

SUPREME COURT OF THE UNITED STATES

No. 91-998

COMMISSIONER OF INTERNAL REVENUE, PETITIONER
v. NADER E. SOLIMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[January 12, 1993]

JUSTICE BLACKMUN, concurring.

I join the Court's opinion but add these few words primarily to fortify my own conclusions:

This case concerns §280A(c)(1)(A) of the Internal Revenue Code, 26 U. S. C. §280A(c)(1)(A). A deduction from gross income is a matter of grace, not of right, *Commissioner v. Sullivan*, 356 U. S. 27, 28 (1958); *Commissioner v. Tellier*, 383 U. S. 687, 693 (1966), so that our analysis starts with an assumption of nondeductibility. Precise exceptions to this are then provided by the statute.

Although he is a licensed physician who treats patients, respondent finds no solace in subsection (B) of §280A(c)(1). Subsection (B) requires that the place of business be “used by patients . . . in meeting or dealing with the taxpayer,” a factual element that is lacking here unless the physician-taxpayer's papers, records, and telephone calls are to be deemed to personify the patient in the office. Such an interpretation, in my view, would stretch the statute too far.

Respondent is thus confined to subsection (A), which uses the vital words “principal place of business.” As JUSTICE KENNEDY points out, this phrase invites and compels a comparison, an exercise the Court of Appeals did not undertake. When comparison is made, this taxpayer loses his quest for a deduction. The bulk of his professional time and performance is spent in the hospitals. By any measure, the greater part of his remuneration is generated and earned there. His home office well

may be important, even essential, to his professional activity, but it is not "principal." The fact that it is his primary, perhaps his only, office is not in itself enough.

91-998—CONCUR

COMMISSIONER *v.* SOLIMAN

This result is compelled by the language of the statute. Congress must change the statute's words if a different result is desired as a matter of tax policy.