FAMILY RESEARCH COUNCIL Perspective

MAKING THE HOME OFFICE TAX DEDUCTION MORE AVAILABLE TO PARENTS

by

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People who do paid work from home so that they can care for their children are presently in most cases denied any meaningful deduction for their legitimate home-office expenses under the Internal Revenue Code. Not only is this result inequitable for these taxpayers, but it also puts them at a competitive disadvantage with their colleagues who rent or own workspace away from home. Furthermore, it discourages people who want to spend more time with their children from establishing home-based businesses or from making a home-based work arrangement with their employer.

Taxpayers who conduct a home business while caring for dependents, particularly small children, often fail to qualify for the home-office deduction under Section 280A of the Code, because it requires that the space used for a home business to be used exclusively for such purpose. The home-based businesswoman needing to keep an eye on small children or struggling with one income needs to be physically proximate to her children and may not be able to afford a separate room or space used for no other purpose. In either instance, no deduction is allowed for depreciation, rent (if the taxpayer doesn't own his or her home), maintenance, utilities and insurance expenses allocable to the home office space if, for instance, the work room is used also as a family room or guest bedroom.

In another related development, the IRS has taken the position that day care providers (presently, the only home-based businesses that are not required to satisfy the "exclusive use" rule) must keep elaborate records on the time any room is used for personal and business purposes. This recordkeeping requirement would presumably apply to any future exceptions to the "exclusive use" rule such as taxpayers who operate home businesses while caring for dependents. It imposes an unworkable burden on the home-based business not required of their non home-based competitors.

Moreover, the value of a new exception to the "exclusive use" rule would be minimal unless the existing rule for allocating time of use was amended. Applying the existing allocation rule to a home-based business where there is mixed use of space, even if the business were operating a full 40 hours per week, results in a deduction worth only 25 percent of the amount a competitor in an office receives for the same expenses.

Finally, employees who are "telecommuters" and who would otherwise qualify for the deduction for home-office expenses under Section 280A's "exclusive use" test, are often denied the deduction under Section 67 enacted in 1986. Section 67 disallows home-office expenses of an employee to the extent that such expenses along with other certain "miscellaneous itemized deductions" do not, in the aggregate, exceed two percent of the taxpayer's adjusted gross income. Such other deductions are defined sufficiently broadly that it would be the rare case where the two percent floor was exceeded, and then, only the excess of expenses above the floor is deductible.

Suggested Solutions:

Consequently, in order to provide the growing number of home-based employees and business owners proper tax treatment that recognizes legitimate business expenses in a way that is comparable to their competitors and colleagues who are not home-based, the following amendments to the Internal Revenue Code are needed:

(1) Amend Section 280A(c)(1) to allow an exception to the "exclusive use" rule permitting mixed use of space for business and personal purposes in the case of taxpayers who conduct home-based businesses while caring for dependents. Dependents should be defined to include not only children, but also elderly parents or a sick spouse.

(2) Amend Section 280A(c)(4)(C) to revise the allocation rule for mixed uses to only compare only the amount of time a room is in fact used for a business or personal purpose and not count the time a room is used for no purpose at all (e.g., nighttime). This would eliminate the reduction in the deductions for business use for the time the mixed use room is used for no purpose and put home-based taxpayers on a par with non-home-based taxpayers who do not suffer a loss in deductions for their office space when the office is closed.

(3) Provide some statutory "safe harbors" in Section 280A(c)(4) on calculating the mixed use of space for home day care providers and, if the amendment suggested in (1) above is enacted, for taxpayers with home-based businesses caring for dependents to eliminate, in most cases, a burdensome recordkeeping requirement.

(4) Amend Section 67 to exclude home-office expenses of employees from the miscellaneous itemized deductions subject to the two percent floor.

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Carlie Sorensen Dixon is a co-founder of Lawyers at Home, a forum of the Women's Bar Association of the District of Columbia, for women in the legal profession who are now devoting primary attention to childrearing. She has drafted legislative language for each of the four proposed changes. Copies of this language, further analysis and supporting documents can be obtained from the Family Research Council.

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