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THE TREND TOWARD LIBERALIZING THE DEDUCTION  
OF MAINTAINING AN OFFICE AT HOME

In the past the Internal Revenue Service has maintained that before a taxpayer may properly claim a deduction for maintaining an office in his home, he must be required as a condition of his employment to provide his own space and facilities. However, in the *Newi* Case<sup>1</sup> the Court of Appeals for the Second Circuit found that the deduction was justified if it was impractical or inconvenient for the employee to return to his office furnished by the employer; it did not accept the IRS contention that before expenses may be deducted for maintaining an office in one's home the taxpayer must be required to provide an office at home. Moreover, the case was a marked departure from recent decisions which have allowed as a deduction expenses of maintaining an office at home, although not required as a condition of employment, if the office provided by the employer was inadequate for the intended business purpose.

In *Newi* an outside salesman of television time for the American Broadcasting Company network was allowed to deduct expenses of maintaining an office at his apartment even though he was not required to set aside a portion of his apartment for an office by his employer. On an average of three hours a night at his home office, the taxpayer reviewed his notes on the day's selling activities, studied various research materials and ratings, made his plans for the next day's work and viewed television advertisements of ABC and its competitor networks. The room was used exclusively for business purposes and not by the taxpayer or his wife for personal television viewing.

<sup>1</sup> *Newi v. Commissioner*, 432 F.2d 998 (2d Cir. 1970), 70-2 U.S. Tax Cas. 9669 (1970), *aff'g* 28 CCH Tax Ct. Mem. 686 (1969).

The Commissioner contended that an office in one's home must be required as a condition of the taxpayer's employment before the expense properly may be deducted. He pointed out that since the ABC building was open in the evening with office space and television equipment available, neither was Newi required to maintain an office at his home nor was the office provided by ABC inadequate for Newi's intended use.

The question to be decided was whether Newi could deduct amounts incurred for the rental, cleaning and lighting of one room of his apartment which was used by him for business purposes under Section 162 of the Internal Revenue Code of 1954.

The Tax Court answered in the affirmative applying the "appropriate and helpful" test. ". . . [T]he term 'necessary' imposes only the minimal requirement that the contested expenditure be appropriate and helpful to the taxpayer's business."<sup>2</sup> Furthermore, the Tax Court was ". . . unaware of any legal requirement that the expenditure must be required before it qualifies as an allowable business expense."<sup>3</sup>

The Court of Appeals for the Second Circuit affirmed, limiting the "appropriate and helpful" test to situations in which an office in the taxpayer's home would be either necessary or clearly related to the performance of his business duties. The Court of Appeals relied primarily on the impracticability of returning to the ABC building in the evening hours. First of all, it would have been almost impossible to obtain a cab at that hour in Manhattan. Secondly, Newi would have to cross four or five main arteries, each with traffic lights, and proceed some distance on a street also controlled by traffic lights to reach his office. Because of these difficul-

<sup>2</sup> George H. Newi, 28 CCH Tax Ct. Mem. at 691 (1969).

<sup>3</sup> *Id.*

ties, he would have missed many programs important to him.

The Internal Revenue Code says: "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 . . . ."<sup>4</sup> However, ". . . [N]o deduction shall be allowed for personal, living, or family expenses."<sup>5</sup> In the past the IRS has maintained that certain conditions must be met before a taxpayer may properly claim a deduction for maintaining an office at his home:

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. However, the voluntary, occasional or incidental use by an employee of a part of his residence in connection with his employment does not entitle him to a business expense deduction of any portion of the depreciation and expenses of maintaining his residence . . . .

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 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 attributed to such use."<sup>6</sup>

. . . However, in making an allocation of expenses, it would, if the circumstances warrant, be proper to compare the number of rooms or square feet of space devoted to a business purpose to the total num-

<sup>4</sup> INT. REV. CODE of 1954, §162(a).

<sup>5</sup> INT. REV. CODE of 1954, §262.

<sup>6</sup> Rev. Rul. 62-180, 1962-2 CUM. BULL. 52-53.

ber of rooms or square feet in the residence and apply the ratio thus arrived at to the total of each of the expenses properly attributable to the use of part of the residence for business purposes. Such methods of allocation are not the only methods which may be made. Any other method which is reasonable under the circumstances will be acceptable."<sup>7</sup>

Revenue Ruling 62-180 is particularly clear and unambiguous. Nevertheless, recent cases have liberalized the requirement that in order for a home office deduction to be allowed, the employee must be required to maintain an office at home as a condition of his employment. These cases have focused essentially on the fact that the office provided by the employer was inadequate for one reason or another.

In an early case, *Freda W. Sandrich*,<sup>8</sup> a producer-writer-director was allowed to deduct expenses in performing his duties at home, even though an office at the studio was provided and he was not required to maintain an office at home. The court found it necessary that the taxpayer seek the seclusion of his home since it was impossible to do effective creative work at his studio office because of constant interruptions and general confusion. Therefore, since his studio was inadequate for his particular business duties, the taxpayer was allowed the deduction.<sup>9</sup>

However, in the *Anzalone Case*,<sup>10</sup> a sales engineer and branch manager was not allowed to deduct expenses in connection with his office at home since he was not required by

<sup>7</sup> *Id.* at 54.

<sup>8</sup> *Freda W. Sandrich*, 5 CCH Tax Ct. Mem. 234, 570 (1946).

<sup>9</sup> See also, *Rupert and Elsie Stuart v. Commissioner*, 20 CCH Tax Ct. Mem. 938 (1961), *Morris S. and Charlotte G. Schwartz v. Commissioner*, 20 CCH Tax Ct. Mem. 725 (1961), *Louis Lindbaum v. Commissioner*, 15 CCH Tax Ct. Mem. 896 (1956).

<sup>10</sup> *Valentine J. Anzalone*, 23 CCH Tax Ct. Mem. 497 (1964).

his employer to provide space in his home for use in the performance of his duties for his employer. In addition, he was furnished an office and a key to such office which enabled him to have access to the employer's premises at all times. Furthermore, nothing in the record indicated or established that the office furnished by the employer was inadequate.

But in the *Peiss Case*,<sup>11</sup> a college professor, even though he had an office at school, was allowed to deduct expenses incurred in maintaining an office at home since his office at school was not separated from the research laboratory constantly in use by graduate students who frequently interrupted him. The court also noted that the work done in his home could not be done in his school office because there was just not adequate time even in an extended working day. However, Peiss had to show that his home office was necessary and not merely a convenience to avoid going to his office.

Finally, in the *Bishoff Case*,<sup>12</sup> where the employer furnished an office at its regular place of business that was available at night, an art director who maintained a studio at home was allowed to deduct those expenses connected with that office. The court concluded, that "[t]o be deductible as an ordinary and necessary business expense, it is sufficient that the expenditure be 'appropriate and helpful' to the conduct of the business; it need not be 'required'."<sup>13</sup> In addition, because of the difficulty in obtaining air conditioning in the summer and heat in the winter after six o'clock in the evening, it was undesirable for the taxpayer to use these facilities after regular hours. Furthermore, the taxpayer found he could work more efficiently at his home studio.

<sup>11</sup> Clarence and Evelyn Peiss, 40 T.C. 78 (1963).

<sup>12</sup> Herman E. and Virginia W. Bischoff, 25 CCH Tax Ct. Mem. 538 (1966).

<sup>13</sup> *Id.* at 539.

From the cases above it may be surmised that if the office provided by the employer was inadequate, an employee may deduct expenses in connection with his office at home. Constant interruption, general confusion and lack of heat or air conditioning are factors which would make the employer's office inadequate. In addition, lack of space, lack of sufficient file space and high noise levels would probably be sufficient to declare an office inadequate. However, in *Newi*, the employer provided office was adequate in every respect. *Newi* could do everything as efficiently at the ABC building as he could at his home office. However, the Court of Appeals did not focus its attention on the adequacy or inadequacy of the office, but focused primarily on the inconvenience to *Newi* if he were required to return to the ABC building at night. Now, if it is impractical or inconvenient for a taxpayer to return to his employer's office, the taxpayer is allowed to deduct those expenses of maintaining an office at home. Distance, available transportation to the office, time involved to return to the office and even traffic congestion are important factors to consider if the return trip is impractical or inconvenient. The Commissioner will continue to argue that for expenses of an office at home to be deductible the home office must be required as a condition of employment, but the trend seems to be in the opposite direction.

The *Newi* Case has far reaching implications for those who work part time at home in a home office, in particular teachers, professors, traveling salesmen, outside salesmen, writers and even lawyers. The case clearly indicates that the courts will construe liberally the deduction for an office at home. Moreover, the office no longer needs to be required. It is sufficient that it would be impractical or inconvenient for the employee to return to the company office. Furthermore, the *Newi* Case is a marked modification of earlier case law that permitted the deduction only when the office provided by the employer was inadequate.

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