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Notice 93-12

PURPOSE

After the 1992 edition of Publication 587, Business Use of Your Home, went to print, the Supreme Court, in *Commissioner v. Soliman*, 113 S. Ct. 701 (Jan. 12, 1993), clarified what factors should be used to determine whether your home office is your principal place of business for purposes of the office-in-the-home deduction. In light of the Soliman decision, Publication 587 will be modified as discussed below. (However, it should be noted that the Soliman decision does not affect deductions, such as interest and real estate taxes, allowed with respect to your home without regard to the business use of an office in your home.)

BACKGROUND

To deduct expenses for the business use of your home under section 280A of the Internal Revenue Code, you must use part of your home exclusively and regularly:

- (A) As the principal place of business for your trade or business;
- (B) As a place to meet or deal with patients, clients, or customers in the normal course of your trade or business; or
- (C) In connection with your trade or business, if you are using a separate structure not attached to your home.

For purposes of the principal place of business requirement in (A) above, the Court in *Soliman* relied on a comparative analysis of a taxpayer's activities at various business locations. The Court identified two primary factors in determining whether a home office is a taxpayer's principal place of business:

- (1) The relative importance of the activities performed at each business location; and
- (2) The amount of time spent at each location.

A comparison of the relative importance of the activities performed at each business location depends on the characteristics of each business. If the nature of your business requires that you meet or confer with clients or patients, or that you deliver goods or services to a customer, the place where that contact occurs must be given great weight in determining where the most important activities are performed. Performance of necessary or essential activities in your home office (such as planning for services or the delivery of goods, or the accounting or billing for those activities or goods) is not controlling.

In addition to comparing the relative importance of the activities performed at each business location, you should also compare the amount of time spent on business at your home office with the amount of time spent on business at other locations. The time consideration is particularly significant when a comparison of the importance of the activities performed at each business location yields no clear answer to the location of your principal place of business. This may

happen when you perform income-generating activities at both your home office and some other location.

MODIFICATION OF PUBLICATION 587

In light of the Soliman decision, the Principal Place of Business discussion on page 2 of Publication 587 will be modified as follows: (1) the two factors listed above will replace the three factors listed in that discussion; and (2) the three examples set forth below will replace the example at the end of that discussion.

EXAMPLE 1. Jane Williams is an anesthesiologist. Her only office is a room in her home used regularly and exclusively to contact patients, surgeons, and hospitals by telephone; to maintain billing records and patient logs; to prepare for treatments and presentations; to satisfy continuing medical education requirements; and to read medical journals and books.

Jane spends approximately 10 to 15 hours a week doing work in her home office. She spends 30 to 35 hours per week administering anesthesia and postoperative care in three hospitals, none of which provided her with an office.

The essence of Jane's business as an anesthesiologist requires her to treat patients in hospitals. The home office activities are less important to Jane's business than the services she performs in the hospitals. In addition, a comparison of the 10 to 15 hours per week spent in the home office to the 30 to 35 hours per week spent at the hospitals further supports the conclusion that Jane's home office is not her principal place of business. Therefore, she cannot deduct expenses for the business use of her home.

EXAMPLE 2. Joe Smith is a salesperson. His only office is a room in his house used regularly and exclusively to set up appointments, store product samples, and write up orders and other reports for the companies whose products he sells.

Joe's business is selling products to customers at various locations within the metropolitan area where he lives. To make these sales, he regularly visits the customers to explain the available products and to take orders. Joe makes only a few sales from his home office. Joe spends an average of 30 hours a week visiting customers and 12 hours a week working at his home office.

The essence of Joe's business as a salesperson requires him to meet with customers primarily at the customer's place of business. The home office activities are less important to Joe's business than the sales activities he performs when visiting customers. In addition, a comparison of the 12 hours per week spent in the home office to the 30 hours per week spent visiting customers further supports the conclusion that Joe's home office is not his principal place of business. Therefore, he cannot deduct expenses for the business use of his home.

EXAMPLE 3. Fred Jones, a salesperson, performs the same activities in his home office as Joe Smith in Example 2, except that Fred makes most of his sales to customers by telephone or mail from his home office. Fred spends an average of 30 hours a week working at his home office and 12 hours a week visiting prospective customers to deliver products and occasionally take orders.

The essence of Fred's business as a salesperson requires him to make telephone or mail contact with customers primarily from his office, which is in his home. Actually visiting customers is less important to Fred's business than the sales activities he performs from his home office. In addition, a comparison of the 30 hours per week spent selling to customers from the home office with the 12 hours per week spent visiting customers further supports the conclusion that Fred's

home office is his principal place of business. Therefore, he can deduct expenses for the business use of his home.

OTHER EFFECTS

The Service intends to conform section 1.280A-2(b)(3) of the proposed Income Tax Regulations under section 280A of the Code to the Soliman decision. The Service will not challenge home office deductions taken for 1991 and prior taxable years if the taxpayer reasonably fell within the scope of the example at the end of the discussion of Principal Place of Business on page 2 of Publication 587, or the example at the end of section 1.280A-2(b)(3) of the proposed regulations. In addition, the Service will waive any estimated tax penalties to the extent that a 1992 tax underpayment is attributable to the loss of the home office deduction for which the taxpayers would have qualified because they reasonably fell within the scope of the principal place of business example in Publication 587 or the proposed regulations.