

NORTHERN ILLINOIS UNIVERSITY

The Home Office Deduction

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by

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ABSTRACT: As a result of a recent Supreme Court decision, *Commissioner v. Soliman*, stricter guidelines have been imposed upon taxpayers regarding their eligibility to take a home office deduction under the "principle place of business" election. As a result of *Soliman*, determining a taxpayer's principal place of business went from a "facts and circumstances" test, tailored to each individual case, to tests that consider only two factors. Several pronouncements and publications have prescribed guidelines and examples that explain this decision. *Soliman*, however, has been subject to criticism by the tax profession. Some professionals believe these tests are too strict. The pronouncements have also been subject to scrutiny for being vague. The purpose of this thesis was to gather information from the practicing tax profession to determine what its views were regarding *Soliman* and the subsequent pronouncements. Surveys were given to fifteen tax professionals. The purpose of the surveys was to determine whether *Soliman* provided adequate guidelines for determining a taxpayer's principal place of business, as well as to analyze whether the recent IRS pronouncements are consistently interpreted and applied. Survey results support the finding that the effects of *Soliman* are not universally accepted, and that interpretation of its guidelines do not always produce consistent and dependable conclusions. Therefore, it is proposed that the courts revert to the "facts and circumstances" test that was used prior to *Soliman*.

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SENIOR CAPSTONE PROJECT

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1. Title of project.

Home Office Deductions

2. Describe, in detail, the focus of the work.

In the past, home office expenses were fairly easy to take as a deduction on one's tax return. Through time, these deductions have been more difficult to claim. The focus of this paper will be to trace the evolution of home office deduction tax law. There exists a current court case, *Com. v. Soliman*, that influences the way in which professionals view eligibility for this deduction, this case will be discussed. Tax professionals' opinions concerning this case will be obtained, as well as proposals for change in the current law.

3. Please list major works dealing with your topic that you intend to investigate.

Internal Revenue Code
Treasury Regulations
CCH-Standard Federal Tax Reporter
Judicial Decisions
Cumulative Bulletin
Current relevant tax articles

4. Describe the methodology of the proposed study.

I will explain the emergence of the home office deduction and related tax law. Primary and secondary resources will be used to qualitatively analyze the evolution of this law and where it stands today. Fifteen to twenty tax professionals will receive surveys to obtain their ideas of how they interpret the current law and how they interpret the *Com. v. Soliman* court case related to home office deductions. They will be given several scenarios that depict situations in which a tax professional would have a difficult decision as to the eligibility of the deduction and be asked how they would react to each one. Proposals for changes in the current tax law will also be gathered.

5. What is the time frame for completion.

December 1994

6. List any courses taken that provide background for this study.

ACCY 455

HOME OFFICE DEDUCTION - IN GENERAL

Under §280A(c)(1) of the Internal Revenue Code (IRC), a taxpayer is allowed a deduction for home office expenses “allocable to a portion of the dwelling unit” that is in connection with the taxpayer’s trade or business providing that certain requirements are met. In order to qualify for a home office deduction, a taxpayer must exclusively and regularly use a portion of his home solely for business purposes. If a taxpayer works in his home office occasionally, the “regular use” requirement of §280A(c)(1) is not met. Likewise, if the designated portion of the home is used for activities not related to the taxpayer’s trade or business, such as an exercise facility, the home office deduction will be disallowed.¹ It is important to note that using a home office as a passageway to other parts of the home does not inhibit the “exclusive use” requirement.²

Section 280A(c)(1) provides three requirements, one of which must be met, to allow a home office deduction, assuming the home office is used exclusively and regularly by the taxpayer as follows. The home office must be:

1. The taxpayer’s principal place of business for any trade or business,
2. A place of business that is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or
3. A separate structure not attached to the dwelling unit, a place used in connection with the taxpayer’s trade or business.

If a taxpayer can prove that he falls under any of the three possible requirements, a home office deduction will be allowed. If the taxpayer is an employee, the IRC additionally requires that the

¹ CCH Explanation Par. 14,854.03, Prop. Reg. §1.280A-3, p. 31,031.

² *Ibid.*

home office be used for the convenience of his/her employer.

Under current tax law, a taxpayer may deduct expenses (i.e. rent, utilities, depr., etc.) allocable to the portion of the home used for business purposes. These expenses are limited to the gross income from the business less all other business expenses relating to the activity.³ All expenses that are already allowable itemized deductions, such as interest and taxes, are deducted first from the business net income. All other expenses are deducted next, with depreciation of the home office taken last. Any expenses that exceed the income limitation are carried forward indefinitely to future tax years.⁴ See Exhibit One of the Appendix for an example of the home office deduction calculation.

Reporting these expenses on a taxpayer's return differs between a taxpayer who is an employee and a taxpayer who is self-employed. An employee reports the allowable expenses on Schedule A of his individual tax return(1040) as an itemized deduction. As a Schedule A item, the allowable expenses are combined with all other items classified as miscellaneous expenses and the deduction is limited to the excess expenses greater than 2% of the taxpayer's adjusted gross income (AGI). A self-employed individual reports the allowable expenses on Schedule C of the tax return. These expenses are taken in full and are not limited to the 2% of AGI limitation. It is important to note that certain expenses that are not used because of the home office deduction income limitation, such as interest and taxes, are eventually deductible as an itemized deduction.

Sometimes it is difficult to determine whether a taxpayer meets one of the three requirements provided by the IRC. The second and third alternatives provide distinct guidelines

³ Prop. Reg. §1.280A-2(i).

⁴ §280A(c)(5).

for this determination. However, the meaning of the first alternative, in which the taxpayer claims a deduction because the home office is the “principal place of business”, has been controversial throughout the years; therefore, it is the focus of this paper.

EVOLUTION OF “PRINCIPLE PLACE OF BUSINESS”

Prior to 1976, taxpayers were given liberal rules under §162 that allowed them to deduct home office expenses that were “appropriate and helpful” to conduct their trade or business.⁵ These rules had been exploited and often allowed a taxpayer to deduct personal living expenses that were otherwise nondeductible. As a result, Congress enacted §280A of the IRC as part of the Tax Reform Act of 1976.⁶ Section 280A was established in order to provide a set of objective rules to determine how a taxpayer can qualify for a home office deduction. The general provision in §280A states that “no deduction ... shall be allowed with the respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence”. However, 280A does provide numerous exceptions to this general provision.

Section 280A(c)(1) of the IRC states requirements that must be met by a taxpayer who elects to deduct home office expenses relating to his/her trade or business. Congress allows a home office deduction if a taxpayer’s residence is used regularly and exclusively as the taxpayer’s “principal place of business” for any trade or business [§280A(c)(1)(A)], a place for meeting with patients, clients, or customers [§280A(c)(1)(B)], or a separate structure not attached to the dwelling unit [§280A(c)(1)(C)].

⁵ *Newi v Com.*, 70-2 USTC Par. 9,669 (CA-2, 1970).

⁶ See Staff of Joint Committee on Taxation, 94th Cong., 2d. Sess., GENERAL EXPLANATION OF THE TRA OF 1976 .

The “principal place of business” provision set forth by Congress does not provide a clear and decisive meaning for taxpayers to use in determining their eligibility for home office deductions. When a taxpayer has more than one location at which business activity is conducted, §280A(c)(1)(A) does not provide a definitive guideline that defines the “principal place of business”. In situations where the taxpayer has patients or clients visiting the home office, or the home office is a separate structure to the home, a taxpayer may rely on §280A(c)(1)(B) and (C) to take a home office deduction. However, taxpayers claiming a deduction under §280A(c)(1)(A) may be subject to intense scrutiny by the IRS because the “principal place of business” has an ambiguous meaning.

Due to the lack of guidance set forth by Congress, the Tax Court had developed an objective “focal point” test that would determine a taxpayer’s principal place of business. The focal point test compared the locations a taxpayer used for the business and concluded that the “focal point” of a taxpayer’s business activities, which largely relied on the point of contact with clients or customers, determined the principal place of business.⁷

In a 1980 Tax Court case, *Baie v. Com.*, the taxpayer used the kitchen in her home to prepare food to sell at a foodstand near her residence.⁸ Although the “exclusive use” requirement of §280A(c) was an overwhelming factor against the taxpayer, the Tax Court relied on the focal point test to disallow her home office deduction. “The sales of petitioner’s fast food product generated her income . . . Even though preliminary preparation may have been beneficial to the efficient operation of petitioner’s business, both the final packaging for consumption and

⁷ Michael M. Megaard and Susan L. Megaard, “Supreme Court Narrows Home Office Deduction in Soliman,” *The Journal of Taxation*, March 1993.

⁸ *R Baie*, 74 TC 105, Dec. 36,907, (1980).

sales occurred on the premises of the Gay Dog (the foodstand) . . . We therefore take it that what Congress had in mind was the focal point of a taxpayer's activities, which, in the case before us, would be the Gay Dog itself."⁹

In 1981, G.H. Weightman, an associate professor, was denied a home office deduction because the Tax Court did not consider his home office a "principal place of business".¹⁰ Although preparation of lectures, grading papers and exams, and professional development involving research were conducted at the taxpayer's home office, the Tax Court states, "While preparation of lectures, grading of papers and exams, and professional development, including research activities, are important and indeed essential to the work of a college professor, they do not serve to shift the focal point of a professor's activities from the school to his office in his home".¹¹ It is important to note that teachers have consistently been denied the home office deduction.

In a 1982 U.S. Supreme Court case, *Loughlin v. U.S.*, the taxpayer was an airline pilot who occasionally used a portion of his home for business purposes.¹² Although the "regular use" requirement of §280A(c) could have been used to deny the taxpayer a deduction, the Tax Court relied on the focal point test. "Mr. Loughlin's occupation is that of an airline pilot . . . His principal place of business is not his home but rather the airport, cockpit, or the airline headquarters . . . it is clear that the focal point of Mr. Loughlin's business is not the area adjoining his kitchen."¹³

⁹ *R Baie*, 74 TC 105, Dec. 36,907, (1980), p. 3162.

¹⁰ *G.H. Weightman*, 42 TCM 104, Dec. 37,986(M), TC Memo 1981-301.

¹¹ *Ibid.*, p. 108.

¹² *J.O. Loughlin*, DC- Minn., 82-2 USTC Par. 9543.

¹³ *Ibid.*, p. 84,951.

During this period, the IRS issued Proposed Regulations to help clarify the ambiguity in determining a taxpayer's principal place of business.¹⁴ These regulations were proposed in 1980 and amended in 1983, but never made final.¹⁵ The Service established a "facts and circumstances" test in Prop. Reg. §1.280A-2(b)(2) and provided examples of its application in Prop. Reg. §1.280A-2(b)(3). In Prop. Reg. §1.280A-2(b)(2), the Service stated that a taxpayer "may have only one principal place of business regardless of the number of business activities in which that taxpayer may be engaged . . . it is necessary to determine the principal place of the taxpayer's overall business activity in light of all facts and circumstances (pertinent to each individual case)".¹⁶

These regulations proposed a subjective test that compared all facts and circumstances with respect to each business location. This test emphasized the following factors:

1. The portion of the total income from business activities which is attributable to activities in each location,
2. The amount of time spent in business activities in each location, and
3. The facilities available to the taxpayer at each location.¹⁷

The IRS also issued Publication 587 which provided additional examples similar to those cited Prop. Reg. §1.280A-2(b)(3).¹⁸

Proposed Regulation §1.280A-2(b)(2) states that a taxpayer can have only one principle place of business. It is important to note that this requirement relates to a comparison of

¹⁴ Prop. Regs. §1.280A-2, LR 261-76, 8/7/80, amended 7/21/83.

¹⁵ Michael M. Megaard and Susan L. Megaard, "Supreme Court Narrows Home Office Deduction in Soliman," *The Journal of Taxation*, March 1993..

¹⁶ Prop. Reg. §1.280A-2(b)(2), (1983).

¹⁷ *Ibid.*

¹⁸ Pub. 587, "Business Use of Your Home," Principal Place of Business.

activities in each type of business a taxpayer maintains. A taxpayer may claim a home office deduction when activities from several different businesses are conducted in one office. This deduction is valid as long as the “exclusive” and “regular” use requirements are met, as well as one of the three alternatives.¹⁹ However, if any of the activities is related to a business that is not eligible for a home office deduction, the “exclusive use” requirement of the home office is tainted and no deduction is allowed for any of the business activities.²⁰

Although the Proposed Regulations were never made final, the influence of these regulations can be seen with the Appellate Courts’ gradual shift away from the strict focal point test used by the Tax Court.²¹ In a court case involving a musician, the Tax Court applied the focal point test to establish that the musician’s “principal place of business” was at his employer’s premises where the taxpayer performed.²² The employer provided no space for the taxpayer to practice and most of the taxpayer’s time spent practicing was in a studio in his home. The Second Circuit reversed the Tax Court’s decision and stated, “we see no need to disturb the Tax Court’s ruling that the taxpayers are in the business of being employees of the Met Rather, we find this the rare situation in which an employee’s principal place of business is not that of his employer Both in time and in importance, home practice was the ‘focal point’ of the appellant musicians’ employment-related activities”.²³

In 1984, a college professor, who spent the majority of his time in his apartment doing research and writing required by his job, was denied a home office deduction by the Tax Court.²⁴

¹⁹ P.L. 97-119, Black Lung Benefits Revenue Act of 1981.

²⁰ *Hamacher v Com.*, 94 TC 348 (1990).

²¹ Michael M. Megaard and Susan L. Megaard, “Supreme Court Narrows Home Office Deduction in *Soliman*,” *The Journal of Taxation*, March 1993.

²² *Drucker*, 715 F.2d 67 (CA-2, 1983), REV’G 79 TC 605 (1982).

²³ *Ibid.*, p. 87,961.

²⁴ *Weissman*, 751 F.2d 512(CA-2, 1984), REV’G TCM 1983-724.

The Tax Court had used its strict version of the focal point test to state that the focal point of the professor's job was when he taught at school. The Second Circuit reversed the Tax Court's decision and criticized its form of the focal point test. "When the *Drucker* standard is applied to this case, it becomes clear that Professor Weissman has also satisfied the convenience-of-employer test . . . The commissioner attempts to distinguish *Drucker* on the ground that the employer there provided no space for practice, while here the employer provided some space, i.e., a shared office and the library . . . *Drucker* is not so easily distinguished, however, for there, as here, the relevant fact is that the employer provided no suitable space . . . it spared the employer the cost of providing a suitable private office and thereby served the convenience of the employer."²⁵ In comparing *Weightman* and *Weissman*, it is important to note the differing tax consequences in light of the similar circumstances.

As a result of the Appellate Court's continual reversal of Tax Court decisions, the Tax Court began to shift away from its strict focal point test to more subjective tests. The Tax Court began using numerous factors to determine eligibility for a home office deduction. Factors used included time spent at each location, the place where the most important business functions are performed, the location where the majority of income is generated, and availability of space.²⁶ The Tax Court's change clearly resembled the "facts and circumstances" test given in Proposed Regulation §1.280A-2(b)(2).

²⁵ *Ibid.*, p. 87,028.

²⁶ *Pomerantz*, TCM 1986-461, AFF'D 867 F.2d 495(CA-9), 1988); *Kisicki*, TCM 1987-245, AFF'D 871 F.2d 1088 (CA-6, 1989); *Dudley*, TCM 1987-607, AFF'D 860 F.2d 1078 (CA-6, 1988).

COMMISSIONER V. SOLIMAN

In a 1993 U.S. Supreme Court case, *Com. v. Soliman*, the Supreme Court denied the taxpayer a home office deduction.²⁷ This case is very important because the Supreme Court criticized the use of the strict “focal point” test implemented by the Tax Court, as well as the “facts and circumstances” test suggested in the Proposed Regulations. This case resulted in the emphasis of two factors to be used in determining a “principal place of business”.

During the 1983 tax year, respondent Soliman, an anesthesiologist, spent 30 to 35 hours per week administering anesthesia and postoperative care in three hospitals, none of which provide him with an office. He also spent two to three hours per day in a room in his home that he used exclusively as an office, where he did not meet patients but did perform a variety of tasks related to his medical practice. His claimed federal income tax deduction for the portion of his household expenses attributable to the home office was disallowed by petitioner Commissioner, who determined that the office was not Soliman’s “principal place of business” under §280A(c)(1)(A). The Tax Court disagreed and allowed the deduction. In affirming, the Court of Appeals adopted the test used in the Tax Court, under which a home office may qualify as the “principal place of business” if (1) the office is essential to the taxpayer’s business; (2) the taxpayer spends a substantial amount of time there; and (3) there is no other location available for performance of the business’ office functions.²⁸

Initially, the Service had disallowed Soliman’s home office deduction by relying on the original focal point test used by the Tax Court. Since Soliman did not actually perform the activities from which he earned income at his home, he was denied the deduction. However, the Tax Court, influenced by the views of the Appellate Courts in the early 80’s, adopted the subjective “facts and circumstances” test. “The Tax Court abandoned that test (focal point), citing criticism by two Courts of Appeals (noting Meiers, Weissman, and Drucker).”²⁹ The

²⁷ *Com. v. Soliman*, 93-1 USTC Par. 50,014 (1993). Reversing 935 F.2d 52(1991).

²⁸ *Ibid.*, p. 87,052.

²⁹ *Ibid.*, p. 87,054.

Commissioner appealed the Tax Court decision; however, the Appellate Court affirmed. On January 12, 1993, the U.S. Supreme Court reversed the Fourth Circuit.

REASONING OF THE COURTS

The Tax Court, acknowledging that Soliman did not perform his primary income-generating services at home, based its decision on the growing popularity of the subjective “facts and circumstances” test. This subjective test declared that a home office deduction could apply where (1) a home office is essential to the taxpayer’s business, (2) the taxpayer spends substantial time there, and (3) there is no other location available to perform the office functions of the business.³⁰ However, the Tax court did not compare the amount of time spent at each of Soliman’s business locations.

The Fourth Circuit affirmed the Tax Court stating that the Proposed Regulations suggested “a policy to allow home office deductions for taxpayers who maintain ‘legitimate’ home offices, even if the taxpayer does not spend a majority of his time in the office”.³¹ However, similar to the Tax Court, the Appellate Court failed to make a comparison of the activities and time spent at each of Solimans’ locations. As a result, the Supreme Court decided to hear the case.

The Supreme Court analyzed several factors that the lower courts had used as support for their decisions. First, the Supreme Court criticized the lower courts negligence to make a comparison of activities and time spent at each of the locations. “In deciding whether a location is the ‘principal place of business,’ the common sense meaning of ‘principal’ suggests that a

³⁰ Robert T. Kelley, “Home Office Deductions Restricted by Supreme Court,” *Taxation for Accountants*, April 1993.

³¹ *Com. v. Soliman*, 93-1 USTC Par. 50,014 (1993). Reversing 935 F.2d 52(1991), p. 87,054.

comparison of locations must be undertaken.”³² The Supreme Court looked to the definition of the word “principal” as meaning “most important, consequential, or influential”. The Court stated that the essence of Soliman’s profession was to treat patients in the hospitals at which he was employed. This determination resembled the focal point test originally implemented by the Tax Court. The Court acknowledged this issue and stated that although the home office does not necessitate the meeting of patients, clients, or customers, such factors should be given considerable weight. Critics argue that §280A(c)(1)(B) might shadow over §280A(c)(1)(A) by implying that client or customer contact is necessary to determine the “principal” location; however, the Court “disagree(s) with the implication that whether those visits occur is irrelevant . . . The Court stresses the significance of the point of delivery where the nature of the taxpayer’s business requires delivery of goods or services at a facility with unique or special traits”.³³

The Supreme Court also criticized the three factors the lower courts used to make their decisions. Whether a home office is “essential” to the business is not a conclusive factor in determining the allowance of a home office deduction. The court emphasized that a comparison of the activities performed at each location must be conducted to determine which activities are “principal” in nature. No such comparison was performed. The Court concluded that although the activities at the home were “legitimate”, a comparison shows the most important and “essential” activities were performed away from Soliman’s home office. The Court criticizes the “availability” factor stating that, “While that factor may be relevant in deciding whether an employee taxpayer’s use of a home office is ‘for the convenience of the employer, §280A(c)(1),

³² *Ibid.*, p. 87,053.

³³ *Ibid.*, p. 87,056.

it has no bearing on the inquiry whether a home office is the principal place of business".³⁴ The Court also points out that whether or not the taxpayer spends a "substantial amount of time" at his home office, it is a factor that aids in the determination of a "legitimate" rather than the "principal" location.

In deciding Soliman's "principal place of business", the Court looked at the following two factors respectively: importance of business activities with respect to the location performed and time allocated to each location. An analysis of the activities performed concluded that the treatment of his patients at the hospitals were more important than his office duties. An analysis of time showed that Soliman only spent 25-30% of his work week performing activities in his home office. As a result, the Court denied his home office deduction.

Does this two-pronged formula provide adequate and clear guidelines to determine a "principal place of business"? Unfortunately, the Court acknowledged that, "we cannot develop an objective formula that yields a clear answer in every case . . . and there may be cases when there is no principal place of business, and the courts and the Commissioner should not strain to conclude that a home office qualifies for the deduction simply because no other location seems to be the principal place".³⁵ Amongst the criticism, it is important to note that the Court did not state the manner in which these two factors should be applied, the relative weight attached to each, or the conclusion to be drawn if they yield contradictory results.³⁶

Shortly after *Soliman*, the IRS tried to clarify matters with Revenue Ruling 94-24.³⁷

³⁴ *Ibid.*, p. 87,056.

³⁵ *Ibid.*

³⁶ Robert T. Kelley, "Home Office Deductions Restricted by Supreme Court," *Taxation for Accountants*, April 1993.

³⁷ Rev. Rul 94-24, 1994-15 IRB 5.

The Service announced how it will interpret Soliman by way of four examples. The Service issued this ruling to state that it would first apply a "relative importance" test. This test compares business activities at each location to determine which ones are most important to the business or that fully characterize the nature of that business. If the importance test does not lead to a definitive answer, the Service will apply a "time" test to determine at which business location the most time is spent. If no resolution comes out of the tests, the Service points out that it is possible that no principal place of business exists.

Revenue Ruling 94-24 has answered the manner in which the "relative importance" test and "time" test are to be applied; however, the relative weight assigned to each and the conclusion to be drawn when they yield contradictory results still remains undetermined. What if, for example, Soliman spent the majority of his time at the home office? According to Revenue Ruling 94-24, the Service would have denied the home office deduction because the importance test would have shown that the most important activities related to the nature of Soliman's profession, treating patients, are performed in hospitals. If the Supreme Court had faced a situation where Soliman did spend more time at the home office, would it have changed its decision knowing that the "time" test did not support the "importance" test?

As a result of the Soliman decision, taxpayers who had previously deducted home office expenses did not know how the new ruling would affect their tax position. Shortly after Soliman, the IRS also released Notice 93-12, which stated that taxpayers relying on Proposed Regulation §1.280A-2(b)(3) or IRS Publication 587 would not be adversely affected for tax years prior to 1992.³⁸ Notice 93-12 had also changed the existing examples in Proposed

³⁸ Notice 93-12, 1993-1 CB 298, *Business Use Of Your Home*.

Regulation §1.280A -2(b)(3) and Publication 587 to reflect the Soliman decision.³⁹ In addition, on May 20, 1994, LR 261-76 withdrew Prop. Regs. §1.280A-2(b)(2) and §1.280A-2(b)(3) as proposed in 1983.⁴⁰

³⁹ See Exhibit Two for the new examples integrated into Prop. Reg. §1.280A-2(b)(3).

⁴⁰ LR 261-76. 59 Fed. Reg. 26466 (5/20/94).

IMPLICATIONS OF *SOLIMAN*

Was justice served by *Soliman*? *Soliman* did not have an office at any of the hospitals in which he was employed. He conducted legitimate and necessary business activities regularly and exclusively in his home office. Although he did not spend the majority of his time in the home office, these functions were necessary to perform his job. The Supreme Court emphasized that a comparison of the activities performed at each location was necessary to determine the principal place of business; however, its conclusion relied largely on the point of delivery. Relying on this factor closely resembles the strict focal point test originally implemented by the Tax Court. The Appellate Courts attempted to move away from this test because it placed more importance on visible work rather than on dominant activities. *Soliman* emphasized the location the which primary income-generating services are provided, but is this the interpretation of §280A(c)(1) Congress intended in 1967?

How will the importance of activities with respect to the nature of a taxpayer's business be determined? There are many possible arguments when determining the most important activities inherent to the nature of a taxpayer's profession. A musician who practices in his home studio all week to prepare for performances that last 2-3 hours will claim that his most important activity is practicing. However, the Service, with guidance from the *Soliman* decision, may state that the musician's most important activity occurs when performing. What will happen if the most important work is done at home and the majority of time is spent away? General contractors spend a majority of there time visiting construction sites, but perform essential administrative duties in there home office. The Court might identify that the most important activities are performed at the construction sites where supervision and meeting

clients occur; however, a contractor may argue that most important functions are talking with clients and making bids on contracts over the phone.

Revenue Ruling 94-24 states that the Service will first apply the relative importance test and will only apply the time test if the first test yields no definitive answer. However, is this a proper interpretation of *Soliman*? In *Soliman*, the Court stated that a comparison of the activities performed and the amount of time spent at each location must be made. Is it right for the Service to place more weight on the relative importance test with the possibility that analyzing the time spent at each location might not be necessary? In *Soliman*, the Supreme Court criticized the Tax and Appellate courts for failing to make this comparison.

PURPOSE OF SURVEY

Health care professionals, construction trades, teachers, artists, insurance professionals, realtors, and salesmen are only a few of the professions that must now face the implications of *Soliman*. However, as stated earlier, the element of ambiguity that a taxpayer must face when determining eligibility for a home office deduction under the “principal place of business” still exists after *Soliman*. Revenue Ruling 94-24 and the newly issued examples in Proposed Regulations §1.280A-2(b)(3) provide guidelines to help clarify this issue; however, they leave two pertinent questions unanswered. How are the most important activities of a profession relating to the “essence” of a business determined? And, what conclusion will be drawn if the relative importance test and time test yield significant contradictory results? In order to analyze these questions more thoroughly, feedback from practicing tax professionals was obtained.

A survey was drawn up and distributed to fifteen tax professionals working in public accounting firms. The purpose of the survey was to analyze the opinions of the tax profession regarding the most important activities inherent in different businesses or professions, as well as how the tax profession would apply the tax law to home offices after the *Soliman* decision.

The survey consisted of eight scenarios. The majority of the scenarios provided difficult and unclear situations that tested the eligibility of a taxpayer to take a home office deduction under the “principal place of business” election. Each tax professional was required to read the scenario and respond to two statements. The purpose of these two statements were to ask for professionals’ opinions whether the most important activities were conducted at the home office and if he/she would recommend the taxpayer take a home office deduction in light of the *Soliman* case. The survey is depicted in Exhibit 3 of the Appendix.

