of the new test's two factors—the importance of the activity or the amount of time spent at the home office—was more important in determining a taxpayer's principal place of business.⁹⁵

Justice John Paul Stevens, the lone official dissenter,⁹⁶ stated that the Court's new test would "breed uncertainty in the law, frustrate a primary purpose of the statute, and unfairly penalize deserving taxpayers."⁹⁷ He argued that the already stringent requirements of the Tax Court's "facts and circumstances" test⁹⁸ would ensure that abuses could almost never

90. *Id.* at 709 (Thomas & Scalia, JJ., concurring).

91. *Id.* at 710 (Thomas & Scalia, JJ., concurring). Justices Thomas and Scalia seem to believe that a business involving "multiple points of sale" is "extraordinary." *Id.* (Thomas & Scalia, JJ., concurring). This broad statement does little to adequately reflect the reality of the business world, where there is a growing trend toward work-at-home businesses, many of which may have more than one income-generating location.

92. *Id.* (Thomas & Scalia, JJ., concurring). The totality of the circumstances test referred to by the concurring Justices is essentially the two-part comparative and time analysis enunciated by the majority. *Id.* (Thomas & Scalia, JJ., concurring).

93. *Id.* at 709 (Thomas & Scalia, JJ., concurring).

94. *Id.* at 711 (Thomas & Scalia, JJ., concurring).

95. *Id.* (Thomas & Scalia, JJ., concurring).

96. Although Justice Stevens wrote the only actual dissent, Justices Thomas and Scalia agreed only with the majority's result; they strongly disagreed with the Court's new "comparative" test. *Id.* at 709-10 (Thomas & Scalia, JJ., concurring). Additionally, although Justice Blackmun felt "compelled" to join in the majority opinion because of the present form of I.R.C. § 280A, he almost seemed apologetic about having to do so and invited Congress to change the law if it desired a different outcome. *Id.* at 709 (Blackmun, J., concurring).

97. *Id.* at 715 (Stevens, J., dissenting).

98. The facts and circumstances test looks to many factors, including whether the home office is essential to the taxpayer's business, whether the taxpayer spends a substantial amount of time there, and whether alternative office space is available to the taxpayer. *Soliman v. Commissioner*, 94 T.C. 20, 25-28 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

occur,⁹⁹ thereby accomplishing Congress's goal in enacting section 280A. He also criticized the new test on the ground that it would "result in the unequal treatment of similarly situated taxpayers."¹⁰⁰ Of particular concern to Justice Stevens was the plight of many self-employed individuals, who, he argued, would face greater obstacles in obtaining the section 280A deduction—a result that Congress surely did not intend.¹⁰¹ In Justice Stevens's opinion, Dr. Soliman's home office is not only his principal place of business, it is his only place of business.¹⁰²

Additionally, Justice Stevens echoed the Tax Court¹⁰³ in arguing that the principal place of business exception is made moot by the new test because it is merged with another section 280A exception, which allows a home office deduction if the home office is used "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."¹⁰⁴ Since the Court's new test places great weight on the point at which services are rendered or goods are delivered, which generally requires client or customer contact, the new test vitiates the principal place of business exception as a free standing exception.¹⁰⁵

V. ANALYSIS

A. Problems with the Comparative Analysis

The Supreme Court's comparative analysis in *Commissioner v. Soliman* is an ineffective method of bringing fairness and consistency¹⁰⁶

99. *Soliman*, 113 S. Ct. at 715 (Stevens, J., dissenting).

100. *Id.* at 712 (Stevens, J., dissenting). For example, a physician who must go to a hospital to deliver most services would be denied the home office deduction, whereas another physician who did the same work but was wealthy enough to own property with a separate structure on it would be able to take the home office deduction under I.R.C. § 280A(c)(1)(C). Similarly, if a physician could render services to patients at the home office, the home office deduction could be taken under I.R.C. § 280A(c)(1)(B). Justice Stevens argued that Congress could not have intended such a disparate result. *Id.* at 711-12 (Stevens, J., dissenting).

101. *Id.* at 712 (Stevens, J., dissenting). Justice Stevens noted that "Congress intended only to prevent deductions for home offices that were not genuinely necessary business expenses." *Id.* (Stevens, J., dissenting).

102. *Id.* at 715 (Stevens, J., dissenting).

103. *Id.* at 714 (Stevens, J., dissenting) (quoting *Soliman v. Commissioner*, 94 T.C. 20, 25 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993)).

104. I.R.C. § 280A(c)(1)(B) (1988).

105. *Soliman*, 113 S. Ct. at 714 (Stevens, J., dissenting). Justice Stevens argued that by effectively merging these two exceptions, the majority opinion did not reflect congressional intent in creating I.R.C. § 280A(c)(1)(A). *Id.* (Stevens, J., dissenting).

106. *Soliman*, 113 S. Ct. at 708. One of the Court's goals was to formulate rules "for the fair and consistent interpretation of a statute that speaks in the most general of terms." *Id.*

to the determination of a taxpayer's principal place of business for I.R.C. section 280A purposes. The new test purports to resolve the conflict between the Fourth Circuit Court of Appeals and other appellate courts¹⁰⁷ regarding the implementation of, or lack of, a comparative analysis in making the determination.¹⁰⁸ While the Court's decision requires lower courts to use a comparative analysis, application of the new "comparative" test will likely lead to unfair and inconsistent results. This, in turn, will ultimately lead to new conflicts and increased litigation.

The most probable future conflict is likely to be an old focal point test criticism with a new name. Rather than debating the merits of what is a business's focal point, litigants will begin debating what constitutes the "most important" business location. Yet in *Soliman*, the Supreme Court seemed to answer this question with echoes of the focal point test, stating that although it "can be misleading . . . the point where goods and services are delivered must be given *great weight* in determining the place where the most important functions are performed."¹⁰⁹ This is a basic reiteration of the focal point test. Although the Court left itself an escape valve, saying that "no one test is determinative in every case,"¹¹⁰ the Court failed to address the criticisms of the focal point test voiced during the 1980s by many appellate courts and the Tax Court.¹¹¹

Most important, by reviving this major tenet of the focal point test, the Court has taken it upon itself to make a value determination: a pre-

107. *E.g.*, *Pomarantz v. Commissioner*, 867 F.2d 495 (9th Cir. 1988); *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986); *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984); *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983).

108. *Soliman*, 113 S. Ct. at 705.

109. *Id.* at 706 (emphasis added). The Court also noted that "[i]f the nature of the trade or profession requires the taxpayer to meet or confer with a client or patient or to deliver goods or services to a customer, the place where that contact occurs is often an important indicator of the principal place of business." *Id.* Again, this submerges I.R.C. § 280A(c)(1)(A) (the principal place of business exception) within I.R.C. § 280A(c)(1)(B) (the place used by clients exception). See *supra* note 105 and accompanying text. As Justice Stevens aptly noted in his dissent, Congress left each exception free standing, and one exception should not be dependent on fulfilling conditions of another. *Soliman*, 113 S. Ct. at 714 (Stevens, J., dissenting); see also *Soliman v. Commissioner*, 94 T.C. 20, 25 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993) (stating that the focal point test "merges the 'principal place of business' exception with the 'meeting clients' exception and practically eliminates the principal place of business exception from Section 280A").

110. *Soliman*, 113 S. Ct. at 706. Justices Thomas and Scalia feared that the Court's new comparative test would lead to "full-blown evidentiary hearings" to determine the most important place of business each time the Commissioner denied a taxpayer's home office deduction. *Id.* at 709 (Thomas & Scalia, JJ., concurring).

111. See *Pomarantz v. Commissioner*, 867 F.2d 495 (9th Cir. 1988); *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986); *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984); *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983).

sumption that the home office generally cannot be the most important place of business if what takes place there is "simply" managerial or administrative work.¹¹² This presumption is rebuttable, however. It is at least arguable, and at most probable, that managerial and administrative functions are the most important aspects of any business. No business can operate for very long if it is not well operated and managed. This is especially so in the case of a self-employed taxpayer like Dr. Soliman, who must have an office and who has no alternative office space. However, the Court concluded that necessity is relevant, but not controlling.¹¹³ Similarly, the Court stated that lack of alternative office space is irrelevant.¹¹⁴ Thus, even though Dr. Soliman used his home office as his business headquarters, the Court made a value determination that his most important work took place at the hospitals, and therefore the home office was not his principal place of business. The Court determined that treating patients was inherently more important than running the business.

The Court agreed that the determination of what is "principal" is fundamentally subjective.¹¹⁵ "Principal" has been defined as "chief; leading; most important."¹¹⁶ Alternatively, "principal office" has been defined as the "headquarters, or the place where the chief or principal affairs and business of the corporation are transacted. . . . *Synonymous with 'principal place of business.'*"¹¹⁷ Yet the Court, having received no explicit guidance from Congress as to whether Congress meant principal office,¹¹⁸ concluded that a comparative analysis of business locations was

112. Unless, of course, the taxpayer spends a substantial amount of time at the home office, in which case the taxpayer *might* receive the deduction. The Court does not promise, however, that a taxpayer who spends a substantial amount of time at the home office but whose goods and services are delivered elsewhere will necessarily obtain the home office deduction. See *infra* part V.B for a discussion of the time analysis.

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

114. *Id.* In doing so, the Court ignored lower courts' findings that lack of alternative office space is a factor that *should* be considered. See *Weissman v. Commissioner*, 751 F.2d 512, 515 (2d Cir. 1984) (holding that the lack of a private on-campus facility makes professor's home office a necessity); *Drucker v. Commissioner*, 715 F.2d 67, 70 (2d Cir. 1983) (holding that the fact that musician was not provided with a place to practice was relevant).

115. *Soliman*, 113 S. Ct. at 706. The Court admitted that it "cannot develop an objective formula that yields a clear answer in every case." *Id.*

116. BLACK'S LAW DICTIONARY 1192 (6th ed. 1990); see also WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1802 (1971) (defining "principal" as "most important, consequential, or influential").

117. BLACK'S LAW DICTIONARY 1083 (6th ed. 1990) (emphasis added).

118. As Justice Stevens noted in his dissent, Congress may have written "principal place of business" rather than "principal office" to encompass *all* businesses, since many businesspersons, such as artists or cabinet-makers, do not have a traditional office. *Soliman*, 113 S. Ct.

compelled.¹¹⁹ The Court's reading of the statute hardly seems compelled; it is equally plausible that Congress simply meant "principal office."

B. Problems with the Time Analysis

The Supreme Court also stated that the amount of time spent at the home office compared with the amount of time spent at other business locations is of paramount importance, especially when the comparative analysis "yields no definitive answer to the principal place of business inquiry."¹²⁰ However, the Court gave no further guidance as to how much time spent in the home office is enough. In Dr. Soliman's case, spending ten to fifteen hours per week in the home office was not enough.¹²¹ Yet it is unclear how many hours he would have needed to have spent in the home office for it to have "become" his principal place of business.

The IRS has indicated that a taxpayer spending approximately seventy percent of his or her time in the home office will be eligible for the deduction.¹²² However, it remains unclear whether even seventy percent will suffice if the comparative analysis *first* determines that the home office is *not* the most important place of business. The Court did not state which analysis—the comparative analysis or the time analysis—is more important.¹²³ Similarly, the Court did not state in what order the analyses should be performed.

Consider the example of a self-employed physician who spends a weekly average of thirty-five hours in the home office and fifteen hours in the hospital. If the comparative analysis is more critical to the principal place of business determination, the hospital would likely be found to be the principal place of business,¹²⁴ and the physician would proba-

at 715 (Stevens, J., dissenting). He also noted that the principal place of business has been used interchangeably with the term "main office" in other decisions. *Id.* at 714 (Stevens, J., dissenting).

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

120. *Id.* at 707.

121. *Id.* at 708.

122. I.R.S. Notice 93-12, 1993-1 C.B. 46-7. In this publication, the only example given in which a deduction was allowed involved a salesperson who spent 30 hours per week selling goods out of his home office and 12 hours per week visiting customers. Thirty hours out of a total of 42 equals 71.43%. *Id.*

123. The Court fails to state how critical the time analysis is, stating only that it becomes "particularly significant" when the comparative analysis fails to produce a clear answer. *Soliman*, 113 S. Ct. at 707.

124. This is assuming, per *Soliman*, that "actual treatment [is] the essence of the professional service." *Id.* at 708.

bly be denied the deduction. On the other hand, if the time analysis is more critical to the determination, the fact that the physician spent more time at home than in the hospital would become controlling, and the physician would most likely get the deduction. Thus, it is probable that future lower court interpretations of *Soliman*, based on similar factual patterns, will lead to different results. Clearly, this was not the Court's intention in *Soliman*.¹²⁵

C. Discriminatory Effect of the Decision

The Supreme Court's decision will have the unintended effect of discriminating against certain types of businesspersons. Those most likely to be negatively impacted include health care professionals, the self-employed, construction contractors, outside salespeople, musicians, house painters, consultants, caterers, and interior decorators.¹²⁶ Since the place where income is generated most often will be deemed a taxpayer's principal place of business, those professionals whose *income* is largely generated *outside* the home will usually be denied the deduction, even though most, if not all, of their business *expenses* are generated *in* the home office. Dr. Soliman is such a professional, who, due to the nature of his profession, cannot deduct his legitimate business expenses.¹²⁷

Another discriminatory effect is evinced by the Court's statement that "there may be cases when there is *no* principal place of business."¹²⁸ Simply because the Commissioner or the courts cannot ascertain a taxpayer's principal place of business does not mean that one does not exist. To deny the existence of *any* principal place of business is to fly in the face of commercial reality and to disallow certain taxpayers a home office deduction, simply because the nature of their business does not fit neatly into the Court's analysis.¹²⁹ While the home office deduction may

125. *Id.* The Court's paramount goal in *Soliman* was the "fair and consistent interpretation of a statute that speaks in the most general of terms." *Id.*

126. For a more detailed look at how various professions may be adversely affected by the decision, see Robert T. Kelly, Jr., *Home Office Deductions Restricted by Supreme Court*, 50 TAX'N FOR ACCT. 196 (1993); see also Lynn Asinoff, *How Supreme Court's Home-Office Ruling Affects You*, WALL ST. J., Jan. 13, 1993, at C1.

127. Conversely, those taxpayers who, due to the nature of their business, spend the vast majority of time at home, are less likely to be affected by the ruling.

128. *Soliman*, 113 S. Ct. at 707 (emphasis added). The Court held that if no principal place of business can be determined, the home office does not become the principal location "by default." *Id.*

129. Consider the example of a self-employed person who provides home health care services to 10 homes and maintains the managerial and administrative headquarters of the business in a home office, spending 20 hours per week in the home office. Since the taxpayer

indeed be "a matter of grace, not of right,"¹³⁰ no one type of business should be given grace over another. A business is a business; the inadvertent singling out of certain types of trades or professions for denial of the home office deduction will be an unfortunate result of the Court's decision in *Soliman*.

Finally, the new rule discriminates against those who are not wealthy enough to build a separate structure for their home office¹³¹ or to rent office space outside the home. A wealthy suburban stockbroker will simply build a "shed" in the yard or rent an office elsewhere. An inner-city home health care provider may not have the same option. Regardless of one's income, however, it often makes excellent business sense to maintain a headquarters in the home,¹³² avoiding the additional expenses of rent and transportation¹³³ to another location.

D. Congressional Involvement Needed

Although there exists a presumption of nondeductibility of personal, living, and family expenses,¹³⁴ there exists a concomitant presumption that ordinary and necessary expenses incurred in conducting a trade or business are deductible.¹³⁵ When Congress formulated section 280A in 1976, it intended only to prevent taxpayers from converting otherwise nondeductible personal expenses into deductible business expenses, not to prevent taxpayers from deducting legitimate business expenses.¹³⁶ The Supreme Court's new test goes beyond that limited purpose and achieves unintended results. In its attempt to winnow out abuse, the Court has inadvertently created a test that will prevent many taxpay-

fluctuates between 11 different locations, the Court might conclude that the taxpayer has no principal place of business.

130. *Soliman*, 113 S. Ct. at 708 (Blackmun, J., concurring) (quoting *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958)).

131. I.R.C. § 280A(c)(1)(C) states that a deduction may be taken "in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business." I.R.C. § 280A(c)(1)(C) (1988).

132. See *Meiers v. Commissioner*, 782 F.2d 75, 79 (7th Cir. 1986) (holding that taxpayer made a "legitimate business decision not to create office space at the laundromat").

133. See Rhonda M. Abrams, *Don't Give Up Home Office Deduction*, Gannett News Service, May 20, 1993, available in LEXIS, News Library, GNS File (criticizing Court's decision and noting that a taxpayer who rents office space for a business can take the full deduction, but a home-based business is not accorded the same treatment).

134. I.R.C. § 262 (1988).

135. *Id.* § 162.

136. S. REP. NO. 938, *supra* note 38; see also *Meiers*, 782 F.2d at 79 ("[The] purpose of Congress [is] to prevent taxpayers from converting non-deductible personal expenses into deductible business expenses while ensuring that taxpayers retain their entitlement to deduct necessary business expenses.") (emphasis added).

ers¹³⁷ from taking a deduction that Congress likely intended them to have.

The Court's analysis is not in step with commercial practice and economic reality. The number of taxpayers who opt to work at home is growing, as is the number of taxpayers who actually run a business out of the home.¹³⁸ Many of these include recently laid-off workers who have made a new start on their own.¹³⁹ Although the legislative history is silent,¹⁴⁰ Congress could not have intended for these taxpayers to be penalized for making a business decision to maintain part of the business at home. The Court admitted that a decision-maker ultimately must look to "life in all its fullness"¹⁴¹ to answer questions of deductibility, yet its chosen parameters belie its stated intention to produce "fair and consistent"¹⁴² results.

It is time for Congress to step in and clarify the home office deduction issue. If Congress agrees with the Court's interpretation, it should codify the tenets of *Soliman* into section 280A. In the more probable event that Congress disagrees with the Court's decision, it should amend the section to reflect its views.

One way Congress could amend section 280A would be to clearly define a taxpayer's principal place of business. The definition could provide that if a taxpayer has only one office, and it is the home office, then the home office *is* the principal place of business for section 280A purposes.

On a more basic level, Congress could also amend section 280A(c)(1)(A) to read "principal *office or* principal place of business."

137. Most notable, as mentioned, are self-employed individuals. The concern about abuse and converting otherwise personal expenses is less of a concern with these individuals who, unless they rent other space, *must* use their own home as their business headquarters. Under the new test, many taxpayers such as the musician in *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983), or the professor in *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984), who had previously been able to take the home office deduction, are now unable to do so.

138. Approximately 30 million Americans work out of the home. See Gwen Hall, *Home Based Businesses Create Local Controversies*, Gannett News Service, Nov. 10, 1992, available in LEXIS, News Library, GNS File; see also *New Publishers Serve At-Home Workers*, L.A. TIMES, Feb. 14, 1993, at D10. The number of publications serving the growing number of at-home workers has risen dramatically. At present there are approximately 50 publications. *Id.*

139. See Louis Uchitelle, *Newest Corporate Refugees: Self-Employed but Low-Paid*, N.Y. TIMES, Nov. 15, 1993, at A1 (discussing how the recession has forced many laid-off employees to become self-employed).

140. S. REP. NO. 938, *supra* note 38, at 148.

141. *Commissioner v. Soliman*, 113 S. Ct. 701, 708 (1993) (quoting *Welch v. Helvering*, 290 U.S. 111, 115 (1933)).

142. *Id.*

The existing requirements that the home office must be used on a regular basis and exclusively for business purposes¹⁴³ would prevent abuse. At least five members of Congress have introduced bills that seek to achieve similar results.¹⁴⁴ Representative Rod Grams of Minnesota has introduced a bill¹⁴⁵ that would allow the home office deduction when the home is the sole fixed business location.¹⁴⁶ Representatives Wayne Allard of Colorado and Jim Bunning of Kentucky have introduced a bill that is similar, but which goes even further, allowing the deduction regardless of "the amount of time or type of work" performed in the home office.¹⁴⁷ Representative Kweisi Mfume of Maryland has introduced a bill¹⁴⁸ that would allow the home office deduction if the home office is the location for management activities.¹⁴⁹ Finally, Senator Conrad Burns of North Dakota has introduced a bill¹⁵⁰ that adopts the Tax Court's facts and circumstances test as first enunciated in 1990.¹⁵¹ The pace at which bills have been introduced since the *Soliman* decision was

143. I.R.C. § 280A(c)(1) (1988). Congress, if it so chooses, could codify additional requirements, such as those that have been enumerated by various courts (e.g., necessity and lack of alternative space) to ensure that abuses are prevented.

144. Congressmen Rod Grams of Minnesota, Wayne Allard of Colorado, Jim Bunning of Kentucky, Kweisi Mfume of Maryland, and Senator Conrad Burns of North Dakota have introduced bills in response to the Supreme Court's decision in *Commissioner v. Soliman*. See *infra* notes 147-52 and accompanying text.

145. H.R. 2291, 103d Cong., 1st Sess. (1993).

146. H.R. 2291 provides, in pertinent part, that I.R.C. § 280A(c)(1)(A) would be changed to read: "(A) as the principal place of business for any trade or business of the taxpayer or as the sole fixed location of business for any trade or business of the taxpayer." H.R. 2291, *supra* note 145.

147. H.R. 2444, 103d Cong., 1st Sess. (1993) would amend I.R.C. § 280A(c)(1)(A) to read:

(A) as the principal place of business for any trade or business of the taxpayer, or as the sole fixed location of business for any trade or business of the taxpayer who has no other fixed location of business for such trade or business, regardless of (i) the amount of time or type of work the taxpayer performs in such fixed location, or (ii) the proportion of the total income from the business attributable to such location

Id. The bill also contains a provision allowing for the deduction of business expenses attributable to home storage space for product samples. Section 280A(c)(2) currently allows a deduction for storage space only for inventory, not product samples.

148. H.R. 687, 103d Cong., 1st Sess. (1993).

149. H.R. 687 would add the following to I.R.C. § 280A(c)(1): "For purposes of subparagraph (A), in the case of a trade or business which would not (but for this sentence) have a principal place of business, its principal place of business shall be where substantially all of the management activities for such trade or business occur." H.R. 687, *supra* note 148.

150. S. 1116, 103d Cong., 1st Sess. (1993).

151. S. 1116 would add to I.R.C. § 280A(c) the following:

(7) TREATMENT OF HOME OFFICE AS PRINCIPAL PLACE OF BUSINESS.—

For purposes of paragraph (1)(A), if—

(A) management or administrative activities are essential to the trade or business of the taxpayer,

announced indicates that there is already strong bipartisan support for making the home office deduction more widely available to taxpayers. The amount of congressional and public support¹⁵² garnered for these bills in the coming months will likely determine the fate of the home office deduction.

Additionally, Congress should clarify how much time spent in the home office is sufficient to obtain the deduction.¹⁵³ The IRS has given guidelines based on *Soliman*,¹⁵⁴ but even the guidelines do not assure borderline taxpayers¹⁵⁵ that they may take the deduction. This uncertainty will prevent many deserving businesspersons from taking the deduction. Many taxpayers simply will not claim the deduction in order to avoid any potential encounter with the IRS.

VI. CONCLUSION

In 1976, Congress determined that there existed "a great need for definitive rules"¹⁵⁶ regarding the deductibility of home office expenses. The same is even more true today. The Supreme Court's ruling in *Soliman*¹⁵⁷ narrows the availability of the deduction without providing definitive rules that are needed to lead to "fair and consistent" results.¹⁵⁸ A few simple changes would end the continuing uncertainty and injustice that prevails. Congress and the courts should not fear that widening the availability of the home office deduction will be costly or lead to abuse.

(B) the only available office for such activities is in the dwelling unit of the taxpayer,

(C) such office is essential to such trade or business, and

(D) the taxpayer spends a substantial amount of time in such office, the portion of such dwelling unit which is used exclusively on a regular basis for such office shall be treated as the principal place of business for such trade or business.

S. 1116, *supra* note 150. This is a basic reiteration of the Tax Court's more liberal facts and circumstances test. *See supra* notes 57-61 and accompanying text.

152. Several lobbying organizations have already indicated their support for one or more of the various bills, including the National Federation of Independent Businesses (NFIB), the Bureau of Wholesale Sales Representatives, the National Shoe Travelers, the International Home Furnishing Representatives Association, and the Direct Selling Association.

153. H.R. 2444 allows the deduction regardless of the amount of time spent in the home office. *See supra* note 147 and accompanying text.

154. I.R.S. Notice 93-12, 1993-1 C.B. 46-7; *see supra* notes 84 and 122 and accompanying text.

155. A borderline taxpayer is one who *may* be able to take the home office deduction depending on how the particular trier of fact interprets the Court's decision in *Soliman*. *See supra* Part V.B.

156. S. REP. NO. 938, *supra* note 38, at 147, *reprinted in* 1976 U.S.C.C.A.N. at 3579.

157. *Commissioner v. Soliman*, 113 S. Ct. 701 (1993).

158. *Id.* at 708.

Sufficient safeguards exist to prevent such abuse,¹⁵⁹ and the cost would not be prohibitive.¹⁶⁰ A straightforward change in the law would recognize the increasing importance of home offices in today's business world, and reflect the reality that the workplace of the future will continue to be replete with increasing numbers of businesses that do not fit into traditional definitions. The law should reflect that reality.

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159. I.R.C. § 280A(c)(1) (1988) requires the home office to be exclusively used on a regular basis for business purposes in all cases. *See also supra* note 143 and accompanying text.

160. The amount of the deduction is often minimal to begin with, since it represents only that portion of the residence used for the business. Additionally, since the home office is considered nonresidential real property, depreciation must generally be taken over 39 years using the straight line method; thus, it is a relatively small amount each year. I.R.C. § 168(b)(3)(A), (c)(1).

Approximately 1.6 million taxpayers filed home office deductions for a total of approximately \$2.4 billion in 1992. Elizabeth M. MacDonald, *How to Write Off a Home Office*, MONEY, Mar. 1993, at 16. In relative terms of total dollars, the cost (in terms of lost revenues) of widening the availability of the home office deduction is not likely to be prohibitive. Additionally, any cost would be offset by revenue gains elsewhere under the 1990 statutory mandate of revenue neutrality. Omnibus Budget Reconciliation Act of 1990, §§ 13001-13501, Pub. L. No. 101-508, 104 Stat. 1388 (codified as amended in scattered sections of 2 U.S.C.). This new requirement, also known as "pay as you go," states that all enacted spending and revenue legislation must neither increase nor reduce total federal tax collections over a five-year period. The system was mandated in the Budget Enforcement Act of 1990, which was included as part of the Omnibus Budget Reconciliation Act of 1990. *Id.*

