Michigan Law Review

Volume 79 | Issue 8

1981

Home Office Deductions: May a Taxpayer Have More Than One Principal Place of Business?

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

 Part of the Administrative Law Commons, Taxation-Federal Commons, and the Tax Law Commons

Recommended Citation

Michigan Law Review, *Home Office Deductions: May a Taxpayer Have More Than One Principal Place of Business?*, 79 MICH. L. REV. 1607 (1981).
Available at: https://repository.law.umich.edu/mlr/vol79/iss8/5

This Note is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Home Office Deductions: May a Taxpayer Have More Than One Principal Place of Business?

Section 280A of the Internal Revenue Code[1] establishes the conditions under which taxpayers may deduct expenses incurred to maintain offices in their homes. Congress enacted this provision to enable taxpayers, the Internal Revenue Service (IRS), and the courts to distinguish objectively between deductible business expenses and nondeductible personal living expenses, and to limit excessive deductions.[2] The section furthers these goals by generally prohibiting

---

1. Tax Reform Act of 1976, Pub. L. No. 95-455, § 601, 90 Stat. 1520 (codified at I.R.C. § 280A). Section 280A provides in part:

> (a) GENERAL RULE. — Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an electing small business corporation, 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.
>
> (b) EXCEPTION FOR INTEREST, TAXES, CASUALTY LOSSES, ETC. — Subsection (a) shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity).
>
> (c) EXCEPTION 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 allocable to a portion of the dwelling unit which is exclusively used on a regular basis —
>
> (A) as the taxpayer's principal place of business,
>
> (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.
>
> . . . .
>
> (5) LIMITATION ON DEDUCTIONS. — In the case of a use described in paragraph (1) . . . the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of —
>
> (A) the gross income derived from such use for the taxable year, over
>
> (B) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

This Note considers only the deduction authorized by § 280A(c)(1)(A) — the "principal place of business" exception.

2. *See* S. REP. NO. 938, 94th Cong., 2d Sess. 9-10, 147, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 3439, 3446, 3579-80 [hereinafter cited as SENATE REPORT]; H.R. REP. NO. 658, 94th Cong., 1st Sess. 10, 160, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 2987, 2905, 3053-54. When Senator Long, Chairman of the Senate Finance Committee, introduced this section on the floor of the Senate, he stated:

> While in theory there is nothing wrong with appropriate deductions for business or investment expenses, in practice it is often extremely difficult to allocate between deductible business expenses and nondeductible personal expenses. The result is that many people are deducting excessive amounts, and the bill places strict limits on these deductions.

122 CONG. REC. 18,542 (1976).

Expenses incurred in a taxpayer's trade or business or in the production of income are generally deductible. I.R.C. §§ 162, 212. However, "[e]xcept as otherwise expressly provided . . . no deduction shall be allowed for personal, living, or family expenses." I.R.C. § 262. Congress allows taxpayers to deduct certain personal expenses for unexpected occurrences, such as casualty losses, I.R.C. § 165(c)(3), and large medical bills, I.R.C. § 213, and for behav-

deductions for trade or business expenses[3] attributable to home offices,[4] and specifying a limited number of exceptions. One of those exceptions authorizes home office deductions where the taxpayer uses part of his home "exclusively . . . on a regular basis" as his "principal place of business."[5]

Although the phrase "principal place of business" seems relatively straightforward, it has created interpretative difficulties. The IRS defines "principal place of business" as the single location from which the taxpayer conducts the bulk of his total business activity, regardless of whether he engages in several separate businesses.[6] In *Curphey v. Commissioner*,[7] the Tax Court rejected this approach in favor of a broader definition. The taxpayer in *Curphey* managed several condominiums in addition to working full time at a hospital and deducted expenses attributable to a home office that he used exclusively on a regular basis to manage the condominiums.[8] The IRS argued that Curphey could have only one principal place of business

---

ior that the legislature wishes to encourage, such as charitable contributions, I.R.C. § 170. Congress also permits taxpayers to deduct certain state and local taxes, I.R.C. § 164. For a general discussion of this area, see M. CHIRELSTEIN, FEDERAL INCOME TAXATION 140-53 (2d ed. 1979).

3. Typically, these expenses include an allocable portion of the home depreciation, maintenance, utility, and insurance expenses. SENATE REPORT, *supra* note 2, at 144, [1976] U.S. CODE CONG. & AD. NEWS at 3577.

4. I.R.C. § 280A(a).

5. I.R.C. § 280A(c)(1)(A).

Section 280A also allows the home office deductions for two other types of offices: a place of business normally used by "patients, clients, or customers," or a separate structure not attached to the dwelling unit. I.R.C. § 280A(c)(1). In each case, the home office must be "exclusively used on a regular basis" for business purposes. In the case of an employee, the home office must be exclusively used "for the convenience of his employer." I.R.C. § 280A(c)(1). Congress also limited the amount that a taxpayer could deduct. The taxpayer may deduct the amount of gross income generated by the business use of the home less the amount of deductions otherwise allowed by the Code for the home, such as property taxes, I.R.C. § 164, and mortgage interest payments, I.R.C. § 163. I.R.C. § 280A(c)(5). For the text of these provisions, see note 1 *supra*.

There are circumstances in which a taxpayer may choose not to take the home office deduction even if his expenses qualify under § 280A. That part of the home to which expenses are allocated as a business office does not qualify for nonrecognition of gain upon the sale of the home. I.R.C. § 1034. Therefore, any gain realized for that portion of the house would have to be currently recognized. *See generally* Priv. Rul. 7950003, IRS LETTER RUL. (CCH) Book 7, Fiche 1; Lubell, *The Home Office Deduction: Is it Worth It?*, 56 TAXES 528 (1978). Presumably the same is true for I.R.C. § 121, the one-time exclusion of gain from the sale of a principal residence by an individual who has attained age 55.

6. *See* Curphey v. Commissioner, 73 T.C. 766, 776 (1980); Proposed Treas. Reg. § 1.280A-2(b)(2) (Aug. 7, 1980) ("[A] taxpayer may have only one principal place of business regardless of the number of business activities in which the taxpayer may be engaged."); Priv. Rul. 8048014, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8048080, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8030025, [1980] IRS LETTER RUL. (CCH) Fiche 31; Priv. Rul. 8030024, [1980] IRS LETTER RUL. (CCH) Fiche 31.

7. 73 T.C. 766 (1980).

8. 73 T.C. at 767-68. The Tax Court also determined that management of the rental property constituted a business under § 280A. 73 T.C. at 775.

even if he engaged in more than one business.[9] The Service contended that the hospital was Curphey's principal place of business because he spent more time and earned a greater portion of his income there.[10] The Tax Court, however, held that section 280A authorizes deductions for a home office that is the principal place of any of a taxpayer's businesses.[11] Because Curphey's home office was the principal place of his rental business, section 280A would not prevent him from deducting the expenses incurred to maintain that office. The IRS does not acquiesce in the Tax Court's decision, and has proposed regulations that adopt the overall business activity interpretation.[12]

This Note argues that the Tax Court's more liberal interpretation is correct because it more nearly reflects Congress's intent. Part I seeks a basis for preferring one of the competing interpretations in the text of section 280A and in the section's legislative history, but finds none. Looking, of necessity, to the purposes that Congress sought to advance with section 280A, Part II argues that those purposes do not demand a restrictive reading of "principal place of business." Such a reading, moreover, would undermine fundamental and longstanding congressional tax policies. In the absence of a more explicit statement of congressional intent, this policy analysis provides a reasonable basis for rejecting the IRS's definition and for concluding that home office expenses are deductible if the office in question is the principal place of any of the taxpayer's businesses.

I

Although Congress excepted home offices that serve as a taxpayer's "principal place of business" from section 280A's general rule of nondeductibility, it did not define this phrase when it enacted the section. Because Congress apparently did not consider how this provision would apply to taxpayers engaged in more than one busi-

9. 73 T.C. at 775-76.

10. 73 T.C. at 775-76.

11. 73 T.C. at 776-77.

12. Proposed Treas. Reg. § 1.280A-2(b)(2) (Aug. 7, 1980).

After these proposed regulations were announced, Congress forbade the IRS from using public funds to enforce regulations that determine the taxpayer's principal place of business under § 280A. Appropriation — Fiscal Year 1981, Pub. L. No. 96-369, § 123, 94 Stat. 1351 (1980). Senator William L. Armstrong has since proposed S.31, 97th Cong., 1st Sess. (1981), which, in part, would clarify § 280A by explicitly allowing a deduction, subject to certain limitations, for the expenses incurred by a taxpayer in maintaining a home office which is the principle place of *any* business, including a secondary business. In a letter to Senator Armstrong dated July 13, 1981, the Assistant Secretary for Tax Policy indicated that this amendment was unnecessary since the Treasury now intends to propose new regulations providing for such a result. *See* [1981] 9 FED. TAXES (P-H) ¶ 55,421, at 55,236. At this writing, new proposed regulations have not been issued.

ness,[13] the statutory language does not indicate whether section 280A refers to the principal place of all of a taxpayer's business activity or to the principal place of any specific business.[14] Despite section 280A's lack of clarity on this point, the IRS argues that the statute's language favors its approach. Specifically, the Service points out that Congress authorized deductions for expenses incurred in maintaining a principal *place* of business rather than principal *places*.[15] But "words importing the singular include and apply to several persons, parties, or things" in all acts of Congress, unless the context otherwise requires.[16] The IRS argues further that because Congress authorized deductions for three types of home offices,[17] it is an "obvious conclusion" that if the office is not the taxpayer's "principal place of business," a deduction is allowable only if one of the other provisions applies.[18] This argument, however, is at least as circular as it is obvious. Both its premise and its conclusion assume that a taxpayer may apply the exception only once, and the mere presence of other exceptions does not justify that assumption.

The definitional problem is compounded by the fact that Congress has not used the phrase "principal place of business" in any other section of the Code in a way that elucidates the meaning of section 280A. Lacking explicit textual support for its position, the

13. The issue was raised in a letter to Congress, but apparently not acted upon. The writer stated:

> Let me also raise a third point which I believe should be clarified in the committee report. Section 280(c)(1)(a) [sic] applies to the taxpayer's "principal place of business." It is my assumption that this relates to the business whose income is being taxed and not to the major source of income of the individual.

Tax Reform Act of 1975: Hearings on H.R. 10612 Before the Senate Comm. on Finance, 94th Cong., 2d Sess. 3220 (1976) (letter from Roy Slade, director, Corcoran Gallery of Art).

Congress debated the Tax Reform Act on the following dates: Dec. 3 & 4, 1975, (considered in and passed by the House); June 16-18, 21-25, 28-30, July 1, 20-23, 26-30, Aug. 3-6, 1976 (House and Senate agreed to conference report that resolved amendments in disagreement). *See* 121 CONG. REC. 35,458 (1975); 122 CONG. REC. 17,454 (1976).

14. *See* I.R.C. § 280A. Other sections of the Code that use the phrase "principal place of business" refer to the headquarters or main office of a single corporation or tax preparation business. *See* I.R.C. § 819A(b) (contiguous country branches of domestic life insurance companies); I.R.C. § 5113(b) (exemption of sales by liquor stores operated by states, political subdivisions, etc.); I.R.C. § 6038(a) (information with respect to certain foreign corporations); I.R.C. § 6091(b) (place for filing returns or other documents); I.R.C. § 7407(a), (c) (action to enjoin income tax preparers); I.R.C. § 7482(b) (courts of review; venue).

15. *See* Priv. Rul. 8048080, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8048014, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8030025, [1980] IRS LETTER RUL. (CCH) Fiche 31; Priv. Rul. 8030024, [1980] IRS LETTER RUL. (CCH) Fiche 31.

16. 1 U.S.C. § 1 (1976) (cross referenced from I.R.C. § 7701(d)(*l*)(*l*)). *Cf.* Treas. Reg. § 1.368-2(h) (1960) ("As used in section 368, as well as in other provisions of the Internal Revenue Code, if the context so requires . . . the singular includes the plural.").

17. *See* note 1 *supra*.

18. Brief for Respondent at 14-15, Curphey v. Commissioner, 73 T.C. 766 (1980). Priv. Rul. 8048080, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8048014, [1980] IRS LETTER RUL. (CCH) Fiche 50; Priv. Rul. 8030025, [1980] IRS LETTER RUL. (CCH) Fiche 31; Priv. Rul. 8030024, [1980] IRS LETTER RUL. (CCH) Fiche 31.

IRS has relied by analogy on decisions interpreting section 162(a)(2),[19] which authorizes the deduction of "ordinary and necessary . . . traveling expenses . . . [incurred] while away from home in the pursuit of a trade or business."[20] The Service invokes this analogy because, for the purposes of section 162, a taxpayer's home "is [usually] considered to be located at his principal or regular place of business or employment."[21] The IRS argues that the criteria used to determine a taxpayer's tax home under section 162 should also be used to designate his "principal place of business" under section 280A.[22] Implicit in these criteria is an assumption that a taxpayer may have only one principal place of business and, therefore, only one tax home,[23] regardless of how many businesses he has.[24]

There are several reasons why courts should not rely on cases interpreting section 162(a)(2) to interpret section 280A's "principal place of business" requirement. First, the tax "home" relevant to section 162 includes the entire city or general area in which a business is located,[25] while a taxpayer's "principal place of business" under section 280A is related to a specific situs or building.[26] Second, these sections address different types of tax problems. Congress adopted section 162(a)(2) to aid taxpayers whose businesses require that they travel to another city and incur additional living expenses.[27] Although these expenses generally would be classified as

19. 73 T.C. at 776.

20. I.R.C. § 162(a), 162(a)(2). Travel expenses generally include transportation expenses, meals, and lodging.

21. Rev. Rul. 71-247, 1971-1 C.B. 54, 54. *See* Coombs v. Commissioner, 608 F.2d 1269, 1274 (9th Cir. 1979); Frank v. United States, 577 F.2d 93, 97 (9th Cir. 1978); Markey v. Commissioner, 490 F.2d 1249, 1253 (6th Cir. 1974); Daly v. Commissioner, 72 T.C. 190, 195 (1979), *revd.*, 631 F.2d 351 (4th Cir. 1980). *But see* Six v. United States, 450 F.2d 66, 69 (2d Cir. 1971); Burns v. Gray, 287 F.2d 698, 700 (6th Cir. 1961).

22. *See* Brief for Respondent at 11-14, Curphey v. Commissioner, 73 T.C. 766 (1980). The factors used to determine which area is the taxpayer's home under § 162(a)(2) are (1) the total time ordinarily spent in performing duties in each area; (2) the degree of the individual's activity in each area, and (3) the relative significance of his financial return from each area. *See* Markey v. Commissioner, 490 F.2d 1249, 1252 (6th Cir. 1974); IRS Publication No. 17 at 67, 1 IRS PUBLICATIONS (CCH) 501, 569 (1980).

23. *See* Markey v. Commissioner, 490 F.2d 1249 (6th Cir. 1978); Curphey v. Commissioner, 73 T.C. 766 (1980); Montgomery v. Commissioner, 64 T.C. 175 (1975), *affd.*, 532 F.2d 1088 (6th Cir. 1976); Sherman v. Commissioner, 16 T.C. 332 (1951).

24. *See generally* Benson v. Commissioner, 27 T.C.M. (CCH) 1555, 1557 (1968); Dorsky v. Patterson, 59-1 U.S. Tax Cas. (CCH) ¶ 9135, at 71,189 (D. Alaska 1958); Stairwalt v. Commissioner, 11 T.C.M. (CCH) 902, 903 (1952); Sherman v. Commissioner, 16 T.C. 332, 337 (1951).

25. *See* Curphey v. Commissioner, 73 T.C. at 776; IRS, DEPT OF THE TREAS., PUB. NO. 463, TRAVEL, ENTERTAINMENT AND GIFT EXPENSES 2 (1980).

26. The taxpayer's home office is in his place of residence — a particular building. The *Curphey* court rejected the application of the § 162(a)(2) criteria for this reason. 73 T.C. at 776.

27. *See* Daly v. Commissioner, 72 T.C. at 195; Kroll v. Commissioner, 49 T.C. 557, 562 (1968); Benson v. Commissioner, 27 T.C.M. (CCH) 1555, 1557 (1968).

nondeductible personal expenses,[28] Congress concluded that duplicative costs incurred to further a business should be deductible.[29] Section 280A, on the other hand, represents an attempt to distinguish between business and personal expenses to prevent taxpayers from deducting personal expenditures.[30] Home office expenses are deductible because of their inherent business nature, rather than because these expenses duplicate costs otherwise incurred by the taxpayer. The IRS's single principal place of business requirement may be justified under section 162(a)(2) as a reasonable means to determine whether the taxpayer has incurred duplicative expenses. But section 280A has no duplication requirement, and the analogy relied on by the IRS is, therefore, inapposite.

Part I thus finds no basis in section 280A's language, in explicit congressional statements, or in analogies to other Code sections for preferring either the IRS's "total business" interpretation or the Tax Court's more liberal one. Part II looks for other evidence that may illuminate Congress's intent.

II

To choose between the alternative constructions of "principal place of business," courts should examine how each interpretation comports with the purposes of section 280A, and adopt the one that best satisfies congressional intent.[31] Congress enacted section 280A to "curb the widespread abuses"[32] associated with home office deductions — to prevent taxpayers from deducting predominantly personal expenses under the guise of business expenses.[33] Although this purpose would favor a restrictive reading of section 280A's exceptions, another fundamental tax policy — authorizing the deduction of legitimate business expenses — also underlies the section. It is, therefore, essential that courts strike a balance between these competing policies. Part II argues that only the Tax Court's interpretation guarantees the deductibility of legitimate business expenses, and that it does so without reducing the effectiveness of Congress's statutory abuse-prevention scheme.

Before Congress adopted section 280A, a taxpayer could deduct the costs of maintaining an office in his home under either of the

28. *See* I.R.C. § 262; Treas. Reg. § 1.262-1(b)(5) (1958) (household expenses are nondeductible); Treas. Reg. § 1.262-1(b)(5) (1958) (traveling expenses nondeductible unless specifically authorized).

29. James v. United States, 308 F.2d 204, 206-08 (9th Cir. 1962).

30. *See* text at note 2 *supra*.

31. *See* Stanley v. Commissioner, 338 F.2d 434, 439 (9th Cir. 1964); Commissioner v. Kelley, 293 F.2d 904, 912 (5th Cir. 1961).

32. SENATE REPORT, *supra* note 2, at 3, [1976] U.S. CODE CONG. & AD. NEWS at 3440.

33. *See* note 42 *infra* and accompanying text.

general business expense deduction provisions: section 162, which allows "as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,"[34] or section 212, which permits taxpayers to deduct the "ordinary and necessary expenses paid or incurred during the taxable year . . . for the production or collection of income."[35] However, the IRS and the courts did not always use the same standard to determine whether home office expenses were "ordinary and necessary."[36] The Service challenged the deduction of expenses associated with employees' home offices that were not required by the employer as a "a condition of employment."[37] Some courts used a more liberal and subjective standard, requiring only that the office be "appropriate and helpful" to the taxpayer's business.[38] Under this standard, courts allowed deductions to a teacher who used a portion of his home to prepare for class,[39] and to a television advertising executive who used his den exclusively to review his day's work and to view television ads and programs.[40] Congress decided to eliminate the home office deduction in such situations because it felt that the office was primarily a personal convenience rather than a necessary element of the taxpayer's trade or business.[41] The Senate Com-

34. I.R.C. § 162(a). *See, e.g.*, Bodzin v. Commissioner, 509 F.2d 679 (4th Cir.), *cert. denied*, 423 U.S. 825 (1975).

35. I.R.C. § 212. In adopting § 280A, Congress eliminated the home office deduction for § 212 activities. *See* SENATE REPORT, *supra* note 2, at 149, [1976] U.S. CODE CONG. & AD. NEWS at 3581.

36. *See* SENATE REPORT, *supra* note 2, at 144-45, 147, [1976] U.S. CODE CONG. & AD. NEWS at 3577, 3579, and cases cited therein.

37. *See* SENATE REPORT, *supra* note 2, at 144, [1976] U.S. CODE CONG. & AD. NEWS at 3577. The IRS has consistently argued that an employee-taxpayer is entitled to a deduction for home office expenses only when that office is a condition of employment. *See* Bodzin v. Commissioner, 60 T.C. 820, 824-25 (1973), *revd.*, 509 F.2d 679 (4th Cir.), *cert. denied*, 423 U.S. 825 (1975); Gino v. Commissioner, 60 T.C. 304, 314 (1973), *revd.*, 538 F.2d 833 (9th Cir.), *cert. denied*, 429 U.S. 979 (1976); O'Connell v. Commissioner, 31 T.C.M. (CCH) 837, 842 (1972); Dietrich v. Commissioner, 30 T.C.M. (CCH) 685, 686 (1971); Rev. Rul. 62-180, 1962-2 C.B. 52, 52-53.

38. *E.g.*, Hall v. United States, 387 F. Supp. 612, 616 (D.N.H. 1975); Gillis v. Commissioner, 32 T.C.M. (CCH) 429, 432 (1973); Johnson v. Commissioner, 31 T.C.M. (CCH) 941, 943 (1972); Rafferty v. Commissioner, 30 T.C.M. (CCH) 848, 850 (1971); Bischoff v. Commissioner, 25 T.C.M. (CCH) 538, 539 (1966). Other courts permitted these expenses to be deducted only when the home office was an implied condition of employment. This type of situation arose when the taxpayer's office was either inadequate, *see* Peiss v. Commissioner, 40 T.C. 78, 83-84 (1963); Dietrich v. Commissioner, 30 T.C.M. (CCH) 685, 687 (1971), or not available after working hours, *see* Kirby v. Commissioner, 40 T.C.M. (CCH) 431, 432-33 (1980).

39. *E.g.*, Hall v. United States, 387 F. Supp. 612 (D.N.H. 1975); Dietrich v. Commissioner, 30 T.C.M. (CCH) 685 (1971); Peiss v. Commissioner, 40 T.C. 78 (1963).

40. Newi v. Commissioner, 28 T.C.M. (CCH) 686 (1969), *affd.*, 432 F.2d 998 (2d Cir. 1970).

41. *See* SENATE REPORT *supra* note 2, at 3, 9-10, 147-48, [1976] U.S. CODE CONG. & AD. NEWS at 3440, 3446, 3579-80.

Some courts had previously disallowed deductions for home office expenses that seemed to be primarily personal in nature. *E.g.*, Sharon v. Commissioner, 66 T.C. 515, 523 (1976), *affd.*

mittee Report indicates that Congress wished to prevent situations in which "expenses otherwise considered nondeductible personal, living, and family expenses might be converted into deductible business expenses simply because, under the facts of the particular case, it was appropriate and helpful to perform some portion of the taxpayer's business in his personal residence."[42]

Congress sought to ensure the discreteness of personal and business expenses by replacing the subjective test used by courts interpreting section 162(a)[43] with more objective and limiting standards.[44] To objectify the analysis further, the IRS has proposed regulations that establish the criteria by which it wishes to determine a taxpayer's overall principal place of business. The Service intends to consider:

(i) the portion of the total income from business activities which is attributable to activities at each location;
(ii) the amount of time spent in business activities in each location; and
(iii) the facilities available to the taxpayer at each location.[45]

These objective factors would provide courts with greater guidance in determining the deductibility of home office expenses than does the amorphous "appropriate and helpful" standard that some courts have employed.[46] But courts can apply these criteria to each of the taxpayer's specific businesses as easily as to his overall business activity. The court could examine the taxpayer's businesses separately and determine the principal location of each. Thus, the factors proposed by the IRS provide the same degree of objectivity whether the court applies the Service's single principal place of business standard

per curiam, 591 F.2d 1273 (9th Cir. 1978), *cert. denied*, 442 U.S. 941 (1979); Meehan v. Commissioner, 66 T.C. 794, 808 (1976); Shepherd v. Commissioner, 35 T.C.M. (CCH) 219, 224 (1976); O'Connell v. Commissioner, 31 T.C.M. (CCH) 837, 843 (1972).

42. SENATE REPORT, *supra* note 2, at 147, [1976] U.S. CODE CONG. & AD. NEWS at 3580. The Committee Report indicates that Congress was particularly concerned about employees who had an office supplied by their employer, but did some work at home because it was more convenient. *See id.* The Report cites Newi v. Commissioner, 28 T.C.M. (CCH) 686 (1969), *aff'd.*, 432 F.2d 998 (2d Cir. 1970), as an example of the sort of deduction that § 280A was intended to disallow. SENATE REPORT, *supra* note 2, at 145, [1976] U.S. CODE CONG. & AD. NEWS at 3577. In that case, the taxpayer, a television network employee, worked during the day in an office supplied by the network, and used a home office during the evenings to review his day's work, view ads, and perform other tasks related to his job at the network. His office at the network was always available to him, and he was not required to do any work at home. *See* 28 T.C.M. (CCH) at 688. Congress concluded that, in such cases, the taxpayer worked at home only for his personal convenience and should not be entitled to a deduction.

43. Prior to the adoption of § 280A, several courts determined the deductibility of home office expenses by using an "appropriate and helpful" standard. *See* notes 38-42 *supra* and accompanying text.

44. *See* SENATE REPORT, *supra* note 2, at 147, [1976] U.S. CODE CONG. & AD. NEWS at 3579. The Report indicates that the Committee believed there was "a great need for definitive rules" in the area of home office deductions. *Id.*

45. Proposed Treas. Reg. § 1.280A-2(b)(2) (Aug. 7, 1980).

46. *See* note 38 *supra*.

or the more liberal standard announced by the *Curphey* court. Since both standards are equally objective, courts cannot select an interpretation of "principal place of business" on the basis of this factor.[47]

Congress, however, sought not only an objective standard, but also one that objectively prohibited the deduction of personal expenses. A standard may provide objective guidelines, yet nevertheless be inconsistent with Congress's intent, if it routinely allows taxpayers to deduct personal expenses. Neither the IRS's interpretation of "principal place of business" nor that of the *Curphey* court is subject to this criticism.

Three requirements — principal place of business, exclusivity, and regular use — together provide a sufficient guarantee that the taxpayer has incurred expenses for a business purpose. In addition to the "principal place of business" requirement, section 280A mandates that the home office be "exclusively used on a regular basis" for business purposes.[48] This means that the taxpayer must prove that a specific part of his home is used "solely for the purpose of carrying on his trade or business."[49] Although the office need not be

47. In fact, on close examination the three factors proposed by the IRS appear better suited to determining which office of a single business is its principal place of business than to deciding which of a taxpayer's businesses is his principal business. The *Curphey* court's interpretation avoids the need to make the very difficult and frequently subjective latter determination. In this sense, the Tax Court's reading of "principal place of business" may provide greater objectivity than the IRS's.

48. I.R.C. § 280A(c)(1).

49. SENATE REPORT, *supra* note 2, at 148, [1976] U.S. CODE CONG. & AD. NEWS at 3581. The "exclusive use" requirement does not apply to all of the provisions of § 280A. If the taxpayer's home is the sole fixed location of his sales business, the inventory storage space need not be exclusively used for business purposes. I.R.C. § 280A(c)(2); SENATE REPORT, *supra* note 2, at 149, [1976] U.S. CODE CONG. & AD. NEWS at 3582. Exclusive use is also not required for a deduction if a taxpayer is providing day care services in the home. I.R.C. § 280A(c)(4). Congress added this exception in 1978 because such activity cannot realistically be limited to one portion of the home yet "ordinarily result[s] in . . . incremental expenses attributable to the residence beyond those which [would] have been incurred if the residence had been used solely for personal purposes." S. REP. NO. 66, 95th Cong., 1st Sess. 91, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 185, 267.

A literal reading of the word "exclusively" may also create difficulties. If "exclusively" is interpreted to mean exclusively as the principal place of the particular business, it would bar deductions that should be allowed. For example, if a taxpayer had two businesses, each with its only office in the same room in the taxpayer's home, he should clearly get a deduction for home office expenses. However, the office would not be used exclusively as the principal place of either business. Under the IRS's interpretation, the taxpayer would get a deduction because the office would be his overall principal place of business, and used exclusively as such. A similar situation would arise if the home office was the principal place of one of the taxpayer's businesses, but was also used as a secondary location for a second business that had its principal place of business located elsewhere. Under this Note's analysis, the taxpayer should get a deduction because it is the principal place of one of the taxpayer's businesses. The taxpayer should not lose the deduction merely because he does some other *business* work in the office. And if the business with its principal office in the taxpayer's home is his primary business, he would be allowed a deduction under the IRS's interpretation as well.

Under both the IRS's and the *Curphey* court's interpretations, the taxpayer should get a deduction in these situations because he has incurred legitimate business expenses. But there may nevertheless be some question as to whether the *Curphey* court's separate business inter-

in a separate room, it must be physically segregated from space used for personal purposes[50] to eliminate the administrative problem of verifying the taxpayer's allocation of expenses attributable to the various uses.[51] Congress imposed the "regular use" requirement to ensure that the taxpayer actually worked in the home office, and to prohibit deductions for a room that is used to conduct business only "incidental[ly] or occasional[ly]."[52] Under either interpretation of "principal place of business," the bulk of the taxpayer's work and income, at least for one business, must be generated through the home office.[53] Although the *Curphey* court's "specific business" interpretation permits a deduction for home offices that may generate a smaller percentage of the taxpayer's total income, the business nature of the office itself remains unchanged. The office must be the headquarters for activities that qualify as a "trade or business" even under this more liberal interpretation of "principal place of business."[54] The limitations that Congress built into section 280A are thus sufficient to ensure that taxpayers may deduct only business expenses, regardless of whether "principal place of business" is read expansively or narrowly.

This conclusion is reflected in the Tax Court's decision in *Curphey*. Dr. Curphey claimed a deduction for a home office that

---

pretation would authorize these deductions. All doubt could be removed by interpreting "exclusively" to mean exclusively for a business purpose. This would ensure that the expenses incurred to maintain the home office in the situations described above would be deductible. It is also consistent with Congress's goals as described in the Committee Reports, which emphasized Congress's reluctance to allow personal expenses to be transformed into business expenses. *See* note 42 *supra* and accompanying text.

50. *See* Gomez v. Commissioner, [1981] 9 FED. TAXES (P-H) ¶ 57,543 (T.C.M. Dec. 18, 1980).

51. This allocation involved several approximations and was not always calculated consistently. For example, some courts allocated expenses based on the ratio of time used for business purposes over total time used, while the IRS compared the business use to the total time that the room was available for any use. *Compare* Gino v. Commissioner, 60 T.C. 304, 314 (1973), *with* Rev. Rul. 62-180, 1962-2 C.B. 52, 54. Courts must also calculate the amount of space in the home used for business purposes. *See* SENATE REPORT, *supra* note 2, at 146-47, [1976] U.S. CODE CONG. & AD. NEWS at 3579.

52. SENATE REPORT, *supra* note 2, at 148, [1976] U.S. CODE CONG. & AD. NEWS at 3581. One court has stated in dictum that "intermittent" use does not meet the "regular basis" test. Borom v. Commissioner, 49 T.C.M. (P-H) ¶ 80,459, at 1997-98 (1980) (dictum).

53. The criteria evolved by the IRS for determining a taxpayer's principal place of business require a determination of "the amount of time spent in business activities" and "the portion of the total income from business activities" generated at each of the taxpayer's business locations. Proposed Treas. Reg. § 1.280A-2(b)(2) (Aug. 7, 1980). This test can be used to determine the principal place of either a specific business or the taxpayer's total business activity.

54. *See* SENATE REPORT, *supra* note 2, at 149, [1976] U.S. CODE CONG. & AD. NEWS at 3581.

For activity to qualify as a trade or business under I.R.C. § 162, it must consist of more than isolated transactions; courts require continuing, regularized activity, though it need not be the taxpayer's primary business. *See, e.g.*, Ehrman v. Commissioner, 120 F.2d 607, 610 (9th Cir.), *cert. denied*, 314 U.S. 668 (1941); Atkins v. United States, 14 F. Supp. 288, 290-91 (Ct. Cl. 1936).

was the principal place of his rental business. The rental business, however, was a secondary business for Curphey, since it produced less income and required less time than his medical career, which was located principally at a nearby hospital.[55] Nevertheless, the Tax Court allowed Curphey a deduction for his home office expenses.[56] It first established that, absent the home office question, expenses attributable to a secondary business are deductible as ordinary and necessary business expenses.[57] The court found no indication that Congress intended to distinguish between primary and secondary businesses when it enacted section 280A, and decided that the section was less restrictive of legitimate business expense deductions than the IRS's overall principal place of business test.[58] According to the court, its more liberal interpretation of section 280A would "fulfill the legislative objective of preventing deductions for the use of a home for reasons which are primarily personal" without excluding any otherwise legitimate home office deductions.[59] The court therefore held that a taxpayer can deduct the expenses incurred in maintaining a home office as the principal place of his second business.

Because Congress's desire for an objective standard that prohibits the deduction of purely personal expenses provides no clear basis for choosing between the alternative interpretations, we must turn to the second major policy goal — ensuring the deductibility of legitimate business expenses. Congress does not allow individuals to deduct personal expenses[60] because these expenditures reflect the disposition that taxpayers elect to make of the net income that they have previously earned.[61] Business expenditures, on the other hand, must be deducted to calculate the taxpayer's net income[62] — total earnings less the expenses and losses incurred in producing those

55. 73 T.C. 766, 767-68 (1980).

56. 73 T.C. at 776.

57. 73 T.C. at 775-76.

58. 73 T.C. at 776-77.

59. 73 T.C. at 776-77.

60. *See* I.R.C. § 262.

61. *See* James v. United States, 308 F.2d 204, 206 (9th Cir. 1962) (footnote omitted) ("[The Internal Revenue Code] reflects a purpose to tax income spent by individuals for their ordinary costs of living."); M. CHIRELSTEIN, *supra* note 2, at 86-87, 140. *See generally* Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. 309, 313 (1972); Kelman, *Personal Deductions Revisited: Why They Fit Poorly in an "Ideal" Income Tax and Why They Fit Worse in a Far from Ideal World*, 31 STAN. L. REV. 831, 833 (1979); Pechman, *Comprehensive Income Taxation: A Comment*, 81 HARV. L. REV. 63, 64 (1967); Warren, *Would a Consumption Tax Be Fairer Than an Income Tax?*, 89 YALE L.J. 1081, 1083-84 (1980).

62. *See, e.g.*, Commissioner v. Tellier, 383 U.S. 687, 691 (1965); Commissioner v. Sullivan, 356 U.S. 27, 29 (1958); McDonald v. Commissioner, 323 U.S. 57, 66-67 (1944) (Black, J., dissenting); W. ANDERSON, TAXATION AND THE AMERICAN ECONOMY 196 (1951).

earnings.[63] Congress taxes net, rather than gross, income because it has concluded that net income is a better measure of an individual's ability to pay taxes.[64] Business expense deductions may also stimulate business growth and increase employment opportunities.[65] Because an individual pays no tax on his business expenses, he has more capital available to reinvest in his business or to spend on consumer goods. This additional capital may produce greater business income, which in turn generates additional tax revenues.[66]

It is on this ground that courts can distinguish between the IRS's "overall business" and the Tax Court's "specific business" interpretations of "principal place of business." Since the deductions allowed under either construction are legitimate business expenses, and not personal expenses,[67] Congress's intent is best satisfied by the standard that allows the greater number of legitimate business expenses to be deducted. By interpreting section 280A liberally, courts will further Congress's desire to tax only net income, to stimulate economic growth, and to increase employment opportunities.[68] The IRS, which allows taxpayers to deduct the office expenses associated with a second business not located in the home,[69] refuses to allow a taxpayer to deduct the expenses of maintaining a room in his home as the principal office of his second business.[70] This policy makes an entire class of business expenses nondeductible, and frustrates congressional intent. The *Curphey* court's analysis, on the other hand, allows this group of business expenses to be deducted. Because the *Curphey* court's approach permits a greater number of legitimate business expenses to be deducted without contravening section 280A's other goals, courts and the IRS should adopt its conclusion that section 280A authorizes deductions for expenses incurred to

63. *See, e.g.*, Tank Truck Rentals, Inc. v. Commissioner, 356 U.S. 30, 33 (1958); Higgins v. Smith, 308 U.S. 473, 477 (1940).

64. *See* M. CHIRELSTEIN, *supra* note 2, at 86; W. GREEN, THE THEORY AND PRACTICE OF MODERN TAXATION 71-72 (2d ed. 1938). *Cf.* W. ANDERSON, *supra* note 62, at 316 (discussing state gross income taxes on businesses).

65. *See* W. ANDERSON, *supra* note 62, at 311, 510-11; THE COMMITTEE ON POSTWAR TAX POLICY, A TAX PROGRAM FOR A SOLVENT AMERICA 16, 58, 82 (1945); W. RABY, THE INCOME TAX AND BUSINESS DECISIONS 42 (1964); THE RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT, TAXES AND THE BUDGET 11, 13 (1947); THE RESEARCH COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT, A POSTWAR FEDERAL TAX PLAN FOR HIGH EMPLOYMENT 7 (1944); Carpenter, *Growth and Federal Income Taxes*, 37 ST. JOHN'S L. REV. 94, 99, 112-13 (1962).

66. *See* S. REP. No. 1881, 87th Cong., 2d Sess. 1, 25, [1962] U.S. CODE CONG. & AD. NEWS 3304, 3304, 3327.

67. *See* notes 47-54 *supra* and accompanying text.

68. *See* notes 62-66 *supra* and accompanying text.

69. *See, e.g.*, Fackler v. Commissioner, 133 F.2d.509, 511-12 (6th Cir. 1943), Curphey v. Commissioner, 73 T.C. 766, 776 (1980); Treas. Reg. § 1.162-6 (1960).

70. *See* note 6 *supra*.

maintain home offices that are the principal place of any of the taxpayer's businesses.

CONCLUSION

Section 280A limits the availability of home office deductions. Congress now permits taxpayers to deduct these expenses in only a few specified cases, such as when the home office is the taxpayer's "principal place of business." In the case of a taxpayer with more than one business, the IRS has interpreted this provision to allow a deduction only when the home office is the principal place of the taxpayer's overall business activity. But the Tax Court recently held that the deduction was available for the principal place of any of the taxpayer's businesses.

This Note advocates the Tax Court's approach, and has demonstrated that this interpretation better satisfies the congressional policies that underlie section 280A — allowing taxpayers to deduct legitimate business expenses and prohibiting the deduction of personal expenses. The IRS and the courts should adopt this interpretation because it allows taxpayers to deduct more of the costs associated with maintaining business offices, while providing adequate guarantees that the personal expenses of maintaining a home will not be deducted under the guise of business expenses.