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 THOMAS, with whom JUSTICE SCALIA joins, concurring in the judgment.

Today the Court announces that "there is no one test," *ante*, at 7, to determine whether a home office constitutes a taxpayer's "principal place of business" within the meaning of 26 U. S. C. §280A(c)(1)(A), and concludes that whether a taxpayer will be entitled to a home office deduction will be "dependent upon the particular facts of each case," *ante*, at 6. The Court sets out two "primary considerations," *ibid*., to guide the analysis—the importance of the functions performed at each business location and the time spent at each location. I think this inquiry, "subtle" though it may be, *ibid*., will unnecessarily require the lower courts to conduct full-blown evidentiary hearings each time the Commissioner challenges a deduction under §280A(c)(1)(A). Moreover, as structured, the Court's "test" fails to provide clear guidance as to how the two-factor inquiry should proceed. Specifically, it is unclear whether the time element and importance-of-the-functions element are of equal significance. I write separately because I believe that in the overwhelming majority of cases (including the one before us), the "focal point" test—which

emphasizes the place where the taxpayer renders the services for which he is paid or sells his goods—provides a clear, reliable method for determining whether a taxpayer's home office is his "principal

place of business." I would employ the totality-of-the-circumstances inquiry, guided by the two factors discussed by the Court, only 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.

I certainly agree that the word "principal" connotes "`most important,'" *ante*, at 5, but I do not agree that this definition requires courts in every case to resort to a totality-of-the-circumstances analysis when determining whether the taxpayer is entitled to a home office deduction under §280A(c)(1)(A). Rather, I think it is logical to assume that the single location where the taxpayer's business income is generated—*i.e.,* where he provides goods or services to clients or customers—will be his principal place of business. This focal point standard was first enunciated in *Baie* v. *Commissioner*, 74 T. C. 105 (1980),[1] and has been consistently applied by the Tax Court (until the present case) in determining whether a taxpayer's home office is his principal place of business.

Indeed, if one were to glance quickly through the Court's opinion today, one might think the Court was in fact adopting the focal point test. At two points in its opinion the Court hails the usefulness of the focal

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[1]In *Baie*, the taxpayer operated a hot dog stand. She prepared all the food in the kitchen at her home and transferred it daily to the stand for sale. She also used another room in her house exclusively for the stand's bookkeeping. The Tax Court denied the taxpayer a home office deduction under §280A(c)(1)(A), recognizing that although "preliminary preparation may have been beneficial to the efficient operation of petitioner's business, both the final packaging for consumption and sales occurred on the premises of the [hot dog stand]." 74 T. C., at 109–110. Thus, the Court concluded that the hot dog stand was the "focal point of [the taxpayer's] activities." *Id*., at 109.

point inquiry: It states 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," *ante*, at 7, and that "the point where services are rendered or goods delivered is a principal consideration in most cases," *ante*, at 8. In fact, the Court's discomfort with the focal point test seems to rest on two fallacies—or perhaps one fallacy and a terminological obstinacy. First, the Court rejects the focal point test because "no one test . . . is determinative in every case." *Ante*, at 7. But the focal point test, as I interpret it, is *not* always determinative: where it provides no single principal place of business, the "totality of the circumstances" approach is invoked. Second, the Court rejects the focal point test because its name has a "metaphorical quality that can be misleading." *Ibid*. But rechristening it the "place of sale or service test"—or whatever label the Court would find less confusing—is surely a simple matter.

The Commissioner's quarrel with the focal point test is that “it ignores management functions.” Tr. of Oral Arg. 24.[2] To illustrate this point, the Commissioner at oral argument presented the example of a sole proprietor who runs a rental car company with many licensees around the country, and who manages the licensees from his home, advising them on how to operate the businesses. Yet the Commissioner's unease is unfounded, since the focal point inquiry easily resolves this example. The taxpayer derives his income from *managing* his licensees, and he performs those services at his home office. Thus, his home office would be his “principal place of business” under §280A(c)(1)(A). On the other hand, if the taxpayer owned several car dealerships and used his home office to do the dealership's bookkeeping, he would not be entitled to deduct the expenses of his home office even if he spent the majority of his time there. This is because the focal points of that business would be the dealerships where the cars are sold—*i.e.,* where the taxpayer sells the goods for which he is paid.

There will, of course, be the extraordinary cases where the focal point inquiry will provide no answer. One example is the sole proprietor who buys jewelry wholesale through a home office, and sells it both at

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[2]The Commissioner's position is not entirely consistent. At one point in his brief he seems to advocate adopting the focal point test: “Since a \`business' under the Code must be an activity designed to produce income, the principal place of a \`business' should ordinarily refer to the principal place where income is earned. The \`focal point' test previously applied by the Tax Court properly encapsulates that principle.” Brief for Petitioner 26, n. 17. At other points in his brief, however, the Commissioner appears to advocate the very test adopted by the Court. See *id.*, at 18, 23–24.

various craft shows and through mail orders out of his home office. In that case, the focal point test would yield more than one location where income is generated, including the home. Where the taxpayer's business involves multiple points of sale, a court would need to fall back on a totality-of-the-circumstances analysis. That inquiry would be rationally guided, of course, by the two factors set out in the Court's opinion: an analysis of the relative importance of the functions performed at each business location and the time spent at each. The error of the Tax Court's original construction of the focal point test was the implicit view that the test allowed no escape valve. Clearly it must. Nevertheless, since in the vast majority of cases the focal point inquiry will provide a quick, objective, and reliable method of ascertaining a taxpayer's “principal place of business,” I think the Court errs today in not unequivocally adopting it.

The difficulty with the Court's two-part test can be seen in its application to the facts of this case. It is uncontested that the taxpayer is paid to provide one service— anesthesiology. It is also undisputed that he performs this service at several different hospitals. At this juncture, under the focal point test, a lower court's inquiry would be complete: on these facts, the taxpayer's home office would not qualify for the §280A(c)(1)(A) deduction. Yet under the Court's formulation, the lower court's inquiry has only just begun. It would need to hear evidence regarding the types of business activities performed at the home office and the relative amount of time the taxpayer spends there. It just so happens that in this case the taxpayer spent 30 to 35 hours per week at the hospitals where he worked. But how would a court answer the §280A(c)(1)(A) question under the standard announced today if the facts were altered slightly, so that the taxpayer spent 30 to 35 hours at his home office and only 10 hours actually performing

the service of anesthesiology at the various hospitals? Which factor would take precedence? The importance of the activities undertaken at the home compared to those at the hospitals? The number of hours spent at each location? I am at a loss, and I am afraid the taxpayer, his attorney, and a lower court would be as well.

We granted certiorari to clarify a recurring question of tax law that has been the subject of considerable disagreement. Unfortunately, this issue is no clearer today than it was before we granted certiorari. I therefore concur only in the Court's judgment.