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## Commissioner v. Soliman: The Final Word on Defining Principal Place of Business

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## COMMISSIONER v. SOLIMAN: THE FINAL WORD ON DEFINING PRINCIPAL PLACE OF BUSINESS

It is estimated that there are more than 20 million home-based businesses in the United States.<sup>1</sup> These taxpayers currently rely on § 280A of the Internal Revenue Code, which permits a deduction for expenses attributable to home-offices.<sup>2</sup> Before Congress enacted § 280A, however, the law was unclear as to whether expenses attributable to home-offices were personal expenses, and therefore nondeductible,<sup>3</sup> or whether such costs were deductible business expenses.<sup>4</sup>

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1. Linda Stern, *The Home-Office Deduction: Don't Worry, Be Happy*, HOME OFFICE COMPUTING, Feb. 1993, at 24. The more than 20 million home-based businesses do not include office workers who also maintain home-offices. Robert W. Wood, *Revenue Ruling 94-24, Notice 93-12, and the Post-Soliman Blues*, 21 J. REAL EST. TAX'N 334 (1994) (stating that with the large number of home-based businesses, it is surprising that *Soliman* did not generate greater controversy).

2. I.R.C. § 280A(a) (1988). The Code states, in part, that “[e]xcept as otherwise provided in this section, . . . 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.” *Id.* Section 280A(c)(1) adds:

Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis —

(A) the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer.

*Id.* A home-office deduction permits a business or taxpayer to deduct expenses that are directly attributable to his business. See I.R.C. § 280A(c) (West 1993). It is estimated that only four million of the estimated 20 million Americans who work at home take the deduction, with the remaining number reluctant to take it for fear of an IRS audit. Stern, *supra* note 1, at 24.

3. See I.R.C. § 262(a) (1988) (providing, in part, that “no deduction shall be allowed for personal, living, or family expenses”).

4. See Mark Levine, Note, *Home Office Deductions: Deserving Taxpayers Finally Get a Break*, 45 TAX LAW. 247 (1991). The author stated that:

[a]n individual taxpayer who must maintain an office, but has no place to do so other than in his home, is typically faced with three hurdles when deducting his home office expenses: the broad and seemingly preclusive language of section

This confusion originated when Congress enacted § 162 of the Internal Revenue Code,<sup>5</sup> a very broad statutory provision that purportedly distinguished nondeductible personal expenses from deductible business expenses.<sup>6</sup> The United States Tax Court, in its interpretation of § 162, established a test that permitted the deduction of home-office expenses if they were “appropriate and helpful” to the taxpayer’s trade or business.<sup>7</sup> The Internal Revenue Service, on the other hand, favored a more strict interpretation of § 162 and, hence, issued a Revenue Ruling<sup>8</sup> that allowed home-office expenses to be deducted only when an employer required that an employee maintain an office in his home.<sup>9</sup>

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280A of the Code, the restrictive interpretation of that section by the [Internal Revenue] Service, and conflicting decisional tests for that interpretation. *Id.* (footnote omitted); compare Rev. Rul. 62-180, 1962-2 C.B. 52 (allowing a home-office business deduction only when the home-office is required by the employer) with I.R.C. § 162 (1954) (allowing deductions for all ordinary and necessary business expenses) and *Newi v. Commissioner*, 28 T.C.M. (CCH) 686 (1969) (allowing deductions for home-office expenses if appropriate and helpful to the taxpayer’s trade or business), *aff’d*, 432 F.2d 998 (2d Cir. 1970), and *superseded by statute as stated in Commissioner v. Soliman*, 113 S. Ct. 701 (1993).

5. I.R.C. § 162 (1988). Prior to enacting § 280A, courts utilized § 162 of the Internal Revenue Code to determine whether a taxpayer’s home-office expenses were deductible. C. David Watson, *An Analysis of “Meeting or Dealing” for Home Office Deductions*, 1984 U. ILL. L. REV. 1075, 1077. However, this statutory provision led to taxpayer abuse and court confusion, and ultimately led Congress to enact § 280A. *Id.* at 1077-79.

6. I.R.C. § 162 (1988) (stating, in pertinent part, that “[t]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business”); see *Commissioner v. Tellier*, 383 U.S. 687, 689-90 (1966) (defining “ordinary” business expenses as those not incurred in the acquisition of a capital asset); *Welch v. Helvering*, 290 U.S. 111, 113 (1933) (implying that an “ordinary” business expense is a necessary business expense not capital in nature); see *infra* notes 55-63 and accompanying text (discussing the case law defining “necessary” business expenses as those that were appropriate and helpful to the taxpayer’s business).

7. See *Bodzin v. Commissioner*, 60 T.C. 820, 825-26 (1973) (applying the “appropriate and helpful” test), *rev’d*, 509 F.2d 679 (4th Cir.), and *cert. denied*, 423 U.S. 825 (1975); *Newi v. Commissioner*, 28 T.C.M. (CCH) 686 (1969) (same), *aff’d*, 432 F.2d 998 (2d Cir. 1970), and *superseded by statute as stated in Commissioner v. Soliman*, 113 S. Ct. 701 (1993); see *infra* notes 51-67 and accompanying text (discussing the appropriate and helpful test). The appropriate and helpful test liberally interpreted § 162 of the Internal Revenue Code. See *Tellier*, 383 U.S. at 689 (interpreting “ordinary” and “necessary” as requiring only that the expense be appropriate and helpful to the taxpayer’s business activities).

8. Rev. Rul. 62-180, 1962-2 C.B. 52. The Revenue Ruling provides that:

[A]n employee who, as a condition of his employment, is required to provide his own space and facilities for performance of his duties and regularly uses a portion of his personal residence for that purpose may deduct a pro rata portion of the expenses of maintenance and depreciation on his residence.

*Id.*

9. *Id.* Prior to adopting the more liberal appropriate and helpful test, the Tax Court originally enforced the Revenue Ruling. *Davis v. Commissioner*, 38 T.C. 175, 178-80 (1962), *vacated*, unpublished op. (9th Cir. 1964). In *Davis*, a college professor built a room over the garage of his home. *Id.* at 177. *Davis* used the study to prepare lectures, grade

In an effort to provide more definitive rules regarding the deductibility of home-office business expenses, Congress enacted 26 U.S.C. § 280A.<sup>10</sup> This section disallows deductions for business expenses attributable to a taxpayer's home-office except in those situations where the taxpayer uses the home-office as a principal place of business,<sup>11</sup> or as a place to meet patients or clients,<sup>12</sup> or where the home-office is a separate structure.<sup>13</sup> Although § 280A provided significantly more guidance in the area of home-office expense deductions, neither § 280A nor its legislative history provided much guidance in determining whether a taxpayer's home-office qualified as a "principal place of business."<sup>14</sup>

Because Congress failed to adequately define principal place of business in § 280A, the Tax Court and the various circuit courts employed different tests to make this determination.<sup>15</sup> The United States Supreme

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exams, and to meet occasionally with students. *Id.* Still, the Tax Court found no evidence that Davis maintained this home-office as an employment requirement. *Id.* at 180. Thus, the court denied the deduction because the expenses were not ordinary and necessary. *Id.*

10. The Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (1976) (codified as 26 U.S.C. § 280A).

11. I.R.C. § 280A (c)(1)(A) (1988) (allowing a deduction if the taxpayer's home-office is used as "the principal place of business for any trade or business of the taxpayer").

12. *Id.* § 280A (c)(1)(B) (allowing a home-office deduction if the home-office is used as a place of business to meet patients, clients, or customers during the normal course of the taxpayer's business).

13. *Id.* § 280A (c)(1)(C) (allowing a deduction if the home-office is a separate structure, not attached to the taxpayer's home, used to carry out the taxpayer's business). Congress did not enact § 280A to supersede § 162 but rather established it to work in conjunction with § 162. S. REP. NO. 938, 94th Cong., 2d Sess. 144 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3576. The legislative history states:

In any case involving the business use of a personal residence, it must be established that the expenses were incurred in carrying on a trade or business (sec. 162) or for the production of income (sec. 212). Thus, there must be some relatively clear connection between the activities conducted in the home and a trade or business or the production of income.

*Id.* at 3576-77. Thus, to deduct a business expense incurred in the home, the expense must be an ordinary and necessary business expense in addition to being a deductible home-office expense under § 280A. *Id.*; *see infra* notes 14-16 and accompanying text (describing permissible § 280A home-office business deductions).

14. *See* I.R.C. § 280A (c)(1)(A). To deduct expenses in connection with business use of the home, Congress required that the relevant portion of the home be used exclusively as the taxpayer's principal place of business. H.R. REP. NO. 658, 94th Cong., 2d Sess. 160-61 (1975), *reprinted in* 1976 U.S.C.C.A.N. 2897, 3053-54; S. REP. NO. 938, 94th Cong., 2d Sess. 148 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3581. This provision prevents a taxpayer from receiving a home-office deduction when he uses only a portion of a room to conduct business. *Id.*

15. *See infra* notes 79-99 and accompanying text (describing the Tax Court "focal point" test which allows a home-office deduction if the home-office is the place where the income is generated or the services or goods are rendered); *infra* notes 100-18 and accompanying text (demonstrating the federal circuits' "dominant portion of the work" test which grants a home-office deduction if the home-office is the place where the work is

Court granted certiorari in *Commissioner v. Soliman*<sup>16</sup> to determine the appropriate standard for deciding whether a home-office qualifies as a principal place of business and concluded that the proper standard for examining a taxpayer's principal place of business requires a comparative analysis of the activities performed at each business location and the time spent at each business location.<sup>17</sup>

In *Soliman*, the respondent, Nader E. Soliman, an anesthesiologist, spent approximately thirty to thirty-five hours per week at several hospitals administering anesthesia and caring for patients.<sup>18</sup> Because the hospitals did not provide Soliman with an office, he converted a spare bedroom in his home into an office, where he spent approximately ten to fifteen hours per week performing various administrative tasks in connection with his occupation.<sup>19</sup> On his 1983 federal income tax return, Soliman deducted the expenses attributable to his home-office.<sup>20</sup>

The Commissioner of the Internal Revenue Service disallowed Soliman's deduction for home-office expenses. The Commissioner reasoned that Soliman did not meet the requirements of § 280A because the home-office was not Soliman's principal place of business.<sup>21</sup> The Tax Court reversed the Commissioner's ruling and held that Soliman's home-office was his principal place of business and thus the deduction should be allowed.<sup>22</sup> The Tax Court held that the facts and circumstances of each case determine whether a taxpayer's home-office qualifies as a principal place of business.<sup>23</sup> Applying the facts and circumstances of *Soliman*, the

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predominantly performed); *infra* notes 119-33 and accompanying text (discussing the "facts and circumstances" test which permits a home-office deduction if the home-office is essential to the taxpayer's business; a substantial amount of time is spent in the home-office; and no other location is available to perform the office functions of the business).

16. 113 S. Ct. 701 (1993).

17. *Id.* at 707-08.

18. *Id.* at 704. Soliman worked at Shady Grove Hospital in Rockville, Maryland, Suburban Hospital in Bethesda, Maryland, and Loudon Memorial Hospital in Leesburg, Virginia. *Soliman v. Commissioner*, 94 T.C. 20, 21 (1990), *aff'd*, 935 F.2d 52 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

19. *Soliman*, 113 S. Ct. at 704. The various administrative tasks performed included "contacting patients, surgeons, and hospitals by telephone; maintaining billing records and patient logs; preparing for treatments and presentations; satisfying continuing medical education requirements; and reading medical journals and books." *Id.*

20. *Id.* Soliman deducted portions of his condominium fees, utilities, and depreciation attributable to the home-office. *Id.* Because he regarded his home-office as his principal place of business, Soliman argued that he qualified for a § 280A home-office deduction. *Id.*

21. *Id.*

22. *Id.*; *Soliman*, 94 T.C. at 29. The Tax Court found that Soliman's practice as an anesthesiologist was "headquartered" in his home-office. *Id.*

23. *Id.* at 25. The Tax Court deemed review of the following factors important when determining a taxpayer's principal place of business: (1) whether the functions performed

Tax Court decided that Soliman's business involved both rendering medical services and performing administrative functions, and that the home-office was the only place where he could properly perform the administrative tasks.<sup>24</sup>

The United States Court of Appeals for the Fourth Circuit affirmed the decision of the Tax Court,<sup>25</sup> concluding that the principal place of business will be determined by considering not only the place where the taxpayer generates income or meets clients, but also the place that is deemed the "true headquarters" of the taxpayer's business.<sup>26</sup> In addition, the Fourth Circuit agreed that the "facts and circumstances" test articulated by the Tax Court should be liberally applied in the taxpayer's favor to find that the principal place of business is the home-office.<sup>27</sup>

The United States Supreme Court granted certiorari<sup>28</sup> and held that the facts and circumstances test inadequately defined principal place of business because it did not address whether the taxpayer's home-office is more significant than any other place where the taxpayer conducts business.<sup>29</sup> The majority insisted that the phrase "principal place of business" in § 280A compels a comparative analysis of the taxpayer's various busi-

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in the home-office are essential to the conduct of the business; (2) whether the taxpayer spends a substantial amount of time in the home-office; and (3) whether suitable office space is available outside the home-office. *Id.* at 27-28. These three criteria distinguish the dominant portion of the work test from the facts and circumstances test. Levine, *supra* note 4, at 257 (noting that the dominant portion of the work test "measure[s] exclusively in terms of hours"); see *infra* notes 100-18 and accompanying text (discussing the dominant portion of the work test which will allow a home-office deduction if that is the place where the work is predominantly performed).

24. *Soliman*, 94 T.C. at 26. The Tax Court determined that "[b]oth functions were equally essential to a successful medical practice." *Id.*

25. *Soliman v. Commissioner*, 935 F.2d 52, 55 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993). The Fourth Circuit held that "where management or administrative activities are essential to the taxpayer's trade or business and the only available office space is in the taxpayer's home, the 'home office' can be his 'principal place of business.'" *Id.* at 54.

26. *Id.* at 55 (holding that the "'facts and circumstances' test does not eviscerate the requirements of section 280A, but simply replaces the inflexible and potentially unjust 'focal point' test"); see *infra* notes 79-99 and accompanying text (discussing the "focal point" test).

27. *Soliman*, 935 F.2d at 54-55; see John K. Benintendi, Note, *I.R.C. Section 280A — Business Use of a Personal Residence — The Supreme Court's Latest Decision Bringing the House Down on Home Office Deductions — A Purely Revenue Producing Decision*, 18 DAYTON L. REV. 835, 860 (1993) (quoting Prop. Treas. Reg. 1.280A-2(b)(3), 48 Fed. Reg. at 33,324). The author notes that the facts and circumstances test "reflects the same policy that undergirds the IRS's proposed regulation . . . . The regulation provides that salespersons can deduct expenses from a home office even though they spend most of their time on the road as long as they spend a 'substantial amount of time on paperwork at home' ". *Id.*

28. *Commissioner v. Soliman*, 503 U.S. 935 (1992).

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

ness locations—an analysis the Fourth Circuit failed to undertake.<sup>30</sup> The Court denied Soliman a home-office deduction because, in comparing the relative importance of Soliman's activities at the various locations and the time spent at these locations, the hospitals qualified as Soliman's principal place of business.<sup>31</sup>

Justice Thomas, in a concurring opinion, agreed that Soliman's home-office did not qualify as his principal place of business.<sup>32</sup> He wrote separately, however, to assert that the "focal point" test, which defines a taxpayer's principal place of business as that place where goods are delivered, services are rendered, or income is generated,<sup>33</sup> provided a more reliable method for determining whether a taxpayer's home-office qualified as a principal place of business.<sup>34</sup> In those few instances where it is difficult to ascertain the focal point of a taxpayer's activities because more than one location is used to render services or deliver goods, however, Justice Thomas advocated application of the facts and circumstances test.<sup>35</sup>

Justice Stevens, in dissent, criticized the majority's test, asserting that it failed to provide a proper interpretation of § 280A.<sup>36</sup> Justice Stevens argued that the majority interpretation injects the "meeting patients" exception in § 280A with the "principal place of business" exception, thus

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30. *Id.* Justice Kennedy held that the common sense meaning of "principal" suggests a comparative analysis of business locations. *Id.* The majority required that two primary considerations be given substantial weight in a comparative analysis to determine whether a home-office qualifies as a taxpayer's principal place of business: (1) the relative importance of the activities performed at each of the taxpayer's business locations; and (2) the time spent at each location. *Id.* "Principal" is defined as "[c]hief; leading; most important or considerable; primary; original." BLACK'S LAW DICTIONARY 1192 (6th ed. 1990).

31. *Soliman*, 113 S. Ct. at 708 (disallowing a deduction for expenses attributable to the home-office after concluding that the professional services performed at the hospitals were the "essence" of Soliman's activities and finding that Soliman spent more time at the hospitals than at the home-office).

32. *Id.* at 711 (Thomas, J., concurring). Although Justice Thomas and Justice Scalia agreed with the majority's determination that Soliman did not qualify for a home-office deduction, they disagreed with the majority's comparative analysis and instead favored the focal point test. *Id.*

33. *Id.* at 709 (citing *Baie v. Commissioner*, 74 T.C. 105, 109-10 (1980), *aff'd*, 919 F.2d 1273 (7th Cir. 1990)); see *infra* notes 79-99 (applying the focal point test and allowing a home-office deduction if that is the place where the income is generated, services are rendered, or goods are delivered).

34. *Soliman*, 113 S. Ct. at 709 (Thomas, J., concurring) (stating that the focal point test "provides a clear, reliable method for determining whether a taxpayer's home office is his 'principal place of business'"); see also *infra* notes 79-81 and accompanying text.

35. *Soliman*, 113 S. Ct. at 709 (Thomas, J., concurring) (concluding that the facts and circumstances test should be applied "in the small minority of cases where the home office is one of several locations where goods or services are delivered, and thus also one of the multiple locations where income is generated").

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

eliminating the principal place of business exception.<sup>37</sup> Therefore, Justice Stevens advocated the application of the facts and circumstances test employed by the Tax Court and the Fourth Circuit Court of Appeals to determine whether a home-office expenditure may be deducted.<sup>38</sup> Justice Stevens declared that the test employed by the majority created further uncertainty and unfairness to taxpayers who maintain home-offices and meet the conditions set forth in § 280A.<sup>39</sup>

This Note analyzes whether the Supreme Court succeeded in defining which factors and tests should be applied in determining a taxpayer's principal place of business. First, this Note examines the judicial treatment of home-office expenses through application of the "appropriate and helpful" test, which was employed prior to the enactment of § 280A. Second, this Note analyzes the various tests implemented by the Tax Court and the federal circuit courts to aid in the interpretation of § 280A. Third, this Note reviews the Supreme Court's decision in *Commissioner v. Soliman*<sup>40</sup> and concludes that the majority opinion fails to provide an appropriate standard for determining whether a home-office qualifies as a principal place of business. Fourth, this Note suggests that the standard applied in *Soliman* will perplex taxpayers and further encumber the courts. Finally, this Note advocates the adoption of the facts and circumstances test because it provides the clearest interpretation of § 280A and it affords favorable tax treatment to taxpayers with valid home-office expenses.

## I. WHAT CONSTITUTES A PRINCIPAL PLACE OF BUSINESS?: THE STRUGGLE BETWEEN THE COURTS AND CONGRESS

### A. *Prior to Enactment of § 280A*

Between 1969 and 1975, the Internal Revenue Service and the courts employed § 162 of the Internal Revenue Code<sup>41</sup> to determine whether a taxpayer could deduct home-office expenses.<sup>42</sup> Interpreting § 162, the In-

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37. *Id.* at 714. Justice Stevens stated that the analysis undertaken by the majority "encourages the misapplication of a relatively simple provision of the Revenue Code." *Id.*

38. *See id.* at 715 (Stevens, J., dissenting); *infra* notes 171-72 and accompanying text (arguing that the facts and circumstances test requires a taxpayer to make a strict showing of exclusive and regular use of a home-office and comports with congressional intent in enacting § 280A).

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

40. 113 S. Ct. 701 (1993).

41. I.R.C. § 162 (1988).

42. *Id.* The pertinent portion of § 162 states: "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." *Id.* § 162(a). Courts have defined ordinary and necessary expenses as those that are "common and accepted" within the business community to which

ternal Revenue Service consistently applied a strict standard that allowed deductions only in those instances where an employer required that an office be maintained in the employee's home.<sup>43</sup> The Tax Court, on the other hand, was neither as consistent nor as strict as the Internal Revenue Service in interpreting § 162.<sup>44</sup>

In 1962, the Tax Court applied the standard supported by the Internal Revenue Service when it disallowed a deduction for expenses attributable to an English professor's home-office.<sup>45</sup> In *Davis v. Commissioner*,<sup>46</sup> the Tax Court held that, because the professor's employer provided him with work space at his place of employment, the school did not require the professor to maintain an office at home; thus, the expenses incurred in building the home-office were not an ordinary and necessary business expense.<sup>47</sup>

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the taxpayer belongs. *Welch v. Helvering*, 290 U.S. 111, 114 (1933). Ordinary and necessary expenses are those that conform to the "ways of conduct and the forms of speech prevailing in the business world." *Id.* at 115.

43. Rev. Rul. 62-180, 1962-2 C.B. 52-53. The ruling stated:

An employee who, as a condition of his employment, is required to provide his own space and facilities for performance of his duties and regularly uses a portion of his personal residence for that purpose may deduct a pro rata portion of the expenses of maintenance and depreciation on his residence.

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The burden of proof rests upon the taxpayer to establish (1) that, as a condition of his employment, he is required to provide his own space and facilities for performance of some of his duties, (2) that he regularly uses a part of his personal residence for that purpose, (3) the portion of his personal residence which is so used, (4) the extent of such use, and (5) the pro rata portion of the depreciation and expenses for maintaining his residence which is properly attributable to such use.

*Id.* The success of the revenue ruling was short lived. *See, e.g., Bischoff v. Commissioner*, 25 T.C.M. (CCH) 538, 539 (1966) (holding that an appropriate and helpful expenditure is deductible). In this case, the taxpayer was an executive working as a commercial artist in a New York advertising agency. *Id.* at 538. Although not required to do so by his employer, the taxpayer maintained an office at home. *Id.* at 539. The Tax Court allowed the deduction because the expenditures were appropriate and helpful in the conduct of the taxpayer's business. *Id.*

44. *Compare Davis v. Commissioner*, 38 T.C. 175, 178-80 (1962) (disallowing a home-office deduction because the petitioner's employer did not require the taxpayer to maintain a home-office) *vacated*, unpublished op. (9th Cir. 1964); *with Peiss v. Commissioner*, 40 T.C. 78, 83-84 (1963) (allowing the petitioner's home-office deduction despite the fact that his employer did not require him to maintain a home-office) *acq.*, 1968-2 C.B. 2; *and Newi v. Commissioner*, 28 T.C.M. (CCH) 686, 689-91 (1969) (applying the appropriate and helpful test rather than inquiring whether the employer required the taxpayer to maintain a home-office), *aff'd*, 432 F.2d 998 (2d Cir. 1970), *and superseded by statute as stated in Commissioner v. Soliman*, 113 S. Ct. 701 (1993).

45. *Davis*, 38 T.C. at 179-80.

46. 38 T.C. 175 (1962).

47. *Id.* at 180. The dissent, however, argued that the applicable test is not whether the expenditures were required, but rather whether it was " 'appropriate' or 'helpful' and prox-

One year later, however, in *Peiss v. Commissioner*,<sup>48</sup> a case substantially similar to *Davis*, the Tax Court strayed from the Internal Revenue Service's interpretation of § 162 and applied a more liberal interpretation.<sup>49</sup> In *Peiss*, the Tax Court allowed a professor's deduction for expenses attributable to his home-office, holding that the evidence established that the expenses incurred were ordinary and necessary business expenses under § 162.<sup>50</sup>

The Tax Court later established its own test, the "appropriate and helpful" test, in *Newi v. Commissioner*.<sup>51</sup> The petitioner, a salesman, maintained a study in one room of his apartment even though his employer did not require him to do so.<sup>52</sup> The Commissioner disallowed the petitioner's deduction of expenses attributable to the study because the expenses were not ordinary and necessary business expenses and because the study was not a condition of the petitioner's employment.<sup>53</sup>

The Tax Court refuted the Commissioner's arguments in holding that expenses did not have to be "required" to qualify as deductible business expenses.<sup>54</sup> The court held that interpreting the word "necessary", as it applies to § 162, only requires that the expenditure be appropriate and

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imately related to the taxpayer's trade or business." *Id.* at 186 (Raum, J., dissenting). The dissent found it appropriate that the petitioner would maintain a home-office to prepare lectures, grade papers, and meet students. *Id.* at 187.

48. 40 T.C. 78 (1963).

49. See *Peiss*, 40 T.C. at 82-84 (relying on the weight of evidence introduced by the petitioner in making its determination), *acq.* 1968-2 C.B. 2. The petitioner, an associate professor of physiology, used a room in his home to meet students, prepare lectures, and perform a substantial amount of research. *Id.* at 80.

50. *Id.* at 84. Because these facts were so similar to those of *Davis*, the Tax Court was expected to deny *Peiss*'s deduction. Bryna Lee Rosen, Note, *The Home Office Deduction Game: Will Soliman v. Commissioner Return the Taxpayer to Square One?*, 12 VA. TAX REV. 141, 145 (1992). Professor *Peiss*, like the professor in *Davis*, had an office at school but argued that he could not perform his duties solely at the school office. *Peiss*, 40 T.C. at 83-84. *Peiss* argued that his school office was difficult to use because it was "not separated from the research laboratory . . . [which] was in constant use by the graduate students." *Id.* at 80. Instead of denying *Peiss* a deduction, like the Tax Court did previously in *Davis*, the court held that the evidence was "adequate" to allow the deduction as an ordinary and necessary business expense. *Id.* at 84.

51. 28 T.C.M. (CCH) 686 (1969).

52. *Id.* at 688. The petitioner was an outside salesman of television time for the American Broadcasting Company television network. *Id.* at 687. He spent approximately three hours per day in his home-office performing work related activities, including reviewing notes on the day's selling activities, studying various research materials and ratings, and viewing the television advertisements of his company and competing networks. *Id.* at 688. The study was never used for personal television viewing or entertaining. *Id.*

53. *Id.* The expenses attributable to the study included rent, cleaning, and lighting costs. *Id.*

54. *Id.* at 691.

helpful to the taxpayer's business.<sup>55</sup> Because the study was appropriate and helpful to the petitioner's business, the court concluded that the expenses attributable to the study were deductible as ordinary and necessary business expenses.<sup>56</sup> The Second Circuit affirmed the Tax Court's decision, holding that rent and other expenses attributable to a taxpayer's home-office were deductible business expenses.<sup>57</sup>

The Tax Court applied the appropriate and helpful test again in *Bodzin v. Commissioner*.<sup>58</sup> The petitioner, a government attorney, maintained a home-office even though his employer did not require him to do so and despite the fact that the petitioner had access to his work office at any time.<sup>59</sup> The petitioner occasionally found it more convenient and more efficient to bring his work home rather than stay late at his downtown office.<sup>60</sup> In determining the deductibility of home-office expenses, the court held that the applicable test was whether the maintenance of the home-office was appropriate and helpful to the taxpayer's business.<sup>61</sup> Notwithstanding the fact that duplicate facilities were provided by the employer,<sup>62</sup> the court concluded that the petitioner's expenditures were

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55. *Id.* (holding that the "Supreme Court has indicated on more than one occasion that the term 'necessary' imposes only the minimal requirement that the contested expenditure be 'appropriate and helpful' to the taxpayer's business"); see also *Commissioner v. Tellier*, 383 U.S. 687, 689 (1966) (stating that the term "necessary" has been consistently construed as imposing only a minimal requirement that the expense be appropriate and helpful for the development of the taxpayer's business). The court, in *Newi*, rejected the "required by the employer" standard argued by the IRS and favored the "appropriate and helpful" standard argued by the taxpayer. *Newi*, 28 T.C.M. at 691.

56. *Id.* The court held that the study was appropriate and helpful to the petitioner's business as an outside salesman and was used regularly and exclusively by the petitioner for business purposes, thus allowing a home-office deduction. *Id.*

57. *Newi v. Commissioner*, 432 F.2d 998, 1000 (2d Cir. 1970), superseded by statute as stated in *Commissioner v. Soliman*, 113 S. Ct. 701 (1993). Although the Commissioner argued that the appropriate and helpful standard utilized by the Tax Court "would open the doors for a business deduction to any employee who would voluntarily choose to engage in an activity at home which conceivably could be helpful to his employer's business," the Second Circuit dismissed this concern. *Id.* at 1000 (quoting the Commissioner's Brief, pp. 11-12).

58. 60 T.C. 820 (1973), *rev'd*, 509 F.2d 679 (4th Cir.), and *cert. denied*, 423 U.S. 825 (1975).

59. *Id.* at 822-24. The petitioner spent approximately two to three nights each week and three to five hours each weekend in his home-office. *Id.* at 823.

60. *Id.* Although the petitioner occasionally used the home-office for personal reasons, the petitioner spent the majority of his time working on cases, reading about recent developments in the law, and preparing for upcoming conferences. *Id.*

61. *Id.* at 825. In reviewing the record, the court found that the home-office expenses were directly related to the petitioner's business, and that the expenses were "necessary" because they were appropriate and helpful to the taxpayer in conducting his business. *Id.* at 826.

62. *Id.* at 824 (suggesting that the petitioner could have worked in his Internal Revenue Service office in the evenings, on weekends, and during holidays because the building

deductible because they were appropriate and helpful to his business.<sup>63</sup> The court did not consider convenience to the petitioner a sufficient factor in determining whether the home-office expenditures met the appropriate and helpful test.<sup>64</sup> The United States Court of Appeals for the Fourth Circuit reversed the Tax Court's decision<sup>65</sup> finding that, in some situations, personal choice dictated where the petitioner performed his work.<sup>66</sup> Therefore, the costs attributable to his residence were nondeductible personal expenditures.<sup>67</sup>

*B. Courts Employ Various Tests to Define Principal Place of Business After Enactment of § 280A*

Because the Second Circuit and the Fourth Circuit split on whether home-office expenses were deductible, Congress decided to address the issue and attempt to resolve the conflict.<sup>68</sup> Congress disapproved of the appropriate and helpful test, finding that it increased administrative problems because the test involved a subjective determination by each taxpayer of the time spent performing business activities and the time spent performing personal activities.<sup>69</sup> Concern also existed in that the appropriate and helpful test promoted taxpayer abuse because expenses normally considered nondeductible personal expenses could be deducted

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was open at all times to those employees having proper security clearance and identification; petitioner had both clearance and identification).

63. *Id.* at 826.

64. *Id.*

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

66. *Id.* at 681. The Fourth Circuit held that "like most lawyers and judges, [Bodzin] sometimes, by choice, did some of his reading and writing at home." *Id.*

67. *Id.* Because these expenses were personal, the Fourth Circuit did not address what the appropriate standard would be in those instances where the court found both personal and business use of a residence. *See Benintendi, supra* note 27, at 842 (noting that because the taxpayer was denied a deduction pursuant to § 262, which disallows deductions for personal expenses, it was unnecessary for the court to determine whether the contested expenditures were appropriate and helpful).

68. H.R. REP. NO. 658, 94th Cong., 2d Sess. 160 (1975), *reprinted in* 1976 U.S.C.C.A.N. 2897, 3053; S. REP. NO. 938, 94th Cong., 2d Sess. 147 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3579.

69. H.R. REP. NO. 658, 94th Cong., 2d Sess. 160 (1975), *reprinted in* 1976 U.S.C.C.A.N. 2897, 3053-54; S. REP. NO. 938, 94th Cong., 2d Sess. 147 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3579-80 (finding that the "appropriate and helpful" test increases the inherent administrative problems because both business and personal uses of the residence are involved and substantiation of the time used for each of these activities is clearly a subjective determination"); *see also Cadwallader v. Commissioner*, 919 F.2d 1273, 1275 (7th Cir. 1990) (holding that the appropriate and helpful test is "so fuzzy a standard, taxpayers could claim the deduction on the flimsiest of grounds with no fear of a fraud penalty, and thus could pocket a tax savings except in the unlikely event of an audit").

as business expenses merely because they were appropriate and helpful in developing the taxpayer's business.<sup>70</sup>

As a result of this concern, Congress enacted 26 U.S.C. § 280A.<sup>71</sup> As a general rule, § 280A(a) provides that a taxpayer cannot deduct any business expenses incurred in a taxpayer's dwelling unit when that dwelling is used as a residence.<sup>72</sup> Congress, however, provided three exceptions to this general rule thereby allowing deductions for certain business uses of a taxpayer's residence.<sup>73</sup> One of the exceptions provides that if a portion of the taxpayer's residence is used exclusively and regularly as the taxpayer's principal place of business, expenses attributable to that portion of the taxpayer's residence will be deductible.<sup>74</sup> Although § 280A provided more definitive rules in the area of home-office deductions, the statute failed to define principal place of business either in the statutory provision itself or in the legislative history.<sup>75</sup>

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70. H.R. REP. NO. 658, 94th Cong., 2d Sess. 160, *reprinted in* 1976 U.S.C.C.A.N. 3054; S. REP. NO. 938, 94th Cong., 2d Sess. 147, *reprinted in* 1976 U.S.C.C.A.N. 3580. Congress stated that "expenses otherwise considered nondeductible personal, living, and family expenses might be converted into deductible business expenses simply because, under the facts of the particular case, it was appropriate and helpful to perform some portion of the taxpayer's business in his personal residence." *Id.* Both the House Ways and Means Committee and the Senate Finance Committee cited *Bodzin* and noted that "it is not clear which standard would be applied in the Fourth Circuit in a case in which the court found both personal and business use of a residence." H.R. REP. NO. 658, 94th Cong., 1st Sess. 158, *reprinted in* 1976 U.S.C.C.A.N. 3052; S. REP. NO. 938, 94th Cong., 2d Sess. 145, *reprinted in* U.S.C.C.A.N. 3577.

71. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, 1569-72 (codified at 26 U.S.C. § 280A (1988)).

72. I.R.C. § 280A(a) (1988) (stating that "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").

73. *Id.* § 280A(c)(1).

74. *Id.* § 280A(c)(1)(A); see Kenneth F. Abramowicz, et al, *Reflections on Post-Soliman Home Office Deductions*, 27 ARK. BUS. & ECON. REV. 1, 3-4 (1994) (stating that the difficulties in interpreting the language and intent of § 280A arise when the taxpayer does not use the home office to meet patients or clients or does not have a separate structure, and the taxpayer must therefore rely on the principal place of business exception). In addition to the principal place of business exception, § 280A provides that if a portion of the taxpayer's residence is used exclusively and regularly as a place to meet patients, customers, or clients, a deduction will be allowed for expenses attributable to that portion of the taxpayer's home. I.R.C. § 280A(c)(1)(B). Similarly, if a separate structure, not attached to the taxpayer's residence, is maintained exclusively and regularly for the taxpayer's business, expenses attributable to this structure may be deducted. *Id.* § 280A(c)(1)(C).

75. *Id.* § 280A (c)(1)(A); see also H.R. REP. NO. 658, 94th Cong., 1st Sess. 160 (1975), *reprinted in* 1976 U.S.C.C.A.N. 2897, 3054; S. REP. NO. 938, 94th Cong. 2d Sess. 147 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3580 (failing to provide guidance in determining what constitutes a taxpayer's principal place of business).

In determining what constituted a taxpayer's principal place of business, the Tax Court employed the strict focal point test.<sup>76</sup> Unlike the Tax Court's application of the focal point test, the Second and Seventh Circuits applied the "dominant portion of the work" test, which resulted in more favorable treatment of the taxpayer.<sup>77</sup> Upon reexamination, the Tax Court replaced the focal point test with the less stringent facts and circumstances test which allowed for home-office expense deductions when the taxpayer satisfied certain requirements.<sup>78</sup>

### 1. The Focal Point Test

The Tax Court had initial difficulty in interpreting the principal place of business exception because the statute and the legislative history provided no guidelines as to its interpretation.<sup>79</sup> The Tax Court formulated the focal point test in an effort to provide an appropriate interpretation of the principal place of business exception to § 280A.<sup>80</sup> Under the focal

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76. See *infra* notes 79-99 and accompanying text (discussing the focal point test). The Tax Court opined that the focal point of a taxpayer's business, and thus his principal place of business, is that place where the goods are delivered, services are rendered, or income is generated. *Green v. Commissioner*, 78 T.C. 428 (1982), *rev'd*, 707 F.2d 404 (9th Cir. 1983); *Baie v. Commissioner*, 74 T.C. 105 (1980).

77. See *infra* notes 102-18 and accompanying text (noting that the Second Circuit and the Seventh Circuit, although conceding that the focal point test was easier to apply and less subjective than pre-§ 280A standards, held that the focal point test was unfair to taxpayers and failed to consider where the taxpayer's work was predominantly performed).

78. See *infra* notes 119-33 and accompanying text (discussing the facts and circumstances test which allows a taxpayer to qualify under § 280A(c)(1)(A) if the home-office is the principal place of business).

79. See *Malat v. Riddell*, 383 U.S. 569 (1966). The Supreme Court held that under I.R.C. § 1221(1), the word "primarily" is to be interpreted as meaning "of first importance" or "principally." *Id.* at 572. The IRS interpreted the term to mean the place where most of the taxpayer's business occurs "regardless of the number of business activities in which the taxpayer may be engaged." 45 Fed. Reg. 52,399, 52,403 (1980). Under this proposed regulation, a taxpayer could engage in more than one trade or business, but could only claim one principal place of business for all activities. *Id.*

80. See *Curphey v. Commissioner*, 73 T.C. 766 (1980). The petitioner in *Curphey* was a dermatologist who owned several rental properties and was employed by a hospital. *Id.* at 767-68. The petitioner used one room in his home exclusively as an office. *Id.* at 768. The Internal Revenue Service denied the petitioner a deduction, arguing that the hospital was the petitioner's principal place of business because that was where he spent most of his time and earned most of his money. *Id.* at 767. The Tax Court, however, held that the home-office qualified as the petitioner's principal place of business regarding his real estate dealings. *Id.* at 776. The court held that the principal place of business exception of § 280A "requires a determination as to whether, with respect to a particular business conducted by a taxpayer, the home office was his principal place for conducting that business." *Id.* Thus, a taxpayer may have more than one principal place of business depending on the number of business activities in which the taxpayer is involved. *Id.*

point test, a taxpayer's principal place of business is that place where services are rendered or income is generated.<sup>81</sup>

In *Baie v. Commissioner*,<sup>82</sup> the petitioner operated a foodstand, called the "Gay Dog," approximately one mile from her residence.<sup>83</sup> Because the foodstand was too small to prepare the food, the petitioner found it necessary to prepare the food in the kitchen of her residence.<sup>84</sup> The petitioner also used a second bedroom in her home as an office that was used exclusively in connection with the foodstand operation.<sup>85</sup>

The Tax Court denied the petitioner a deduction for the expenses attributable to the spare bedroom as well as expenses incurred in the kitchen, holding that the petitioner failed to qualify under one of the enumerated exceptions of § 280A.<sup>86</sup> The petitioner argued, however, that the rooms in her home used in connection with the "Gay Dog" constituted her principal place of business, thus triggering § 280A(c)(1)(A).<sup>87</sup> The Tax Court rejected this argument and concluded that because Congress failed to provide any guidance in defining principal place of business, the focal point of a taxpayer's activities adequately determined a taxpayer's principal place of business.<sup>88</sup>

Applying the focal point test to the facts of *Baie*, the Tax Court held that the foodstand constituted the focal point of the petitioner's activities because it was where she sold the food and generated income.<sup>89</sup> Although the court found preparation of the food and maintenance of the books to be necessary for the continued efficient operation of the food-

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81. See *Baie v. Commissioner*, 74 T.C. 105, 109-10 (1980); see also Benintendi, *supra* note 27, at 848 (stating that this was the first case to apply the focal point test).

82. 74 T.C. 105 (1980).

83. *Id.* at 106.

84. *Id.* The kitchen, when not used to prepare food for the foodstand, was used to prepare food for the petitioner and her family. *Id.*

85. *Id.* The petitioner used the office to maintain the bookkeeping and other paperwork of the foodstand operation. *Id.*

86. *Id.* at 111. Specifically, the taxpayer's kitchen and office did not meet the principal place of business exception because the focal point of the taxpayer's activities were at the foodstand—that is where the income was generated. *Id.* at 109-10. In addition, the taxpayer did not use the kitchen or office as a place to meet customers—the customers went to the foodstand. See *id.* at 106. Lastly, the kitchen and office failed the third exception because neither room was a separate structure unattached to the taxpayer's home. See *id.* at 107.

87. *Id.* at 109.

88. *Id.* The Court stated, though, that "what Congress had in mind was the focal point of a taxpayer's activities, which, in the case before us, would be the [foodstand] itself." *Id.*

89. *Id.* at 109-10.

stand, the court determined that the focal point of the petitioner's business operation was the "Gay Dog" foodstand.<sup>90</sup>

Two years later, the Tax Court applied the focal point test again in *Drucker v. Commissioner*.<sup>91</sup> The taxpayer was a concert violinist employed by the Metropolitan Opera Association, Inc. to perform at Lincoln Center.<sup>92</sup> Because the Metropolitan Opera did not provide its musicians with practice facilities, the petitioner set aside a room in his apartment and used it exclusively as a music studio for musical study and practice.<sup>93</sup> Indeed, the petitioner spent more time practicing in his studio than he did performing at Lincoln Center.<sup>94</sup>

The Tax Court held that although the petitioner spent more hours practicing than performing, Lincoln Center constituted the focal point of his activities.<sup>95</sup> The Court conceded that it was essential for the petitioner to practice to retain his job, but found that performing at Lincoln Center at designated times was the only requirement of his employment.<sup>96</sup> Thus, the deduction for expenses attributable to the home music studio was disallowed because the studio could not be termed the petitioner's principal place of business.<sup>97</sup>

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90. *Id.* at 110. The Tax Court noted that the petitioner could not invoke § 280A even if she did meet one of the enumerated exceptions because she did not satisfy the exclusively requirement of § 280A(c)(1). *Id.* at n.7. Specifically, the court noted that her kitchen was used for both personal and business purposes. *Id.* Although the bookkeeping room was used exclusively for business, it did not constitute the principal place of business because it was not the focal point of the foodstand's business operations. *Id.*

91. *Drucker v. Commissioner*, 79 T.C. 605 (1982), *rev'd*, 715 F.2d 67 (2d Cir. 1983). Other notable cases in which the Tax Court applied the focal point test include *Jackson v. Commissioner*, 76 T.C. 696 (1981) (holding that a real estate agent's principal place of business was her employer's office); *Pomarantz v. Commissioner*, 52 T.C.M. (CCH) 599 (1986) (holding that the focal point of the physician's activities was the hospital because that was where he spent the majority of his time), *aff'd*, 860 F.2d 960 (9th Cir. 1988).

92. *Drucker*, 79 T.C. at 606.

93. *Id.* at 608-09.

94. *Id.* at 606-07. The petitioner spent approximately 15 hours per week performing at the Lincoln Center and approximately 30 hours per week practicing in his home studio. *Id.* at 607-09.

95. *Id.* at 614 (holding that although the home studio was appropriate and helpful, the focal point of petitioner's activities was on the employer's premises).

96. *Id.* at 613. Although recognizing the importance of practicing, the court held that from both the employer's perspective and the petitioner's perspective, the focal point or the principal place of the job was Lincoln Center. *Id.* at 613-14.

97. *Id.* at 615. Justice Wilbur filed a dissenting opinion arguing that the "retention of [the petitioner's] job depended on the quality of his playing at rehearsals as well as at the public performances." *Id.* at 621 (emphasis omitted) (Wilbur, J., dissenting). Justice Wilbur examined all the "facts and circumstances" to determine the petitioner's principal place of business and argued that the "intense and continuous individual practice on a year-round basis [was] the most important contributing factor to petitioner's success as a

Although the focal point test comports with congressional intent in disallowing deductions for expenses that are essentially personal and unrelated to the taxpayer's business, it denies deductions to taxpayers who are engaged in professions that require the taxpayer to maintain a home-office and perform duties elsewhere.<sup>98</sup> In other words, taxpayers whose occupations do not fit neatly within the focal point test are denied deductions for valid expenses incurred in home-offices that should qualify as a principal place of business.<sup>99</sup>

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concert musician." *Id.* at 621-22. Thus, Justice Wilbur argued that the petitioner's home studio should qualify as the petitioner's principal place of business. *Id.* at 623 n.8.

98. See *Jackson v. Commissioner*, 76 T.C. 696 (1981). The Tax Court held that the petitioner, a real estate agent, failed to prove that her home-office was her principal place of business and not just a helpful convenience. *Id.* at 700. The evidence established that her employer's office was the source of most of her business activities because that was where she first came in contact with her clients. *Id.* Although the taxpayer argued that client contact also occurred in her home, the court held that not enough evidence was introduced to show that the home-office was regularly used as a place to meet clients. *Id.*; see also *Pomarantz v. Commissioner*, 52 T.C.M. (CCH) 599 (1986), *aff'd*, 860 F.2d 960 (9th Cir. 1988); *Green v. Commissioner*, 78 T.C. 428 (1982), *rev'd*, 707 F.2d 404 (9th Cir. 1983). In *Pomarantz*, the petitioner, a physician specializing in emergency medical care and working through a professional service corporation, provided services to Riverton General Hospital in Seattle. *Pomarantz*, 52 T.C.M. at 600. Because the hospital did not provide him an office, Dr. Pomarantz maintained a home-office over his garage where he kept business records, a desk, a chair, a telephone, filing cabinets and bookshelves. *Id.* The Tax Court disallowed his home-office deduction holding that the home-office was not his principal place of business because the time spent at the hospital treating patients outweighed the time spent in the home-office. *Id.* at 602. The court further held that the work performed at the hospital was more important than the work done in the home-office. *Id.*

In *Green*, the petitioner, and manager of seven condominiums spent a good part of his day in the field. *Green*, 78 T.C. at 429-30. The petitioner maintained a home-office to receive work related phone calls he missed during the day while he was in the field. *Id.* at 430. Although the taxpayer spent equal time at both his work office and his home-office, the Tax Court denied the home-office deduction holding that the focal point of the taxpayer's activities was his work office because that is where he filled out his paperwork and performed his most important duties. *Id.* at 433; see *Dudley v. Commissioner*, 54 T.C.M. (CCH) 1288, 1291 (1987) (holding that the focal point of the petitioner's business activities was where he taught), *aff'd*, 860 F.2d 1078 (6th Cir. 1988); *Lopkoff v. Commissioner*, 45 T.C.M. (CCH) 256, 257-58 (1982) (holding that the focal point of an administrative assistant at the Veterans Administration was the hospital); *Trussel v. Commissioner*, 45 T.C.M. (CCH) 190, 192 (1982) (holding that the focal point of a judge's business activities was the courtroom); *Moskovit v. Commissioner*, 44 T.C.M. (CCH) 859, 861 (1982) (holding the focal point of a professor's job was the university where he taught).

99. See *Weissman v. Commissioner*, 751 F.2d 512, 514 (2d Cir. 1984) (concluding that the focal point test is inadequate because it places attention on the place where the work is most visible, and not where the majority of the work is completed); see also *Levine, supra* note 4, at 259. Examples of occupations that would not satisfy the focal point test include artists, musicians, writers, and those who handle business activities in their home but who also engage in significant business activity elsewhere. *Id.*

## 2. *The Dominant Portion of the Work Test*

Many appellate courts rejected the focal point test, finding it an inadequate interpretation of § 280A(c)(1)(A), particularly in situations where the taxpayer's job involved several distinct activities.<sup>100</sup> Instead of applying the focal point test, the United States Court of Appeals for the Second Circuit and the United States Court of Appeals for the Seventh Circuit adopted the dominant portion of the work test, which placed great emphasis on the amount of time the taxpayer spent at the home-office.<sup>101</sup>

In *Drucker v. Commissioner*,<sup>102</sup> the Second Circuit reversed the Tax Court's holding that the appellant's focal point of activity or principal place of business was Lincoln Center.<sup>103</sup> Without specifically stating that it was applying the dominant portion of the work test,<sup>104</sup> the court held that only the appellant's practice at home made the work performed at Lincoln Center possible.<sup>105</sup> Use of the home studio was more than a convenience to the appellant, it was a business necessity to his continued employment as a musician, and thus, the court allowed a deduction for expenses attributable to the home music studio.<sup>106</sup>

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100. See, e.g., *Meiers v. Commissioner*, 782 F.2d 75, 79 (7th Cir. 1986) (rejecting the focal point test); *Weissman*, 751 F.2d at 514 (rejecting the focal point because it "creates a risk of shifting attention to the place where a taxpayer's work is more visible, instead of the place where the dominant portion of his work is accomplished"); *Drucker*, 715 F.2d at 69 (rejecting the focal point test). Although criticized by the appellate courts, the Tax Court consistently applied this test to identify the taxpayer's principal place of business. See *infra* note 101 and accompanying text.

101. See *infra* notes 102-06 and accompanying text (discussing *Drucker v. Commissioner* and the court's holding that because the taxpayer spent more time in his home-office practicing, that was his principal place of business); *infra* notes 107-11 and accompanying text (analyzing the court's decision in *Weissman v. Commissioner* which held that because the taxpayer spent the majority of his time in his home-office researching and writing, this was where the dominant portion of the taxpayers work was performed); *infra* notes 112-18 and accompanying text (analyzing the court's holding in *Meiers v. Commissioner* where it was determined that the taxpayer's principal place of business is where the taxpayer's work is predominantly performed).

102. 715 F.2d 67 (2d Cir. 1983).

103. *Id.* at 69.

104. See *id.* The Second Circuit held that the focal point of the musician's activities, in terms of both time and importance, was at the musician's home studio. *Id.*

105. *Id.* The Second Circuit adopted the reasoning of Justice Wilbur's dissenting opinion in the Tax Court's opinion. See *supra* note 97 (discussing Justice Wilbur's dissent and his argument that an examination of the facts and circumstances is required to determine a taxpayer's principal place of business).

106. *Drucker*, 715 F.2d at 69-70. The Court noted that the mere fact that there was an element of personal convenience would not preclude a finding that the music studio was a business expense. *Id.* Thus, the court's holding is consistent with the legislative history and the congressional intent of § 280A because it prevents a nondeductible personal expense from being converted into a deductible personal expense. *Id.* at 69.

The Second Circuit applied the dominant portion of the work test again in *Weissman v. Commissioner*.<sup>107</sup> In *Weissman*, the petitioner, an associate professor of philosophy, was required to research and write in his field to retain his teaching position.<sup>108</sup> To comply with this requirement, he spent approximately twenty percent of his time at campus teaching and the remaining eighty percent in his home-office, where he did the majority of his research and writing.<sup>109</sup>

The Second Circuit refused to apply the Tax Court's focal point test, and criticized the test as focusing more attention on the visible location of the taxpayer's work and less attention on the location where the dominant portion of the taxpayer's work was actually performed.<sup>110</sup> The Second Circuit held that because the petitioner spent the majority of his time in his home-office researching and writing, the dominant portion of his work took place in this office, thus qualifying it as his principal place of business.<sup>111</sup>

The Seventh Circuit, in *Meiers v. Commissioner*,<sup>112</sup> also rejected the Tax Court's focal point test and followed the Second Circuit's application of the dominant portion of the work test to determine what constituted a taxpayer's principal place of business.<sup>113</sup> There, the petitioner spent approximately one hour per day at the laundromat facility she owned and two hours per day in a home-office used exclusively for drafting employee work schedules and maintaining the laundromat's books.<sup>114</sup> Rejecting the Tax Court's application of the focal point test,<sup>115</sup> the Seventh Circuit held that the emphasis should be on where the taxpayer's work is primarily performed, even if that is not the same place where the goods

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107. 751 F.2d 512 (2d Cir. 1984).

108. *Id.* at 513. In addition to *Weissman*'s research and writing requirements, the petitioner also met with students, prepared lectures, and graded exams. *Id.*

109. *Id.* Although the petitioner was more visible on campus when he was teaching, his occupation involved other distinct yet related activities, including researching and writing. *Id.* at 514.

110. *Id.* Specifically, the court held that the focal point test "creates a risk of shifting attention to the place where a taxpayer's work is more visible, instead of the place where the dominant portion of his work is accomplished." *Id.* The court found that "the Tax Court focused too much on Professor *Weissman*'s title and too little on his activities." *Id.* The Second Circuit further noted that the Tax Court erred as a matter of law "by failing to consider all aspects of his activities." *Id.*

111. *Id.* at 515.

112. 782 F.2d 75 (7th Cir. 1986).

113. *Id.* at 79.

114. *Id.* at 76. While at the laundromat, the petitioner would meet with employees, collect the money from the laundry machines, and provide customer assistance. *Id.*

115. *Meiers v. Commissioner*, 49 T.C.M. (CCH) 136, 138 (1984), *rev'd*, 782 F.2d 75 (7th Cir. 1986).

and services are rendered, or the income is generated.<sup>116</sup> Considering the length of time spent at each location to be the primary factor in determining where the work was primarily performed, the Seventh Circuit concluded that the appellant spent the dominant portion of her time and work in the home-office carrying out her chief function as manager of the laundromat.<sup>117</sup> Thus, the court considered the home-office the principal place of business and expenses attributable to the office were deductible under § 280A.<sup>118</sup>

### 3. *The Facts and Circumstances Test*

The Tax Court re-examined the focal point test after the Second and Seventh Circuits rejected the test's application because of its failure to interpret § 280A(c)(1)(A) properly.<sup>119</sup> Because the focal point test merged the principal place of business exception under § 280A(c)(1)(A) into the meeting patients exception under § 280A(c)(1)(B), the Tax Court subsequently followed suit and rejected the focal point test.<sup>120</sup>

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116. *Meiers*, 782 F.2d at 79. The Seventh Circuit stated, “[w]e, like the Second Circuit, question the usefulness of the focal point test . . . we do not believe this approach is fair to taxpayers or carries out in the most appropriate way the apparent intent of Congress.” *Id.*

117. *Id.* The Seventh Circuit, like the Second Circuit, viewed the focal point test as focusing excessively on “visible” activity, rather than on where the dominant portion of the taxpayer’s work was performed. *Id.* The Seventh Circuit developed a test substantially similar to the Second Circuit:

In determining the taxpayer’s principal place of business, we think a major consideration ought to be the length of time the taxpayer spends in the home office as opposed to other locations. But time spent is not necessarily the only consideration. There are other factors, which may from time to time weigh in the balance, such as the importance of the business functions performed by the taxpayer in the home office; the business necessity of maintaining a home office; and the expenditures of the taxpayer to establish a home office.

*Id.* (citations omitted).

118. *Id.*

119. See *supra* notes 102-18 and accompanying text (discussing the Second and Seventh Circuits’ rejection of the focal point test and enactment of the dominant portion of the work test).

120. *Kahaku v. Commissioner*, 58 T.C.M. (CCH) 1247, 1249 (1990). The Tax Court reexamined the focal point test because of the existence of cases in which administration of the business is essential to the taxpayer’s business and the taxpayer’s home provides the only available office space. *Id.*; see James A. Fellows, *Current Status of Home Office Deductions Needs Clarification*, 72 J. TAX’N 332, 334 (1990). The article explains the reason for the court’s abandoning the focal point test:

Since the focal point of a taxpayer’s business is where goods and services are transferred to customers, a taxpayer’s home is the principal place of business only if he or she regularly meets the customers at the home office. Thus, as the Tax Court correctly points out, the focal point test merges the principal place of business exception under Section 280A(c)(1)(A) into the meeting of clients exception under Section 280(A)(c)(1)(B) [sic]. The effect is the de facto elimination of the

The Tax Court replaced the focal point test with the facts and circumstances test and deemed the following factors important in determining whether a taxpayer's home-office qualified as a principal place of business: (1) whether the functions performed in the home-office are essential to the conduct of the business; (2) whether the taxpayer spends a substantial amount of time in the home-office; and (3) whether suitable office space is available outside the home-office.<sup>121</sup>

In *Kahaku v. Commissioner*,<sup>122</sup> the Tax Court applied the facts and circumstances test and held that the petitioner could deduct business expenses incurred in his home-office.<sup>123</sup> Because the petitioner, a professional solo guitarist, was not allowed to practice at the restaurant where he was employed, he set aside a room in his home which was used exclusively as an office and studio.<sup>124</sup> The court held that the activities performed at the home-office and studio, including practicing the guitar and maintaining business records, were essential to the petitioner's work as a musician.<sup>125</sup> In addition, the court held that in spending thirty hours per week in the office and studio, the petitioner satisfied the requirement that he spend a substantial amount of time in the home-office.<sup>126</sup> Lastly, because the restaurant did not permit the petitioner to practice at work or maintain an office at the restaurant, the court found that he had no place to practice the guitar and manage his business other than his home.<sup>127</sup>

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principal place of business exception from the Code. To restore this exception, it is necessary to apply a different standard.

*Id.*

121. See *Kahaku*, 58 T.C.M. (CCH) at 1249; see *Levine*, *supra* note 4, at 256. These three criteria are considered a major distinction between the dominant portion of the work test and the facts and circumstances test. *Id.* at 254-56. Courts that applied the dominant portion of the work test considered other factors important, such as (1) the importance of the business functions performed in the home-office; (2) the business necessity in maintaining a home-office; and (3) the expenditures of the taxpayer to establish a home-office. *Meiers*, 782 F.2d at 79; see *Levine*, *supra* note 4, at 255-56 (noting that another distinction between the facts and circumstances test and the dominant portion of the work test is that the facts and circumstances test places less emphasis on the amount of time a taxpayer spends in the home-office).

122. 58 T.C.M. (CCH) 1247 (1990).

123. *Id.*

124. *Id.* at 1249. As a solo guitarist, the petitioner would play two to three nights per week for a total of four hours during each night's performance. *Id.* The petitioner practiced approximately 30 hours per week in the home studio. *Id.* He also used the home studio to record music, listen to music, and maintain all business records. *Id.*

125. *Id.* (finding that to maintain his business as a guitarist, "it was essential for Leroy [Kahaku] to keep abreast of current music and to record practice sessions on tape which could be studied and supplied to potential customers").

126. *Id.*; see *Fellows*, *supra* note 120, at 335 (noting that the *Kahaku* opinion is distinct because it was written by one of the chief dissenters of the *Soliman* Tax Court decision).

127. *Kahaku*, 58 T.C.M. at 1249.

Similarly, the Tax Court applied the facts and circumstances test in *McDonald v. Commissioner*,<sup>128</sup> where the petitioner, an owner and operator of a television, radio, and stereo repair shop, deducted expenses for a home-office used to store business files and other work-related documents.<sup>129</sup> The Tax Court denied the deduction after “considering all the facts and circumstances,”<sup>130</sup> holding that the home-office was “incidental and secondary”<sup>131</sup> to the repair shop where the petitioner actually carried out his business.<sup>132</sup> Because the evidence showed that the repair shop was essential to the petitioner’s business and that he spent substantial time there, the court concluded that the repair shop, not the home-office, qualified as the petitioner’s principal place of business.<sup>133</sup>

## II. *COMMISSIONER v. SOLIMAN*: A NEW STANDARD FOR DETERMINING A TAXPAYER’S PRINCIPAL PLACE OF BUSINESS

In *Commissioner v. Soliman*,<sup>134</sup> the Supreme Court addressed “the appropriate standard for determining whether an office in the taxpayer’s home qualifies as his ‘principal place of business’ under 26 U.S.C. § 280A(c)(1)(a).”<sup>135</sup> At trial, the Tax Court ruled that where the taxpayer’s administrative activities differ from his income generating activities, the place where the taxpayer executes those administrative activities can constitute the taxpayer’s principal place of business.<sup>136</sup> The Tax Court, applying the facts and circumstances test, held that Soliman’s home-office was his principal place of business because it was essential to

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128. 61 T.C.M. (CCH) 1876 (1991); see also *Shore v. Commissioner*, 59 T.C.M. (CCH) 762, 765 (1990) (holding that the petitioner failed to satisfy the criteria of the facts and circumstances test), *aff’d*, 1991 U.S. App. LEXIS 26835 (6th Cir. Nov. 7, 1991).

129. *McDonald*, 61 T.C.M. at 1877. The petitioner’s wife worked for the repair shop on a part time basis and spent much of her time in the home-office doing the bookkeeping, paying bills, and preparing the employee payroll. *Id.* The petitioner’s wife worked out of the home-office because the shop space was limited. *Id.*

130. *Id.* at 1878.

131. *Id.*

132. *Id.*

133. *Id.* The court held that “[w]hile [the McDonald’s] home office was obviously a function of their business, it was clearly incidental and secondary to the commercial location, where all the repair work was done, where customers reported to deliver and pick up their merchandise, and where the business was conducted.” *Id.*

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

135. *Id.* at 703.

136. *Soliman v. Commissioner*, 94 T.C. 20, 25 (1990) (holding that “where a taxpayer’s occupation requires essential organizational and management activities that are distinct from those that generate income, the place where the business is managed can be the principal place of business”), *aff’d*, 935 F.2d 52 (4th Cir. 1991), and *rev’d*, 113 S. Ct. 701 (1993).

conducting his business, he spent a substantial amount of time in the home-office, and no other suitable office space was available other than the home-office.<sup>137</sup> The United States Court of Appeals for the Fourth Circuit affirmed the Tax Court's decision, holding that a taxpayer's principal place of business can be determined by considering not only the place where the taxpayer generates income or meets clients, but also the place that is deemed the "true headquarters" of the taxpayer's business.<sup>138</sup>

The Supreme Court reversed the Tax Court and the Fourth Circuit and established two criteria for determining a taxpayer's principal place of business: a comparative analysis of the relative importance of the activities performed at each business location,<sup>139</sup> and the time spent at each location.<sup>140</sup> The dissent advocated the facts and circumstances test that the Tax Court and the Fourth Circuit applied because it provided a more consistent interpretation of § 280A and afforded more favorable treatment to taxpayers who incur valid business expenses in the home-office.<sup>141</sup>

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137. *Id.* at 28-29. The Tax Court further indicated that it would no longer follow its opinion in *Drucker v. Commissioner*, 79 T.C. 605 (1982), *rev'd*, 715 F.2d 67 (2d Cir. 1983). *Soliman*, 94 T.C. at 29. Judge Ruwe dissented from the Tax Court's opinion after concluding that the court should apply the test used by the Second and Seventh Circuits. *Id.* at 41 (Ruwe, J., dissenting). Applying the Second and Seventh Circuits' test would require courts to determine the place where the dominant portion of the taxpayer's work is accomplished. *Id.* To determine if the home-office is where the dominant portion of the taxpayer's work is completed, Judge Ruwe recommended evaluating the time spent in the home-office and the importance of the activities performed in the home-office. *Id.* at 35.

Judge Nims also filed a dissenting opinion, advocating a modified focal point test be applied in those situations where the home-office was the focal point of a taxpayer's activities in the context of time and importance. *Id.* at 32 (Nims, C.J., dissenting). He argued that the facts and circumstances test "takes us all the way back to square one, i.e., to the situation which existed even before Congress took what it thought would be the remedial action of section 280A." *Id.* at 33.

138. *Soliman v. Commissioner*, 935 F.2d 52, 55 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993). Judge Phillips dissented, arguing that a comparison of the time spent at each location should be performed when the taxpayer engages in business at more than one location. *Id.* at 55-56 (Phillips, J., dissenting). Judge Phillips would have denied *Soliman* a deduction because the majority of his time was spent at the hospitals, where he performed his most important function, giving anesthesia to patients. *Id.* at 56.

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

140. *Id.* The Supreme Court refused to apply the Fourth Circuit's facts and circumstances test because it "failed to undertake a comparative analysis of the various business locations of the taxpayer in deciding whether the home office was the principal place of business." *Id.* at 703-04; see Brian J. McMillin, Comment, *A New Standard of Deductibility for Home Office Expenses*, 27 SUFFOLK U. L. REV. 318, 324-25 (1993) (stating that "[t]he Court reasoned that the facts and circumstances approach employed by the lower courts focused solely on activities in the home office and therefore lacked the requisite comparative analysis of all the various locations of business-related activity").

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

A. *The Majority: A Comparative Analysis*

Justice Kennedy delivered the opinion of the Court which held that in determining a taxpayer's principal place of business, the term "principal" compels a comparative analysis of the taxpayer's various business locations.<sup>142</sup> In performing this analysis, the majority held that two primary considerations were critically important to determining whether a home-office qualified as a taxpayer's principal place of business.<sup>143</sup> These two factors are the relative importance of the taxpayer's activities performed at the various business locations and the time spent at each location.<sup>144</sup>

As a preliminary step to analyzing the relative importance of the activities performed at each location, the Court suggested performing an overall objective description of the business in question, which would likely reveal a pattern of more significant activities.<sup>145</sup> Although the majority recognized that a business location where this pattern occurs may indicate a focal point of the business, the majority reiterated that no one test is determinative.<sup>146</sup> The majority did admit, however, that principal consideration should be given to the place where goods are delivered or services are rendered to determine where the most important functions are performed.<sup>147</sup>

The majority disagreed with the Fourth Circuit regarding the weight that should be given to the necessity of the functions performed at home.<sup>148</sup> The majority held that although the necessity of a taxpayer's business activities performed in the home-office is relevant in ascertaining whether a taxpayer's home-office qualifies as a principal place of busi-

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142. *Id.* at 706. Justice Kennedy noted that the six judges who dissented in the Tax Court decision criticized the majority for failing to perform a comparative analysis of Soliman's business locations to determine the principal place of business. *Id.* at 704. In interpreting the term "principal", Justice Kennedy looked to the "ordinary, everyday senses" of the words. *Id.* at 705-06 (citations omitted). The majority criticized the facts and circumstances test employed by the United States Court of Appeals for the Fourth Circuit because it failed to discern whether the taxpayer's home-office was, in fact, the principal place of the taxpayer's business as compared to the taxpayer's other business locations. *Id.* at 706. The Court did concede, however, that the ultimate determination of a taxpayer's principal place of business would necessarily depend on "the particular facts of each case." *Id.*

143. *Id.*

144. *Id.* The Court conceded, however, that "we cannot develop an objective formula that yields a clear answer in every case." *Id.*

145. *Id.*

146. *Id.* (finding that the phrase "focal point" has a "metaphorical quality that can be misleading").

147. *Id.*

148. *Id.* at 707. Although the majority found the planning and preparation for an activity important, the Court held that "in integrated transactions, all steps are essential." *Id.*

ness, it is not a controlling factor.<sup>149</sup> The majority also rejected the Fourth Circuit's assertion that the availability of alternative office space should be considered, finding this proposition irrelevant in determining a taxpayer's principal place of business.<sup>150</sup>

The *Soliman* majority held that the respondent's treatment of his patients was the essence of his professional services and noted that this treatment was more important and more significant than the tasks he performed at his home-office.<sup>151</sup> Comparing the time spent at each of the business locations, the majority held that because significantly more time was spent at the hospital, it should be regarded as his principal place of business.<sup>152</sup>

### B. *The Concurrence: Defender of the Focal Point Test*

Justice Thomas, joined by Justice Scalia, concurred with the judgment of the majority in denying *Soliman*'s deduction for expenses attributable to the home-office.<sup>153</sup> Although Justice Thomas agreed with the result reached by the majority, he attacked the majority's test as extremely burdensome, arguing that an inquiry into the relative importance of the activities performed at each location and the time spent at each location "will unnecessarily require the lower courts to conduct full-blown evidentiary hearings each time the Commissioner challenges a deduction under § 280A(c)(1)(A)."<sup>154</sup> Justice Thomas, expressing concern over application of the majority's test, questioned whether the two primary considera-

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149. *Id.* The Court stated that "[e]ssentiality . . . is but part of the assessment of the relative importance of the functions performed at each of the competing locations." *Id.*

150. *Id.* The Court stated that the availability of alternative office space has no bearing in determining whether a home-office qualifies as a taxpayer's principal place of business. *Id.* Instead, the Court held that availability of alternative office space should be used to determine whether the taxpayer is using the home-office for the convenience of the employer. *Id.*

151. *Id.* at 708. Before concluding, the Court briefly addressed the second part of their test—comparing the amount of time spent at home with the amount of time spent at other business locations. *Id.* at 707. The Court held that this element becomes more important when the relative importance of the activities factor yields no definitive answer regarding a taxpayer's principal place of business. *Id.* The Court further held that there may be cases where no location qualifies as a principal place of business and that in those instances, courts should not strain to call a location a principal place of business simply because no other location seems to qualify. *Id.* at 707-08.

152. *Id.* at 708. The majority compared the 10 to 15 hours worked in the office at respondent's residence with the 30 to 35 hours worked at the hospital in concluding that the hospital was the respondent's principal place of business. *Id.*

153. *Id.* at 709 (Thomas, J., concurring). Justice Blackmun also wrote a concurring opinion in which he agreed with the majority that the phrase "principal place of business" compels a comparative analysis of a taxpayer's various business locations. *Id.* at 708 (Blackmun, J., concurring).

154. *Id.* at 709 (Thomas, J., concurring).

tions of the majority's test were of equal significance or whether the time element applied only if the relative importance of the activities element rendered no definitive answer.<sup>155</sup>

Justice Thomas favored application of the focal point test.<sup>156</sup> He suggested that the majority opinion, instead of rejecting the focal point test, actually utilized the focal point test in its analysis when it stated that great weight must be given to the places where most of the important functions are performed.<sup>157</sup> Conceding that no one test is determinative, Justice Thomas asserted that in those cases where the focal point test provides no definitive answer, the facts and circumstances test guided by the two primary considerations expounded by the majority should be employed to determine whether a taxpayer's home qualifies as his principal place of business.<sup>158</sup>

### C. *The Dissent: Proponent of the Facts and Circumstances Test*

Justice Stevens dissented, asserting that the respondent's ordinary and necessary business expenses were questioned only because he incurred these expenses in an office that was located in the respondent's home.<sup>159</sup> This results in the unequal treatment of otherwise similarly situated taxpayers, which the dissent suggested was not what Congress intended.<sup>160</sup>

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155. *Id.*

156. *Id.* Justice Thomas wrote that "the 'focal point' test . . . provides a clear, reliable method for determining whether a taxpayer's home office is his 'principal place of business.'" *Id.*

157. *Id.* Justice Thomas emphasized the majority's statement that "the place where goods are delivered or services rendered must be given 'great weight in determining the place where the most important functions are performed.'" *Id.*

158. *Id.* at 710. For example, in those cases where the home-office is one of several locations where goods or services are delivered, the "facts and circumstances" test in conjunction with the majority's comparative analysis should be applied to determine a taxpayer's principal place of business. *Id.*

159. *Id.* at 711. Had the respondent incurred those same expenses in any other place, the deduction would have been allowed. *Id.*

160. *Id.* at 712; see Rita Marie Cain and Larry R. Garrison, *Home Office Deductions After Soliman*, 31 AM. BUS. L. J. 397, 409 (1993) (stating that because of the majority opinion in *Soliman*, "taxpayers incurring comparable business expenses will receive different deduction treatment depending on the nature of their business and where it is conducted, not on the nature of the claimed deduction"). An example demonstrates how similarly situated taxpayers would be treated inequitably:

[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).

Joan M. Harvath, Note, *Home Office Deduction Narrowed: Commissioner v. Soliman*, 113 S. Ct. 701 (1993), 77 MARQ. L. REV. 179, 190 n.100 (1993). Justice Stevens reminded the

Congress enacted § 280A both to clarify the rules of deduction and to eliminate deductions for home-offices that do not qualify as necessary business expenses.<sup>161</sup>

Breaking § 280A(c)(1) into what he saw as its three major components, Justice Stevens concluded that the respondent satisfied each one and, therefore, should have been allowed to deduct expenses incurred in his home-office.<sup>162</sup> First, the respondent used the home-office exclusively for a business purpose.<sup>163</sup> Second, the respondent used the home-office on a regular basis.<sup>164</sup> Justice Stevens noted that spending two or three hours in a home-office communicating with patients and surgeons, performing bookkeeping, and preparing for procedures was sufficient to constitute use of the home-office on a regular basis.<sup>165</sup> Justice Stevens criticized the majority's analysis of the third component, which required that the space be used as a place of business in one of three ways: (1) as the principal place of business for a taxpayer's trade or business; (2) as a place to meet clients or patients; or (3) as a separate structure, other than a home, used in connection with the taxpayer's trade or business.<sup>166</sup> Justice Stevens noted that the principal place of business exception was written specifically to allow deductions for those home-offices in which the taxpayer does not meet patients or clients, but nevertheless uses it for business purposes.<sup>167</sup>

By suggesting that Soliman was denied a home-office deduction because he failed to meet patients in his home, Justice Stevens reasoned that the majority merged the meeting patients and clients exception with

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majority that Congress enacted § 280A to provide deductions only for legitimate business expenses incurred in a taxpayer's home-office. *Soliman*, 113 S. Ct. at 711 (Stevens, J., dissenting).

161. *Soliman*, 113 S. Ct. at 712 (Stevens, J., dissenting). Justice Stevens stated that Congress did not intend "to discourage parents from working at home; to promote the construction of office buildings or separate structures on residential real estate; or to encourage hospitals to keep doctors near their patients." *Id.*

162. *Id.* at 715.

163. See I.R.C. § 280A(c)(1) (1988) (providing that in addition to satisfying one of the exceptions under § 280A(c), a taxpayer must also use the home-office exclusively to advance a business purpose). Justice Stevens interpreted the phrase "exclusive use" as requiring that the use of the home-office be "substantial." *Soliman*, 113 S. Ct. at 713 (Stevens, J., dissenting). Justice Stevens stated that this requirement, alone, eliminated many of the abuses associated with the appropriate and helpful test because the taxpayer must now appropriate a separately identifiable space to his business. *Id.*

164. See I.R.C. § 280A(c)(1) (requiring that the home-office be used on a regular basis).

165. *Soliman*, 113 S. Ct. at 713 (Stevens, J., dissenting). Justice Stevens concluded that Soliman satisfied the first and second criteria. *Id.*

166. I.R.C. § 280A(c)(1).

167. *Soliman*, 113 S. Ct. at 714 (Stevens, J., dissenting).

the principal place of business exception, thus eliminating the principal place of business exception from § 280A.<sup>168</sup> Justice Stevens added that interpreting the statute in this manner renders the meeting patients and clients exception more significant than the principal place of business exception.<sup>169</sup> This interpretation of the statute was inconsistent with congressional intent.<sup>170</sup>

Justice Stevens favored the approach used by the Tax Court and the Fourth Circuit, which required that: (1) the home-office be used exclusively and regularly as a home-office; (2) the home-office be essential to the taxpayer's business; and (3) no other office space be available to the taxpayer to carry out his business activities.<sup>171</sup> Because the office in the respondent's residence was essential to performing the administrative tasks associated with being an anesthesiologist and because the respondent was not provided with an office at any of the hospitals, Justice Stevens argued that the home-office was maintained for the respondent's business and thus qualified as his principal place of business.<sup>172</sup>

### III. UNCERTAINTY, INCONSISTENCY, AND UNFAIRNESS RESULT FROM *COMMISSIONER V. SOLIMAN*

In *Commissioner v. Soliman*,<sup>173</sup> the Supreme Court resolved the conflict that existed among the Tax Court, the circuit courts, and the Internal Revenue Service regarding the appropriate standard for determining whether a taxpayer's home-office qualifies as a principal place of business by establishing a two-part test.<sup>174</sup> The Court, however, also incorporated by reference the focal point test applied by the lower courts, which the majority held might be significant in determining a taxpayer's principal

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168. *Id.* The majority's relative importance requirement merges the principal place of business exception with the meeting clients exception. *Id.* The dissent stated that injecting the meeting patients exception into the principal place of business exception "renders the latter alternative entirely superfluous." *Id.*

169. *Id.* (declaring that this interpretation "sets the three subsections on unequal footing").

170. *Id.* The dissent asserted that:

[t]he meaning of 'principal place of business' may not be absolutely clear, but it is absolutely clear that a taxpayer may deduct costs associated with his home office if it is his principal place of business *or* if it is a place of business used by patients in the normal course of his business *or* if it is located in a separate structure used in connection with his business.

*Id.*

171. *Id.* at 715 (stating that the test applied by those two courts "is both true to the statute and practically incapable of abuse"). According to Justice Stevens, "a principal place of business is a place maintained *by* or (in the rare case) *for* the business." *Id.*

172. *Id.*

173. 113 S. Ct. 701 (1993).

174. *Id.* at 706.

place of business.<sup>175</sup> This holding will have a considerable impact on the courts' future analyses of home-office deductions and also will impact taxpayers' ability to claim a home-office deduction.<sup>176</sup> In particular, *Soliman* will further confuse lower courts as they attempt to apply the appropriate standard for determining a taxpayer's principal place of business while staying within the confines of the Supreme Court's opinion.<sup>177</sup>

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175. *Id.* Although the Court disliked the focal point test because the "phrase has a metaphorical quality that can be misleading," the majority held that the focal point, the point where services are rendered or goods are delivered, "must be given great weight in determining the place where the most important functions are performed." *Id.*; see Harvath, *supra* note 160, at 187 (stating that because of the Court's emphasis on where services are rendered and goods are delivered, the location where these activities are carried out apparently will be the most important location, and thus, the principal place of a taxpayer's business).

176. Richard Thomas Lauer, Note, *A New Standard for the Home Office Deduction?*, 62 U. CIN. L. REV. 765, 779 (1993). Although predicting a dramatic impact on deserving taxpayers, Lauer does not see *Soliman* as having a tremendous impact on lower courts' analysis. *Id.* Under the Court's two-part test, lower courts will continue to use the facts and circumstances test when the taxpayer's business generates income inside and outside the home. *Id.* at 781. In addition, where the taxpayer's business generates income exclusively at a location outside the home-office, that location will be the principal place of business. *Id.* That location is the point where services and goods are delivered and must be given great weight in determining a taxpayer's principal place of business. *Id.* But see Glenn M. Fortin, Commissioner v. *Soliman*: *Supreme Court's Narrow Interpretation of "Principal Place of Business" Signals Need to Amend Home Office Deduction*, 27 GA. L. REV. 939, 950 (1993) (arguing that the Court's new test is unsatisfactory, confusing, and unfair); Harvath, *supra* note 160, at 180 (arguing that the standard outlined in *Soliman* will make it more difficult for deserving taxpayers to take home-office deductions and will lead to increased litigation for clarification of the new standard).

177. See *supra* notes 139-52 and accompanying text (discussing the Court's new standard). In two subsequent cases, the Tax Court followed, and did not criticize, the *Soliman* decision. *Crawford v. Commissioner*, 65 T.C.M. (CCH) 2540, 2544 (1993); *Bowles v. Commissioner*, 65 T.C.M. (CCH) 2733 (1993).

Three months after the decision in *Soliman*, the Tax Court considered whether an independent contractor in the medical field, was entitled to a home-office deduction. *Crawford*, 65 T.C.M. at 2541. The taxpayer provided medical services for three or four local hospitals in Dallas, Texas. *Id.* The taxpayer maintained a home-office to perform follow-up work for patients, draft correspondence, and conduct other work-related activities. *Id.* at 2542. The Tax Court, accepting the Supreme Court's new subjective test, disallowed the home-office deduction holding that the taxpayer spent much more time at the various hospitals than he did in his home-office. *Id.* at 2544. The Tax Court, in keeping with the Supreme Court's decision, refused to consider the availability of alternative office space as a factor in determining whether the home-office qualified as the principal place of business. See *id.* at 2544-45.

In *Bowles*, the taxpayer was a studio photographer employed by the Texas Youth Commission to teach art to violent juveniles. 65 T.C.M. at 2733. The taxpayer maintained a home-office for drawing and preparing lesson plans and used his bathroom for developing photographs. *Id.* The Tax Court denied the taxpayer a home-office deduction concluding that his home-office activities were secondary to his activities as a teacher with the Texas Youth Commission. *Id.* at 2734.

In addition, the result will unfairly penalize deserving taxpayers who wish to claim a deduction for expenses attributable to their home-offices.<sup>178</sup>

#### A. *The Soliman Standard*

Congress enacted § 280A to provide more definitive rules regarding the correct standard for determining whether expenses attributable to business use of the home are deductible.<sup>179</sup> Rather than provide more definitive rules, however, the Supreme Court implemented a two-part test and failed to provide adequate guidelines for its application.<sup>180</sup> For example, in assessing the relative importance of the activities performed at each of the taxpayer's business locations, the Court suggested that an "objective description of the business"<sup>181</sup> be undertaken as a preliminary step which ultimately would show a "pattern" of significant activity.<sup>182</sup> These terms are ambiguous, and because the Court provides little guidance in applying them, the Court fails to comport with congressional intent in providing more definitive rules in the area of home-office deductions.<sup>183</sup>

What little instruction the Court does provide remarkably resembles the focal point test.<sup>184</sup> The Court concluded that if a taxpayer's relatively important activities include delivering goods or services or meeting patients or clients, the place where that contact occurs should be given great weight in determining a taxpayer's principal place of business.<sup>185</sup>

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178. See *infra* notes 198-99 and accompanying text (discussing the dramatic impact the Court's new standard will have on taxpayers deserving of a home-office deduction).

179. See *supra* notes 5-26 and accompanying text (discussing the legislative history of § 280A).

180. *Soliman v. Commissioner*, 113 S. Ct. 701, 706 (1993). Courts may have difficulty applying the Supreme Court's two-part test because the Court failed to specify whether the relative importance test and the time test are of equal significance or whether one test has priority over the other. See *supra* notes 153-55 and accompanying text (discussing Justice Thomas' concern that problems may arise because of the majority's failure to prioritize the two-part test).

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

182. *Id.* A taxpayer's principal place of business would be the location in which those significant activities were performed. *Id.*

183. Gary Scott Hulsey, Note, *Soliman Leaves Uncertainty in the Area of Home Office Deductions: Suggested Guidelines*, 46 TAX LAW. 947, 953 (1993). The Court concluded that treating patients was "the essence of [Soliman's] professional service." *Id.* The Court did not explain, however, why treating patients was Soliman's most important function. *Id.* Hulsey further criticizes the Court's new test because it is inconsistent with Congress' intent in providing more definitive rules regarding home office deductions. *Id.*

184. *Soliman*, 113 S. Ct. at 706 (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 performed"); cf. *supra* notes 79-99 and accompanying text (discussing the focal point test).

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

Although the Court rejected the focal point test because “no one test is determinative,”<sup>186</sup> it would appear that the Court is applying the focal point test to satisfy its relative importance test.<sup>187</sup> Inclusion of the focal point test created by the Tax Court undermines the importance of the new two-part test created by the *Soliman* majority and places additional burdens on the lower courts in applying the appropriate standard.<sup>188</sup> The majority’s arguable application of the focal point test deprives the three exceptions set forth in § 280A(c)(1) of equal significance.<sup>189</sup> By holding that the place where the taxpayer meets patients, clients, or customers is an important factor in determining the taxpayer’s principal place of business, the majority injected the meeting patients exception into the principal place of business exception.<sup>190</sup> This suggests that the principal place of business exception will apply only if it is accompanied by the meeting patients exception. Such an approach is inconsistent with what Congress intended when it enacted § 280A.<sup>191</sup>

If Congress had intended to make the principal place of business exception dependent on the meeting patients exception, Congress would have incorporated the meeting patients exception into the principal place of business exception rather than creating three separate and individual exceptions.<sup>192</sup> Because Congress did not draft the statute in such a manner, it is inappropriate for the majority to interpret the statute as imposing such a limitation.<sup>193</sup>

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186. *Id.*

187. *Id.* Before introducing the new test, the majority held that it is not possible to “develop an objective formula that yields a clear answer in every case.” *Id.*

188. *Id.* at 709 (Thomas, J., concurring). Proponents of the focal point test argue that the test is objective and satisfies congressional intent. See Charles M. Flesch, Note, *Employed Artists’ Home Office Deductions in the Aftermath of Weissman v. Commissioner: The Second Circuit’s New Limited Exception for Taxpayer-Employees*, 4 CARDOZO ARTS & ENT. L. J. 337, 348 (1985) (arguing that the “focal point standard comports with the congressional intent to objectify the inquiry under which a determination to permit a home office deduction is to be made”); Mark T. Holtschneider, Comment, *Putting the House in Order: An Analysis of and Planning Considerations for Home Office Deduction*, 14 U. BALT. L. REV. 522, 531 (1985) (arguing that the focal point test comports with Congress’ intent in enacting § 280A, but admitting that the test’s emphasis on objectivity “frustrate[s] most taxpayer claims”).

189. *Soliman*, 113 S. Ct. at 714 (Stevens, J., dissenting).

190. *Id.*; see *supra* notes 168-70 and accompanying text (noting that Justice Stevens declared that the focal point test was rejected because the test, “merges the ‘principal place of business’ exception with the ‘meeting clients’ exception”).

191. *Soliman*, 113 S. Ct. at 714-15 (Stevens, J., dissenting).

192. *Id.* Justice Stevens argued that Congress intended only to prevent deductions for home-offices that were not genuinely necessary business expenses. *Id.* at 712.

193. *Id.*

The two-part test advanced by the majority also includes assessing the time spent at each of the taxpayer's business locations.<sup>194</sup> The Court does not clarify, however, whether this time test is equally important as the activities test or whether the time test is applicable only when the relative importance of the activities test yields no definitive answer.<sup>195</sup> Whether these two tests are equally significant is especially important in those cases where the taxpayer's income is earned at a separate business location but the majority of the taxpayer's time is spent in the home-office.<sup>196</sup> The majority's lack of guidance as to the proper application of the two-part test is inconsistent with Congress' intent to provide more definitive rules in the area of home-office deductions.<sup>197</sup>

The Supreme Court's new standard tightly enforces the test for determining whether a taxpayer's home-office qualifies as the principal place of business.<sup>198</sup> As a result, taxpayers who would have qualified for the

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194. *Id.* at 706.

195. *Id.* at 709 (Thomas, J., concurring) (finding the majority's two-part test troubling because of the majority's lack of clarity in how to properly apply the test). Due to this lack of clarity, Justices Thomas and Scalia were "at a loss" in predicting the outcome of the case if the taxpayer had spent the majority of his time in his home-office rather than at the hospital. *Id.* at 711.

196. See Hulse, *supra* note 183, at 953-54. Hulse illustrated the difficulty of applying the Court's two-part test with the decision of *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983). *Id.* The taxpayer, in *Drucker*, spent substantially more time in his home-office than he did at the performance hall where he earned his income. *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983). If it was determined that the performance hall was the taxpayer's principal place of business, it is unclear whether the time test would be a consideration. See Hulse, *supra* note 183, at 955. It is not clear how the *Soliman* test would resolve this type of situation. *Id.*; see also Harvath, *supra* note 160, at 193 (arguing that it is unclear how many hours Soliman would have to spend in his home-office in order for the home-office to qualify as his principal place of business). The Internal Revenue Service has stated that spending approximately 70% of the time in the home-office might make a taxpayer eligible for the home-office deduction. I.R.S. Notice 93-12, 1993-1 C.B. 46-7; see Harvath, *supra* note 160, at 193 (questioning whether 70% will suffice if the taxpayer's most important business activities are performed outside the home-office).

197. See Hulse, *supra* note 183, at 954-55 (arguing that the decision in *Soliman* fails to provide the definitiveness and clarity that Congress intended); see also Harvath, *supra* note 160, at 190-91 (asserting that "[t]he Supreme Court's comparative analysis in *Commissioner v. Soliman* is an ineffective method of bringing fairness and consistency to the determination of a taxpayer's principal place of business for I.R.C. section 280A purposes") (citations omitted).

198. Harvath, *supra* note 160, at 190-91; see *Home Office Deduction Claim Must Hurdle a Comparative Analysis, Justices Rule*, U.S.L.W., Jan. 15, 1993 (daily ed.) (predicting that the Court's new test will "disqualify [ ] numerous taxpayers who would have enjoyed the deduction under a looser test crafted by the Tax Court"); see Harvath, *supra* note 160, at 193. The Supreme Court's decision is likely to have a negative impact on certain types of business persons, such as health care professionals, the self-employed, construction contractors, outside salespeople, musicians, house painters, consultants, caterers, and interior decorators. *Id.*

deduction under the Tax Court's more liberal test now are ineligible from deducting business expenses incurred in the home.<sup>199</sup> The Internal Revenue Service reacted quickly to the Court's new decision when they withdrew a portion of a 1983 regulation concerning home-office deductions to reflect the Supreme Court's decision.<sup>200</sup> The Supreme Court, like the Internal Revenue Service, favored a strict construction of the principal place of business determination, and it is expected that, because of this

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199. Reaction to *Soliman* was immediate with commentators claiming that the new standard would adversely affect thousands of taxpayers, especially those who did some of their work at home, but provided their services at other locations. See, e.g., Robert L. Gardner et al., *Has the Supreme Court's Decision in Soliman Resolved the Home Office Controversy?*, 21 J. REAL EST. TAX'N 13, 25 (1993) (arguing that taxpayers who use home-offices will find it difficult to meet the *Soliman* principal place of business test); Michael M. Megaard and Susan L. Megaard, *Supreme Court Narrows Home Office Deductions in Soliman*, 78 J. TAX'N 132 (1993) (stating that the Court's new standard "may be read as closing the door on home office deductions for most taxpayers"); Lynn Asinof, *How Supreme Court's Home-Office Ruling Affects You*, WALL ST. J., Jan. 13, 1993, at C1 (stating that the taxpayers most likely to be affected include doctors, contractors, home decorators, caterers, computer repairers, house painters, consultants, and personal trainers); Joan Biskupic, *Supreme Court Rules Taxpayers Cannot Deduct Some Home Offices; Decision Seen as Defeat for Consultants, Independent Contractors*, WASH. POST, Jan. 13, 1993, at A3 (stating that the ruling is likely to affect teachers, musicians, and medical workers "whose work takes them away from an office, into a classroom, theater or hospital"); Elizabeth M. MacDonald, *How to Write Off a Home Office*, MONEY, Mar. 1993, at 16 (believing that the Supreme Court, in *Soliman*, "basically rewrote the rules for home office deductions . . . . The likeliest to suffer: the self-employed and people who do some of their work at home and the rest elsewhere").

200. Rev. Rul. 94-24, 1994-15 I.R.B. 5 (providing that the time test becomes more important if the relative importance test yields no definitive answer to the principal place of business). The Ruling also illustrated how the I.R.S. was going to apply the new standard outlined in *Soliman* by providing four examples. *Id.* at 6. In the first example, a plumber who spends 40 hours a week at customer locations and 10 hours in his home-office will be denied a home-office deduction because the essence of his business involves performing services and delivering goods at his customers' locations. *Id.* The activities in his home-office are secondary to the services he renders to his customers. *Id.* In the second example, a school teacher, who maintains a home-office to prepare for class and grade papers, is denied a deduction because the activities performed in the home-office, although important, are less important than the teacher's activities at school. *Id.* In the third example, an author who spends 30 to 35 hours a week in his home-office writing and 10 to 15 hours a week at other locations conducting research and meeting with publishers, will be able to deduct expenses attributable to the home-office because the essence of the taxpayer's business is writing. *Id.* In the fourth example, a self employed retailer spends 25 hours a week in his home-office ordering costume jewelry, shipping orders, and keeping the books. *Id.* He spends 15 hours a week at craft shows selling his merchandise. *Id.* The I.R.S. would consider the home-office to be the principal place of business. *Id.* Because the taxpayer's most important activities occur at more than one location, the time test becomes more important than a comparison of the relative importance of the activities. *Id.*

showing of Supreme Court support, the Internal Revenue Service will be more resolute in challenging home-office deductions.<sup>201</sup>

*B. The Facts and Circumstances Test: Fair to Taxpayers and Consistent with § 280A*

The facts and circumstances test<sup>202</sup> provides the clearest interpretation of § 280A, while affording favorable tax treatment to taxpayers who incur valid home-office expenses in connection with their trade or business.<sup>203</sup> To satisfy the facts and circumstances test, the activities performed in the home-office must be essential to the taxpayer's business; the taxpayer

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201. See Neal St. Anthony, *Key Question: Where is Money Earned?*, STAR TRIB., Feb. 14, 1993, at D4 (stating that "[b]y receiving the Supreme Court's support, the I.R.S. can continue to try to stem abuses even though the court specifically noted that other cases would be determined by their own circumstances"); Pam Yip, *For Office Claims, I.R.S. Leaves No Home Unturned*, HOUS. CHRON., Feb. 22, 1993, at 1B, 2B (quoting an I.R.S. spokesperson as saying, "[T]he home office deduction automatically pushes an alert button on I.R.S. computers"). Legislators, sympathetic to the position of taxpayers, have proposed legislation to overturn the Supreme Court's decision in *Soliman* and restore full deductibility to home-office expenses. Sen. Hatch Proposes to Restore Full Deductibility of Home Office Expenses, DAILY EXEC. REP. (BNA), Mar. 14, 1994, at G-1 ("propos[ing] legislation [that] would allow a home office to meet the definition of principal place of business if it is the location where essential administrative or management activities are conducted on a regular and systematic basis," but requiring that the taxpayer have no other location for the performing of these activities). In addition to Congress' desire to restore full deductibility to home-office expenses, 16 trade associations are supporting legislation to ease home-office deduction restrictions, claiming that " 'home-based businesses have served the economy and the work force well.' " *Trade Associations Push for Easing of Home Office Deduction Restrictions*, DAILY EXEC. REP. (BNA), Jan. 13, 1994, at G-4. Specifically, the legislation would allow expenses incurred in the home-offices used regularly and exclusively for business purposes to be deductible. Sen. Hatch Proposes to Restore Full Deductibility of Home Office Expenses, *supra*, at G-1. The legislation, intended to benefit small business owners and self-employed individuals, would, thus, keep in place the criteria that was applied prior to *Soliman* and would add an additional requirement that the taxpayer have no other location for the performance of administrative activities. Linda Stern, *Reclaim Your Lost Deduction*, HOME OFFICE COMPUTING, Apr. 1994, at 22 (detailing provisions of proposed bill and reasoning that many senators were eager to cosponsor the measure after realizing the number of constituents who work from home).

202. See *supra* notes 121-33 and accompanying text (discussing the Court's application of the factors comprising the "facts and circumstances" test).

203. See Levine, *supra* note 4, at 261 (arguing that because the focal point test is too rigid and the dominant portion of the work test is inconsistent with congressional intent, the facts and circumstances test is the only test that is both fair and consistent with legislative history); see also Fortin, *supra* note 176, at 955 (arguing that the facts and circumstances test, unlike the focal point and time comparison tests, provides a broader analysis in determining whether a home-office deduction is appropriate because it considers all relevant facts and circumstances).

must spend a substantial amount of time in the home-office; and there can be no other office space available to perform the activities.<sup>204</sup>

While this test has been criticized as being as liberal as the appropriate and helpful test,<sup>205</sup> it is much more difficult to prove that use of a home-office is essential to a taxpayer's business, than it is to prove that a home-office is appropriate and helpful to a taxpayer's business.<sup>206</sup> Thus, the facts and circumstances test allows home-office expense deductions for legitimate claims and eliminates those home-office expense deductions for claims that are nonessential to the taxpayer's business.<sup>207</sup>

The facts and circumstances test is also consistent with the congressional intent in enacting § 280A.<sup>208</sup> By eliminating the home-office deduction in those cases where the home-office was used only occasionally or incidentally to further a taxpayer's business, Congress intended the home-office deduction to be available only where an office was used exclusively for carrying out the taxpayer's business.<sup>209</sup> The facts and circumstances test fulfills Congress' intent because to satisfy the test the taxpayer must have no other office space available to conduct the taxpayer's business activities and the home-office must be essential to the

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204. *Soliman v. Commissioner*, 94 T.C. 20, 27-28 (1990), *aff'd*, 935 F.2d 52, 54 (4th Cir. 1991), *and rev'd*, 113 S. Ct. 701 (1993).

205. *See Fortin, supra* note 176, at 959. Fortin asserts that:

[T]he 'facts and circumstances' test goes far beyond a mere inquiry into whether the home office is 'helpful and appropriate'— under the latter test, taxpayers could qualify for a deduction merely by bringing some work home at night. These abuses would not survive judicial scrutiny under the 'facts and circumstances' analysis, which considers among other factors the business necessity of the home office.

*Id.* (citations omitted).

206. *Id.*

207. *See Levine, supra* note 4, at 258-60. For example, a taxpayer has an office downtown but also maintains a home-office. Under the appropriate and helpful test, the taxpayer would be allowed a deduction if he could show that he used the home-office on evenings and weekends and that the home-office was appropriate and helpful to the taxpayer's business. *See id.* at 248-50. However, a deduction would not be granted under the facts and circumstances test because the home-office is not essential to the taxpayer's business. *Id.*

208. *See Levine, supra* note 4, at 261 (arguing that Congress's efforts at preventing deductions for incidental or occasional business use is met by the facts and circumstances test which requires a substantial business exigency for having the home-office). One of Congress's primary goals in enacting § 280A was to prevent taxpayers from taking a home-office deduction when they brought work home from their employer-provided offices. S. REP. NO. 938, 94th Cong., 2d Sess. 1, 147 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3580.

209. S. REP. NO. 938, 94th Cong., 2d Sess. 1, 149 (1976), *reprinted in* 1976 U.S.C.C.A.N. 3439, 3582.

taxpayer's business.<sup>210</sup> If the taxpayer has access to office space outside the taxpayer's home, or if the home-office is used only occasionally in connection with the taxpayer's business, the taxpayer will fail to satisfy the criteria of the facts and circumstances test.<sup>211</sup>

#### IV. CONCLUSION

Although the Supreme Court in *Soliman* addressed the issue of what constitutes a taxpayer's principal place of business in determining whether a taxpayer can deduct expenses attributable to a home office, the Court has left many questions unanswered. The Court's opinion in *Soliman* will foster inconsistency with the statutory law and will unfairly penalize taxpayers who meet the qualifications of § 280A and deserve a home-office deduction. Justice Stevens' support of the facts and circumstances test is more sound because it foresees the ramifications of the majority's holding on the future of home-office deductions. With a growing number of self-employed taxpayers managing businesses from home-offices, there is a need for assistance and encouragement in deducting legitimate and essential business expenses incurred in the home.

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210. *Soliman v. Commissioner*, 935 F.2d 52, 54 (4th Cir. 1991), *rev'd*, 113 S. Ct. 701 (1993).

211. *Id.* Application of the facts and circumstances test to *Drucker v. Commissioner*, 715 F.2d 67, 68-69 (2d Cir. 1983), demonstrates that this test is fair to the taxpayer and is consistent with Congress' intent in enacting § 280A. A concert musician spent more time in his home music studio practicing for performances than he spent performing at the Lincoln Center because his employer did not provide practice facilities. *Id.* Drucker satisfies the facts and circumstances test because the home music studio was essential to the taxpayer's business. If he did not practice, he would not perform well and would probably lose his job. *Id.* In addition, Drucker spent a substantial amount of time, approximately 30 hours per week, in the home studio practicing. *Id.* at 68. Lastly, because Drucker's employer did not provide him with practice facilities, he had no other available space, except his home, to practice. *Id.* at 69.

