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 STEVENS, dissenting.

Respondent is self-employed. He pays the ordinary and necessary expenses associated with the operation of his office in McLean, Virginia; it is the only place of business that he maintains. In my opinion the Tax Court and the Court of Appeals correctly concluded that respondent is entitled to an income tax deduction for the cost of maintaining that office. This Court's contrary conclusion misreads the term "principal place of business" in §280A of the Internal Revenue Code,[1] deviates from Congress'

[1]Section 601 of the Tax Reform Act of 1976, 90 Stat. 1520, 1569–1572, as amended, 26 U. S. C. §280A, provides, in part:

"(a) General Rule

Except as otherwise provided in this section, in the case of a taxpayer who is an individual . . . , 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.

. . . . .

"(c) Exceptions for certain business or rental use; limitation on deductions for such use

"(1) Certain business use

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

purpose in enacting that provision, and unfairly denies an intended benefit to the growing number of self-employed taxpayers who manage their businesses from a home office.

“(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.”

This case involves an exception to the general rule that "ordinary and necessary" business expenses are deductible.[2] There is no dispute that the expenses at issue fall within that general category. They are questioned only because the office is located within respondent's residence. If that office were located in any other place—even in someone *else's* home—the general rule would apply, and respondent could have deducted the costs of its maintenance. If he had been prosperous enough to own a house and property on which a separate structure was located, he could have maintained that structure as an office and deducted the costs. If his business were so structured that he met regularly with clients and patients at his home office, he also could have deducted the costs. And if he spent two or three hours a day in his home office and a similar amount of time in each of three or four

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[2]Section 162(a) of the Code provides, in part:
"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, including . . . rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property. . . ."

separate hospitals he might also be able to deduct the costs; at least the Court's opinion does not begin to explain how the deduction of the costs in that case might be denied, except to insist that "[t]he taxpayer's house does not become a principal place of business by default." See *ante*, at 9. Because respondent chose to preserve one room in his home as an office, however, and because his business was so arranged that he spent most (though by no means all) of his working hours at one hospital, the Court holds that the costs of its maintenance may not be deducted.

Deductions, as JUSTICE BLACKMUN notes, *ante,* at 1, are a matter of legislative grace, but that is no reason to read into them unnecessary restrictions that result in the unequal treatment of similarly situated taxpayers. Such unfair treatment could, of course, have been required by the tax code, if Congress had wanted, for example, 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. We have no reason to think that Congress intended any such results.[3] It is clear, in fact, that Congress intended only to prevent deductions for home offices that were not genuinely necessary business expenses. Because the tests Congress imposed to prevent abuse do not require us to deny respondent's claimed deductions for his home office, I would affirm the decision of the Court of Appeals.

Before 1976, home office deductions were allowed

[3]As the Tax Court wrote, "Section 280A was not enacted to compel a taxpayer to rent office space rather than work out of his own home." 94 T. C. 20, 29 (1990).

whenever the use of the office was "appropriate and helpful" to the taxpayer.[4] That generous standard was subject to both abuse and criticism; it allowed homeowners to take deductions for personal expenses that would have been incurred even if no office were maintained at home and its vagueness made it difficult to administer.[5] It was particularly favorable to employees who worked at home on evenings and weekends even though they had adequate office facilities at their employer's place of business.[6] In response to these criticisms, Congress

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[4]See *Commissioner* v. *Tellier*, 383 U. S. 687, 689 (1966); *Newi* v. *Commissioner*, 432 F. 2d 998 (CA2 1970).

[5]See, *e.g.*, S. Rep. No. 94–938, pt. 1, p. 147 (1976):

"With respect to the `appropriate and helpful' standard employed in the court decisions, the determination of the allowance of a deduction for these expenses is necessarily a subjective determination. In the absence of definitive controlling standards, 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. In many cases the application of the appropriate and helpful test would appear to result in treating personal living, and family expenses which are directly attributable to the home (and therefore not deductible) as ordinary and necessary business expenses, even though those expenses did not result in additional or incremental costs incurred as a result of the business use of the home."

[6]Congress may have been particularly offended by the home office deductions claimed by employees of the Internal Revenue Service. See *Bodzin* v. *Commissioner*, 60 T. C. 820 (1973), rev'd, 509 F. 2d 679 (CA4), cert. denied, 423 U. S. 825 (1975); *Sharon*

enacted §280A to prohibit deductions for business uses of dwelling units unless certain specific conditions are satisfied.

The most stringent conditions in §280A, enacted to prevent abuse by those who wanted to deduct purely residential costs, apply to deductions claimed by employees.[7] This provision alone prevents improper deduction for any *second* office located at home and used merely for the taxpayer's convenience. It thus responds to the major concern of the Commissioner identified in the legislative history.[8]

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v. *Commissioner*, 66 T. C. 515 (1976), aff'd, 591 F. 2d 1273 (CA9 1978), cert. denied, 442 U. S. 941 (1979). The Senate Report also used a common example of potential abuse:

"For example, if a university professor, who is provided an office by his employer, uses a den or some other room in his residence for the purpose of grading papers, preparing examinations or preparing classroom notes, an allocable portion of certain expenses . . . were incurred in order to perform these activities." S. Rep. No 94–938, pt. 1, at 147.

[7]In addition to the conditions applicable to self-employed taxpayers, an employee must demonstrate that his office is maintained "for the convenience of his employer." See 26 U. S. C. §280A(c)(1).

[8]"With respect to the maintenance of an office in an employee's home, the position of the Internal Revenue Service is that the office must be required by the employer as a condition of employment and regularly used for the performance of the employee's duties. . . .

"Certain courts have held that a more liberal standard than that applied by the Internal Revenue Service is appropriate. Under these decisions, the expenses attributable to an office maintained in an employee's residence are deductible if the maintenance of the office is `appropriate and helpful'

Self-employed persons, such as respondent, must satisfy three conditions. Each is more strict and more definite than the "appropriate and helpful" standard that Congress rejected.

First, a portion of the dwelling unit must be used "exclusively" for a business purpose. The Commissioner's proposed regulations construe the exclusive use requirement with appropriate strictness. They state that a portion of a dwelling unit is used exclusively "only if there is no use of that portion of the unit at any time during the taxable year other than for business purposes."[9] This requirement is itself sufficient to eliminate many of the abuses associated with the pre-1976 "appropriate and helpful" standard; the taxpayer must now entirely devote a separately identifiable space, usually an entire room, to his business.[10] Respondent strictly satisfied that condition in this case.

Second, the portion of the dwelling unit that is set aside for exclusive business use must be so "used on a regular basis." Although this condition is not as specific as the "exclusive use" requirement, it obviously requires that the use be substantial. In this case respondent spent two or three hours a day in his office communicating with surgeons, patients, insurance companies, and hospitals; doing his bookkeeping; handling his correspondence; and preparing himself for his professional assignments at

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to the employee's business." S. Rep. No. 94–938, pt. 1, at 144–145 (citations omitted); see also n. 6, *supra*.

[9]Proposed Treas. Reg. §1.280A-2(g)(1), 45 Fed. Reg. 52399, 52404 (1980), as amended, 48 Fed. Reg. 33320, 33324 (1983).

[10]The Court fails to appreciate the significance of the exclusive use requirement when it criticizes the Court of Appeals' holding as "not far removed" from the test that led to the adoption of §280A. See, *ante*, at 6.

other locations. He received business calls on his office answering machine and, of course, his business mail was addressed to that office. Again, because these uses occurred on a regular basis, it is undisputed that respondent has satisfied this requirement.

Third, the use of the space must be as a "place of business" satisfying one of three alternative requirements. It must be used as:

> "(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." 26 U. S. C. 280A(c)(1) (emphasis added)

Subsection (C) is obviously irrelevant in this case, as is subsection (B). The office itself is not a separate structure, and respondent does not meet his patients there. Each of the three alternatives, however, has individual significance, and it is clear that subsection (A) was included to describe places where the taxpayer does *not* normally meet with patients, clients, or customers. Nevertheless, the Court suggests that Soliman's *failure* to meet patients in his home office supports its holding.[11] It does not. By injecting a requirement of subsection (B) into subsection (A) the Court renders the latter alternative entirely superfluous. Moreover, it sets the three

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[11]See *ante*, at 8: "That Congress allowed the deduction where those visits occur in the normal course even when some other location is the principal place of business indicates their importance in determining the nature and functions of any enterprise."

subsections on unequal footing: subsection (A) will rarely apply unless it includes subsection (B); subsection (B) is preeminent; and the logic of the Court's analysis would allow a future court to discover that, under subsection (C), a separate structure is not truly "separate" (as a principal place of business is not truly "principal") unless it is *also* the site of meetings with patients or clients.

The 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. A home office could, of course, satisfy all three requirements, but to suggest that it need always satisfy subsection (B), or even that whether it satisfies (B) has anything to do with whether it satisfies (A), encourages the misapplication of a relatively simple provision of the Revenue Code.

By conflating subsections (A) and (B) the Court makes the same mistake the courts of appeal refused to make when they rejected the Tax Court's "focal point" test, which proved both unworkable and unfaithful to the statute.[12] In this case the Tax Court itself rejected that test because it "merges the `principal place of business' exception with the

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[12]See *Meiers* v. *Commissioner*, 782 F. 2d 75 (CA7 1986), rev'g 53 TCM 2475 (1984), ¶84,607 P-H Memo TC; *Weissman* v. *Commissioner*, 751 F. 2d 512 (CA2 1984); *Drucker* v. *Commissioner*, 715 F. 2d 67 (CA2 1983), rev'g 79 T. C. 605 (1982); see also Note, Home Office Deductions: Deserving Taxpayers Finally Get a Break, 45 Tax Law. 247, 251–254 (1991); Sommer, I.R.C. Section 280A: The Status of the Home Office Deduction—A Call to Congress to Get the House in Order, 16 So. Ill. U. L. J. 501, 519–522 (1992).

`meeting clients' exception . . . from section 280A." 94 T. C. 20, 25 (1990). The Court today steps blithely into territory in which several courts of appeal and the Tax Court, whose experience in these matters is much greater than ours, have learned not to tread; in so doing it reads into the statute a limitation Congress never meant to impose.

The principal office of a self-employed person's business would seem to me to be the most typical example of a "principal place of business." It is, indeed, the precise example used in the Commissioner's proposed regulations of deductible home offices for taxpayers like respondent, who have no office space at the "focal point" of their work.[13] Moreover, it is a mistake to focus attention entirely on the adjective "principal" and to overlook the significance of the term "place of business." When the term "principal place of business" is used in other statutes that establish the jurisdiction or venue in which a corporate defendant may be sued, it commonly identifies the headquarters of the business.[14] The only place where a business is

[13]The proposed regulations stated that "if an outside salesperson has no office space except at home and spends a substantial amount of time on paperwork at home, the office in the home may qualify as the salesperson's principal place of business." 45 Fed. Reg. 52403 (1980), 48 Fed. Reg. 33324 (1983).

[14]For example, in *Texas* v. *New Jersay*, 379 U. S. 674, 680 (1965), we used the terms "main office" and "principal place of business" interchangeably. I recognize that there is disagreement over the proper interpretation of the term in 28 U. S. C. § 1332(c)(1), with some courts regarding the home office as the principal place of business and others regarding it as the place where the principal operations of the corporation are conducted. Under either view, however, the relevant place is one where the corpora-

managed is fairly described as its "principal" place of business.[15]

The Court suggests that Congress would have used the term "principal office" if it had intended to describe a home office like respondent's. *Ante*, at 6. It is probable, however, that Congress did not select the narrower term because it did not want to exclude some business uses of dwelling units that should qualify for the deduction even though they are not offices. Because some examples that do not constitute offices come readily to mind—-an artist's studio, or a cabinet-maker's basement—it is easy to understand why Congress did not limit this category that narrowly.

The test applied by the Tax Court, and adopted by the Court of Appeals, is both true to the statute and practically incapable of abuse. In addition to the requirements of exclusive and regular use, those courts would require that the taxpayer's home office be essential to his business and be the only office space available to him. 935 F. 2d 52, 54 (CA4 1991); 94 T. C., at 29. Respondent's home office is the only place where he can perform the administrative functions essential to his business. Because he is not employed by the hospitals where he works, and because none of those hospitals offers him an office, respondent must pay all the costs necessary for him to have any office at all. In my judgment, a principal place of business is a place maintained *by* or (in the rare case) *for* the business. As I would construe the statute in this context, respondent's office is not just the "principal" place of his trade or business; it is the

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tion owns or rents the premises; it is not a place owned by a third party for whom corporate representatives perform services.

[15]Among the definitions of the word "principal" is "chief" or "most influential." Webster's Third New International Dictionary (1966).

only place of *his* trade or business.[16]

Nothing in the history of this statute provides an acceptable explanation for disallowing a deduction for the expense of maintaining an office that is used exclusively for business purposes, that is regularly so used, and that is the only place available to the taxpayer for the management of his business. A self-employed person's efficient use of his or her resources should be encouraged by sound tax policy. When it is clear that no risk of the kind of abuse that led to the enactment of §280A is present, and when the taxpayer has satisfied a reasonable, even a strict, construction of each of the conditions set forth in §280A, a deduction should be allowed for the ordinary cost of maintaining his home office.

In my judgment, the Court's contrary conclusion in this case will breed uncertainty in the law,[17] frustrate a primary purpose of the statute, and unfairly penalize deserving taxpayers. Given the growing importance of home offices, the result is most unfortunate.

I respectfully dissent.

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[16]If his tax form asked for the address of his principal place of business, respondent would certainly have given his office address (he did, of course, give that address as his business address on the relevant tax forms). It borders on the absurd to suggest that he should have identified a place over which he has no control or dominion as *his* place.

[17]Most, if not all, of the uncertainty in cases debating the relative merits of the "focal point" test and the "facts and circumstances" test, as well as the uncertainty that today's opinion is sure to generate, would be eliminated by defining the term "place of business" to encompass only property that is owned or leased by the taxpayer or his employer.