



[CLICK HERE to return to the home page](#)

Edith G. McKinney v. Commissioner

T.C. Memo 1981-377

NIMS, Judge:

We have reexamined our conclusion as to the application of section 280A(c)(5)(B) 2 relating to the deficiency for 1976. See *McKinney v. Commissioner*, T.C. Memo 1981-181 [¶81,181 P-H Memo TC] (April 15, 1981). That issue was neither raised nor briefed by the parties, but has been the subject of full consideration in *Bolton v. Commissioner*, 77 T.C. No. 8, decided this day, where it was the only matter under review and where the Court had the benefit of briefs of both parties in respect of that issue. We agree with the opinion in that case, and the result herein is modified to the extent that the required computation under section 280A(c)(5)(B) will be consistent with *Bolton*.

Thus, in applying the limitations on deductions of rental expenses in section 280A(c)(5)(B), property taxes paid with respect to petitioners' condominium in Hawaii will be allocated in a manner corresponding to the approximate percentage of the days of the year during which the property was rented.

Since the decision herein under Rule 155 has not yet been entered, the decision to be entered will reflect the foregoing modification.

1 James R. McKinney died after the trial and submission of briefs in this case. A motion to substitute the Estate of James R. McKinney as the petitioner was subsequently granted. For convenience, we will refer to James R. McKinney as the petitioner herein.

2 All section references are to the Internal Revenue Code of 1954, as amended and in effect during the years in issue, unless otherwise specifically indicated.