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The Internal Revenue Code expressly and impliedly allows taxpayers to deduct many business-related expenses that also fill personal needs.[1] However, the deductibility of home office expenses under the general provision for business expenses, section 162 of the

1. *E.g.*, INT. REV. CODE OF 1954, §§ 162, 274 (entertainment expenses), 214 (certain household and dependent care expenses), 217 (moving expenses).

Code,[2] has been a frequent subject of litigation.[3] Section 162 requires that the employee establish that the expenses were "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."[4] Since it is well established that working for an employer is carrying on a trade or business within the statute,[5] in order to secure a deduction for the home office in which he performs work for his employer an employee need only prove that his home office expenses were "ordinary and necessary." "Ordinary" distinguishes deductible expenses from extraordinary expenditures that must be capitalized and depreciated under section 167 of the Code.[6] The Supreme Court has defined a "necessary" expense as one that is "appropriate and helpful" to the taxpayer's conduct of his trade or business.[7] One point of uncertainty is whether the expenses of maintaining a home office are "necessary" where the employer provides adequate and available office facilities.[8]

2. The relevant portions of section 162 read:

(a) In general

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—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) 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 to which the taxpayer has not taken or is not taking title or in which he had no equity.

3. *See, e.g.*, Newi v. Commissioner, 432 F.2d 998 (2d Cir. 1970); Stephen A. Bodzin, CCH TAX CT. REP. Dec. 32,115 (Sept. 4, 1973); LeRoy W. Gillis, CCH TAX CT. REP. Dec. 31,945(M) (April 24, 1973); Richard Keith Johnson, 31 CCH Tax Ct. Mem. 941 (1972); Paul J. O'Connell, 31 CCH Tax Ct. Mem. 837 (1972); Christopher A. Rafferty, 30 CCH Tax Ct. Mem. 848 (1971); James L. Denison, 30 CCH Tax Ct. Mem. 1074 (1971).

4. The term "trade or business" is frequently used but is not defined in the Internal Revenue Code. *See* Groh, *"Trade or Business": What It Means, What It Is, What It Is Not*, 26 J. TAX., Feb. 1967, at 78, 78. The term "trade or business" appears approximately 170 times in 60 Code provisions. *Id.* at 78.

A taxpayer seeking a deduction for home office expenses may do so only if he itemizes his deductible expenses. *See* INT. REV. CODE OF 1954, §§ 63, 161. Further, only noncapital expenses (for example, rent, heat, and light) may be deducted under section 162. Capital expenses resulting in improvements to the home must be depreciated under section 167. Presumably, only improvements affecting the portion of the home used for business purposes would be permitted to increase the total deduction available to the taxpayer. *Cf.* Rev. Rul. 62-180, 1962-2 CUM. BULL. 52, 53.

5. *See, e.g.*, David J. Primuth, 54 T.C. 374, 377-78 (1970); Harold A. Christensen, 17 T.C. 1456, 1457 (1952); Ralph C. Holmes, 37 B.T.A. 865, 871-73 (1938); Peoples-Pittsburgh Trust Co., 21 B.T.A. 588, 592 (1930), *aff'd.*, 60 F.2d 187 (3d Cir. 1932).

6. *See, e.g.*, Commissioner v. Tellier, 383 U.S. 687, 689 (1966); Welch v. Helvering, 290 U.S. 111, 113-14 (1933); Stephen A. Bodzin, CCH TAX CT. REP. Dec. 32,115, at 2932 (Sept. 4, 1973).

7. *See, e.g.*, Welch v. Helvering, 290 U.S. 111, 113 (1933).

8. Where the employer does not provide such facilities, the taxpayer has been per-

Because a home office occupies a portion of the physical area already maintained as a personal residence, the taxpayer who seeks to deduct a legitimate business-related expense must be distinguished from the taxpayer who seeks to deduct a portion of what are in fact his personal living expenses.[9] Unfortunately, the Internal Revenue Service and the courts have developed conflicting tests for making this distinction.

The Service's position is expressed in Revenue Ruling 62–180:

> 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 personal 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 attributable to such use.
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> . . . .
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> The deductible expenses of an employee, whose conditions of employment are such that he regularly uses a part of his residence in the performance of his duties as an employee, include a pro rata portion of such items as rent, light, taxes, and interest on a mortgage. No portion of purely personal expenses attributable to family household purposes are deductible.[10]

The examples accompanying Revenue Ruling 62–180 indicate that, as a practical matter, the taxpayer must establish either that his employer does not furnish adequate facilities or that the facilities furnished were not available when the required work was done.[11] Once this is established, the deduction is permitted only to the extent that the area is used for the performance of job-related work.[12]

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mitted to deduct home office expenses for some time. *See, e.g.*, Herman E. Bishoff, 25 CCH Tax Ct. Mem. 538 (1966); Clarence Peiss, 40 T.C. 78 (1963); Morris S. Schwartz, 20 CCH Tax Ct. Mem. 725 (1961); Freda W. Sandrich, 5 CCH Tax Ct. Mem. 234 (1946).

9. The Commissioner has generally raised this issue in home office litigation where alternate facilities were available. *See, e.g.*, Newi v. Commissioner, 432 F.2d 998 (2d Cir. 1970); Paul J. O'Connell, 31 CCH Tax Ct. Mem. 837 (1972). *See also* Rev. Rul. 62–180, 1962–2 CUM. BULL. 52, 53.

10. Rev. Rul. 62–180, 1962–2 CUM. BULL. 52, 53.

11. *See* Rev. Rul. 62–180, 1962–2 CUM. BULL. 52, 54-57.

Apparently, the Service also inquires into the ability of the taxpayer's coemployees to complete similar work without the use of a home office. *See, e.g.*, James L. Denison, 30 CCH Tax Ct. Mem. 1074 (1971), where taxpayers sought a deduction for a home office used to prepare lessons necessary to their employment as schoolteachers. The Commissioner denied the deduction partly on the grounds that taxpayers were provided with a "free period" during which their colleagues were able to complete similar work. In granting the deduction, the court refused to compare the taxpayers' work habits with those of their colleagues. 30 CCH Tax Ct. Mem. at 1078.

12. While the Commissioner has conceded a pro rata deduction for qualifying taxpayers, *see* Rev. Rul. 62–180, 1962–2 CUM. BULL. 52, 53, only recently has the Tax

The Commissioner's limited definition of a deductible home office expense is predicated on the policy expressed in section 262,[13] which prohibits the deduction of personal living expenses not expressly authorized by other Code provisions.[14] The Service's logic may be summarized as follows: First, while the use of a home office is job-related, the facility is also part of a personal residence, and the cost of buying and maintaining a residence is a personal living expense. The decision not to return to the employer's place of business to do the work is solely a matter of personal convenience. Factors bearing on that decision may include a desire to be at home with family, a preference for more comfortable surroundings, or a dislike of commuting. The taxpayer may live a great distance away from work, but the location of his dwelling is a matter of personal choice.[15] Just as the distance between a taxpayer's principal place of residence and his place of employment does not make the establishment of a

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Court specified the proper formula for home office cases. In George W. Gino, CCH TAX CT. REP. Dec. 31,990 (May 31, 1973), the Service contended that the appropriate formula was the number of hours per week that the office was actually used for job-related work divided by the total number of hours the facility was available for such use (7 days per week times 24 hours per day). CCH TAX CT. REP. Dec. 31,990, at 2609. *See* Rev. Rul. 62-180, 1962-2 CUM. BULL. 52, 54. The Tax Court rejected that formula and held that the proper denominator was the total number of hours per week the facility was used for any purpose. CCH TAX CT. REP. Dec. 31,990, at 2609. Thus, if a taxpayer used the room for 10 hours per week, 5 hours of which were job-related, the court would permit the taxpayer to deduct 50 per cent of all expenses attributable to that room. Under the Service's formula, the taxpayer would have been able to deduct approximately 3 per cent of that expense.

The position taken by the Service was surprising in light of International Artists, Ltd., 55 T.C. 94 (1970), *acquiesed in sub nom.* Walter V. Liberace, 1971-2 CUM. BULL. 3, in which the Tax Court held that the proper method for allocating between business and personal use of a home was to determine the ratio of the time that the premises were used for business purposes to the total actual use of the premises. 55 T.C. at 105.

Recently, the Treasury Department proposed that the Congress permit taxpayers to deduct, without itemization, up to 500 dollars as a "miscellaneous expense." Included within that heading are ten illustrative deductible items, including home office expenses. The deduction, however, would be permitted only if the expense is deductible under current law. The proposal, then, seems to be directed more at allowing taxpayers with small amounts of deductible expenses to receive deductions without itemizing than it is at relaxing the Service's definition of "ordinary and necessary" in relation to home office expenses. *See* U.S. DEPT. OF THE TREASURY, PROPOSALS FOR TAX CHANGE 107-08, 111 (1973).

13. *See, e.g.*, Newi v. Commissioner, 432 F.2d 998, 1000 (2d Cir. 1970); Stephen A. Bodzin, CCH TAX CT. REP. Dec. 32,115, at 2933 (Sept. 4, 1973) (Featherston, J., dissenting); LeRoy W. Gillis, CCH TAX CT. REP. Dec. 31,945, at 431-32 (April 24, 1973).

14. "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." INT. REV. CODE OF 1954, § 262.

15. This view has been adopted by the courts even when the taxpayer is prevented from living near his job and thus must pay high transportation costs. *See, e.g.*, Sanders v. Commissioner, 439 F.2d 296 (9th Cir.), *cert. denied*, 404 U.S. 864 (1971) (civilian employees not permitted to live on Air Force base); United States v. Tauferner, 407 F.2d 243 (10th Cir.), *cert. denied*, 396 U.S. 824 (1969) (employee not permitted to live near chemical plant because of presence of dangerous substances).

second residence a business necessity,[16] neither should the distance between the taxpayer's place of employment and his residence make the establishment of a home office a business necessity within the terms of section 162. Second, the fact that the expenditure involves both business and personal elements means that it is difficult to allocate costs between deductible and nondeductible expenses.

The Service's reasoning is similar to that used in determining the treatment of a taxpayer who incurs an expense for commuting to and from work while carrying tools necessary for the performance of his trade or business.[17] Expanding on the general premise that commuting expenses are personal living expenses and, therefore, not deductible,[18] the Commissioner would deny a section 162 deduction to the commuter unless he can prove that the expenditure was primarily motivated by business considerations and that the personal considerations were incidental.[19] The deduction is denied if the motivation is not primarily job-related because it is impossible to allocate costs between the business and personal elements when the need to transport tools does not alter the taxpayer's manner of commuting.[20]

16. *See, e.g.*, Commissioner v. Flowers, 326 U.S. 465, 473-74 (1946); Sanders v. Commissioner, 439 F.2d 296, 299 (9th Cir.), *cert. denied*, 404 U.S. 864 (1971); Smith v. Warren, 388 F.2d 671, 673 (9th Cir. 1968).

17. The analogy between the home office and commuting situations was most recently drawn in Stephen A. Bodzin, CCH TAX CT. REP. Dec. 32,115, at 2934 (Sept. 4, 1973) (Queally, J., dissenting).

18. Commissioner v. Flowers, 326 U.S. 465 (1946); Treas. Reg. § 1.162-2(e) (1958).

19. Where it is necessary for a musician to use his automobile to transport his musical instruments between his residence and his place of work because they are too bulky to be carried otherwise, and he would not use his automobile on such trips except for that reason, his transportation expenses are deductible under section 162 of the Internal Revenue Code of 1954. Such transportation expenses are paid or incurred in carrying on his trade or business because they are occasioned *primarily* by the necessity for transporting bulky musical instruments even if such expenses would otherwise be nondeductible commuting expenses.

. . . .

Revenue Ruling 56-25, C.B. 1956-1, 152 states that expenses incurred by an employee in using his automobile for commuting between his place of work represent nondeductible personal expenses notwithstanding the fact that the automobile is also used to transport tools used by the employee in his work. That ruling is hereby modified to remove the implication that such transportation expenses would not be deductible even if the employee would not have used his automobile on such trips but for the necessity of taking tools with him.

Rev. Rul. 63-100, 1963-1 CUM. BULL. 34, 34-35 (emphasis added).

20. The expenses incurred by an employee in using his automobile for commuting between his place of abode and his place of work (principal or regular post of duty or employment), regardless of the distance involved, represent nondeductible personal expenses within the purview of section 262 of the Internal Revenue Code of 1954, notwithstanding the fact that the automobile is also used by the employee in his work. The expenses so incurred in going to and from work were not increased by reason of the fact that the tools used by the employee in his work were also transported in the automobile. Thus, the entire amount of the expense is deemed to be commuting expense, no part thereof being allocable to the transporting of the tools.

Rev. Rul. 56-25, 1956-1 CUM. BULL. 152, 152.

The Service has generally prevailed in the Tax Court. *See* Robert A. Hitt, 55 T.C. 628 (1971); Harold Gilbert, 55 T.C. 611 (1971). However, two courts of appeals have

When the Service's test is satisfied, the taxpayer is permitted to deduct the entire cost of his transportation.[21] By analogy, the Commissioner would require a taxpayer who seeks to deduct a home office expense to establish that he incurred an expense beyond that necessary to satisfy his need to maintain a personal residence.[22]

The courts have rejected the Commissioner's position. In *Newi v. Commissioner*,[23] the taxpayer, a time salesman for the American Broadcasting Corporation (ABC), set aside a small room in his apartment for use as a home office. There, to the exclusion of all other uses, the taxpayer reviewed the day's selling activities, studied various research materials, planned the next day's work, watched television advertisements broadcast over all networks, and generally sought to improve his value as an employee.[24] In denying to the taxpayer a section 162 deduction of a pro rata share of his rent, the Commissioner argued that, because the taxpayer's employer had made adequate facilities available during the evening hours, the decision to pursue job-related work at home was a matter of personal convenience and was thus within the general prohibition of section 262.[25] The Tax Court found for the taxpayer and determined that the use of the home office was "appropriate and helpful"

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rejected the "but for" test and have required some allocation of the cost of transporting the tools. Tyne v. Commissioner, 385 F.2d 40 (7th Cir. 1967); Sullivan v. Commissioner, 368 F.2d 1007 (2d Cir. 1966). Recently the Supreme Court passed on the question of allocation in Fausner v. Commissioner, 41 U.S.L.W. 3670 (U.S., June 25, 1973), *affg.* 472 F.2d 561 (5th Cir. 1973). The Court affirmed the court of appeals' decision for the Commissioner because the taxpayer could not demonstrate that he had incurred an additional expense in carrying his tools to work. For a discussion of allocation in the home office context, see note 12 *supra*.

21. *See* Rev. Rul. 63-100, 1963-1 CUM. BULL. 34, the relevant portions of which are set out in note 19 *supra*.

It would seem, however, that, even within the factual situation in which the Service allows a deduction, some allocation is possible. For example, the taxpayer could be required to subtract the amount normally expended in commuting when he is not required to carry tools (or an amount equivalent to the cost of public transportation if the taxpayer always carried tools) from the amount spent in the operation of his personally owned vehicle when he is required to carry tools. This reasoning has been applied to work clothing suitable for general wear. *See, e.g.*, Donnelly v. Commissioner, 262 F.2d 411 (2d Cir. 1959) (L. Hand, J., dissenting); Mortrus v. Commissioner, 44 T.C. 208 (1965). It has also been applied to judges required to have two residences. *See, e.g.*, United States v. LeBlanc, 278 F.2d 571 (5th Cir. 1960); Barnhill v. Commissioner, 148 F.2d 913 (4th Cir. 1945). For statutory relief afforded to members of Congress, see INT. REV. CODE OF 1954, § 162(a).

22. This approach was apparently adopted by Judge Featherston, who, dissenting in *Stephen A. Bodzin*, noted that "there is nothing to show that [the taxpayer] would not have incurred these same rental expenses (or that his rent would have been less) if he had found it more convenient to do his overtime work at the office provided and maintained for that purpose by his employer." CCH TAX CT. REP. Dec. 32,115, at 2933 (Sept. 4, 1973).

23. 432 F.2d 998 (2d Cir. 1970), *noted in* 7 TULSA L.J. 191 (1971).

24. 432 F.2d at 999.

25. 432 F.2d at 999-1000.

in the performance of his business.[26] The second circuit affirmed, emphasizing the fact that the traffic conditions in Manhattan during the early evening hours were such that the taxpayer could not have returned to the ABC building after dinner in time to observe the television broadcasts.[27] The court did not discuss the possibility of eating at the employer's place of business. In another case, the Tax Court recognized this possibility but apparently did not consider it to be a reasonable alternative.[28]

In *LeRoy W. Gillis*,[29] the taxpayer, a district sales manager for an insurance company, used his home office to complete monthly sales reports, read rules and regulations governing his employer's business, interview prospective agents, and maintain a supply of forms for his agents. Unlike taxpayer Newi, however, Gillis apparently was not subject to rigid deadlines or prevented by external factors from utilizing a facility provided by his employer.[30] Nevertheless, the Tax Court, citing *Newi*, characterized Gillis' home office expense as "appropriate and helpful" and permitted a section 162 deduction.[31] In rejecting the condition-of-employment test urged by the Service, the court enumerated several factors that were to characterize a permissible deduction: "the distance from [taxpayer's] regular office to his home, the hazards of working alone at night in a one-story building . . . , the nature of the work performed at home, and the fact that the office was maintained as a separate room for business use."[32]

The most recent Tax Court pronouncement in this area is in *Stephen A. Bodzin*.[33] The taxpayer, an attorney employed by the

26. George H. Newi, 28 CCH Tax Ct. Mem. 686, 691 (1969).

27. 432 F.2d at 1000.

28. *See* Stephen A. Bodzin, CCH TAX CT. REP. Dec. 32,115 (Sept. 4, 1973). In determining whether the taxpayer's purpose in maintaining the home office was primarily related to business necessities, the court, noting that the taxpayer relied on a car pool for transportation to and from work, said that he was confronted with the following three choices: "(1) Go home with the car pool and return to the Internal Revenue Service offices after dinner; (2) use public transportation or call home for a ride after working late at the Internal Revenue Service offices and eating dinner downtown, eating no dinner, or postponing dinner until arriving at home: (3) bring work home to his home office." CCH TAX CT. REP. Dec. 32,115, at 2931. The court concluded that the taxpayer's selection of the third alternative was motivated by convenience and efficiency. CCH TAX CT. REP. Dec. 32,115, at 2931. This did not remove the home office expense from the category of "ordinary and necessary" business expenses. *See* text accompanying note 39 *infra*. The court did not further discuss the possibility of eating elsewhere than at home.

29. CCH TAX CT. REP. Dec. 31,945(M) (April 24, 1973).

30. The court noted that the taxpayer could have completed the journey between his home and his regular office in approximately 15 minutes. CCH TAX CT. REP. Dec. 31,945(M), at 431.

31. CCH TAX CT. REP. Dec. 31,945(M), at 432.

32. CCH TAX CT. REP. Dec. 31,945(M), at 432.

33. CCH TAX CT. REP. Dec. 32,115 (Sept. 4, 1973).

Internal Revenue Service's Interpretative Division, utilized a home office not only to complete his assigned work, but also "to read widely about current developments in the tax law."[34] His employer did not require him to work after hours, but he did so in order to meet what was or what he perceived to be his expected level of performance.[35] Despite the continued availability of the taxpayer's principal place of work, the Tax Court held that the maintenance of the home office was "appropriate and helpful" to the taxpayer's conduct of business and thus deductible under section 162.[36] In so holding, the majority rejected the Service's attempt to reinterpret Revenue Ruling 62–180. The Commissioner, retreating from the position that a home office expenditure is deductible only if its maintenance is required by the taxpayer's employer as a condition of employment, had asserted that "the examples set forth in Rev. Rul. 62–180 . . . make it clear that the term 'required as a condition of employment' means required in order to properly perform the employment duties."[37] The court characterized the Service's reinterpretation as overly strict[38] and held:

> The applicable test for judging the deductibility of home office expenses is whether, like any other business expense, the maintenance of an office in the home is appropriate and helpful under all the circumstances. . . . That the maintenance of the home office can be characterized as "a matter of convenience" due to the existence of duplicate employer-provided facilities does not void the conclusion that the expenditure is appropriate and helpful.[39]

The position of the courts, especially in *Bodzin*, seems more in accord with the wording of the Code than does that of the Commissioner. Under the Code the sole decision to be made is whether the home office is an "ordinary and necessary" business expense as described by section 162, because section 262, by its express terms, excludes only those personal, living, and family expenses that are not permitted under another section of the Code.

While the employer sets out the general requirements of the job, the employee must make marginal decisions on how to carry on his business of being an employee. The decision of where to perform after-hours work seems to fall into the latter category. Taxpayers

34. CCH TAX CT. REP. Dec. 32,115, at 2930.

35. CCH TAX CT. REP. Dec. 32,115, at 2930.

36. CCH TAX CT. REP. Dec. 32,115, at 2932-33.

37. CCH TAX CT. REP. Dec. 32,115, at 2932.

38. "We think [the Service's reinterpretation] is also unsatisfactory in that 'required' can be interpreted strictly as meaning 'absolutely essential' or 'absolutely necessary' and such an interpretation leads to the imposition of a standard which is too strict. Therefore, we . . . reject the rehabilitated version of [Revenue Ruling 62–180]." CCH TAX CT. REP. Dec. 32,115, at 2932.

39. CCH TAX CT. REP. Dec. 32,115, at 2932.

Newi, Gillis, and Bodzin all alleged nonfrivolous reasons for working at home. Their decisions were based in part on convenience and personal preferences, but deductions are allowed for many expenses that are based in part on these factors. Any taxpayer choices regarding the manner in which he furnishes his office, his mode of transportation on business trips, and his style of living while traveling (constrained only by the "lavish or extravagant" limitation found in section 162(a)(2)) are influenced by convenience, efficiency, and personal preference factors. The personal comfort and satisfaction produced do not remove such expenditures from the category of "ordinary and necessary" business expenses. In the area of job-related educational expenses, for example, the courts have allowed section 162 deductions for expenditures motivated by the taxpayer's judgments as to how he might best fulfill his duties. In *Hill v. Commissioner*,[40] the taxpayer, a schoolteacher, was required either to read five books or to attend summer classes at a university. Despite the fact that the taxpayer's choice to attend classes was motivated in part by personal preference, the court permitted the taxpayer to take the full deduction.[41] In *Campbell v. United States*,[42] the taxpayer attended law school in order better to understand his role as a pathologist for the city of Philadelphia. While the taxpayer was not required to attend law school as a condition of his employment, he was allowed a deduction for the cost of his tuition. Finally, in *Coughlin v. Commissioner*,[43] the taxpayer, an attorney, was allowed to deduct the expense of a tax seminar. Although he may have been able to learn as much about the tax law through less expensive methods, the Court permitted the deduction as "appropriate and helpful" to the conduct of his business.

The only real role played by section 262 is to require that home office expenses be allocated according to the portion that is related to personal use and the portion that is business-related. The allocation problems that arise in the tool-transportation situation[44] are not presented by the home office cases. The problem of allocating costs between the business and personal elements of commuting to work while carrying tools arises because the two functions are performed simultaneously. In contrast, a taxpayer who uses an area as a home office cannot himself simultaneously utilize that same area for personal, living, or family purposes. Thus, he is able to calculate objectively the amount expended to maintain the home

40. 181 F.2d 906 (4th Cir. 1950).

41. The court was applying section 23(a)(1)(A) of the 1939 Code, Revenue Act of 1942, ch. 619, § 121(a), 56 Stat. 819, *amending* Int. Rev. Code of 1939, ch. 1, § 23(a)(1), 53 Stat. 12, which did not differ from the current section 162 in any material respect.

42. 393 F.2d 292 (7th Cir. 1968).

43. 203 F.2d 307 (2d Cir. 1953).

44. *See* text accompanying notes 20-21 *supra*.

office for business use by measuring the amount of space and time devoted to that purpose.[45]

The Commissioner has developed methods of allocating between the business and private aspects of a home office in those cases where the employer has required that the employee maintain a home office.[46] The problem of allocation is no different where the employer does not require the office but the employee finds it "appropriate and helpful." The Commissioner's stand ignores the plain language of the Code and confuses convenience—an element in every business decision—with the personal living expenses that cannot be deducted due to the prohibition of section 262. The Commissioner's continued stand forces taxpayers who have legitimate business expenses to undergo expensive litigation in order to sustain a deduction clearly authorized by the Code.

45. For a discussion of the formulas proposed by the Commissioner and the Tax Court for calculating the amount of the deduction, see note 12 *supra*.

46. *See, e.g.*, Rev. Rul. 62-180, 1962-2 CUM. BULL. 52, 54-57 (examples 1-3, 5).