Private Letter Ruling 8819009

Code Section 280A

This is in reply to your letter of February 10, 1987, and subsequent correspondence in which you request a ruling as to the deductibility of certain expenses incurred in connection with the business use of your home.

The facts and representations made are that you and your wife are the sole shareholders in Corporation, which provides engineering and technical consulting services to both private industry and government. The business is highly successful and you devote your full time efforts to the enterprise. You have a part-time employee and engage several independent contractors on an as-needed basis.

You recently moved into a new personal residence which consists of approximately x square feet, of which 40 percent is leased to Corporation. The space so leased is used exclusively and on a regular basis by Corporation and is also Corporation's exclusive place of business. Corporation pays you y dollars per year as rental, an amount which includes utilities, maintenance and insurance. You represent that the rental paid is a reasonable amount and is less than Corporation would pay for an equivalent commercial space.

Section 280A(a) of the Internal Revenue Code provides that, in the case of a taxpayer who is an individual or an S Corporation, no deduction otherwise allowable 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.

Section 280A(c)(1) of the Code provides that 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 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.

Section 280A(c)(3) of the Code provides that subsection (a) shall not apply to any item which is attributable to the rental of the dwelling unit or portion thereof.

Section 280A(c)(6) of the Code, as added by the Tax Reform Act of 1986, states that paragraphs (1) and (3) shall not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer.

In Senate Report No. 99-313, 1986-3 C.B. Vol. 3, 84, the Committee on Finance in its explanation of the provisions of section 143(b) of the Tax Reform Act of 1986 states:

The bill provides that no home office deduction is allowable by reason of business use where an employee leases a portion of his or her home to the employer. For this purpose, an individual who is an independent contractor is treated as an employee, and the party for whom such individual is performing services is treated as an employer. In the case of a lease that is subject to this rule, no home office deductions are allowed except to the extent that they would be allowable in the absence of any business use (e.g., home mortgage interest expense and real property taxes).

Accordingly, on the basis of the explicit language contained in section 280A(c)(6) of the Code, we conclude that you may not deduct any business expenses that are attributable to the rental of a portion of your home to Corporation during any period in which you use the dwelling unit in performing services as an employee of Corporation.

Except as ruled above, no opinion is expressed regarding the federal income tax consequences of this transaction under any provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer who requested it. Section 6100(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in the ruling have not as yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the ruling. See section 16.04 of Rev. Proc. 87-1 I.R.B. 7, 17, dated January 5, 1987. However, when the criteria in section 16.05 of Rev. Proc. 87-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.