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Notice 94-62

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-023-93]

RIN 1545-AR80

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of the notice of proposed rulemaking under section 280A of the Internal Revenue Code that was published in the Federal Register on July 21, 1983. That notice concerns the requirements for deductibility of expenses in connection with the business use, or the rental to others, of a dwelling unit that the taxpayer is deemed to have used for personal purposes during the taxable year.

DATES: This notice is effective [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens, (202) 622- 1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 7, 1980, the IRS published in the Federal Register (45 FR 52399) a notice of proposed rulemaking under Internal Revenue Code (Code) section 280A relating to the deductibility of expenses in connection with the business use, or the rental to others, of a dwelling unit that the taxpayer is deemed to have used for personal purposes during the taxable year. On July 21, 1983, the IRS published in the Federal Register (48 FR 33320) a notice of proposed rulemaking containing amendments to those proposed rules.

Section 280A(c)(1)(A) of the Code permits the deduction of certain expenses relating to the business use of the home if part of the home is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. Proposed section 1.280A-2(b)(2), as amended, provides that a taxpayer is deemed to have a principal place of business for each trade or business in which the taxpayer engages. In *Commissioner v. Soliman*, 113 S. Ct. 701 (1993), the United States Supreme Court noted that, in some cases, there may be no

principal place of business. Thus, the Service is hereby withdrawing proposed section 1.280A-2(b)(2), as amended.

Proposed section 1.280A-2(b)(3), as amended, sets forth three factors to be taken into account in determining the location of a taxpayer's principal place of business when the taxpayer engages in a single trade or business at more than one location. The Supreme Court in *Soliman* identified two primary factors for determining whether a taxpayer's home is the principal place of business in circumstances where the taxpayer engages in the activities of a business at more than one location. Because the two factors identified by the Supreme Court differ from the three factors set forth in proposed section 1.280A-2(b)(3), as amended, the IRS is hereby withdrawing proposed section 1.280A-2(b)(3), as amended.

LIST OF SUBJECTS IN 26 CFR PART 1

Income taxes, Reporting and recordkeeping requirements.

WITHDRAWAL OF PORTION OF NOTICE OF PROPOSED RULEMAKING

Accordingly, under the authority of 26 U.S.C. 7805, proposed sections 1.280A-2(b)(2) and (b)(3), that were published in the Federal Register (48 FR 33320, at 33324) on July 21, 1983, are withdrawn.

Michael P. Dolan

Acting Commissioner of Internal Revenue