Evolution of the Tax Home Concept as a Legal Term of Art

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This article discusses the evolution of the phrase "tax home" as a term of art in the tax law.

INTRODUCTION

Tax home is, particularly when considered in an international context, a curious legal term with a specific meaning that is at odds with what it superficially suggests. Counterintuitively enough, it does not patently mean the location where one files, pays, or is otherwise responsible for income taxes.[1] It also does not patently mean the location of one's residence. Rather, the term has a primarily vocational meaning that was concretized over time through judicial precedent.[2] The peculiarity of the meaning of this term, the false sense it conveys, warrants the exploration of its origin and evolution.

This paper takes a chronological approach to unfurl the particulars of several noteworthy court cases that appreciably contributed to the development of *tax home* as a term of art in the tax law. The limited discussion herein as to what constitutes a tax home and where it is located is incidental to the discussion of how a plain-English language word metamorphosed into a term of art over the course of legal history and is not itself the prime constituent of the thesis of this paper.

The central discussion will begin with when the plain-English language word *home* first appeared in an early American tax statute for a specific purpose. The paper will then consider how the courts subsequently construed the relevant statutory text within the factual contexts they were presented. The paper will finally come full circle by leading to the moment and purpose for which the eventually-developed term, after being imbued with special significance through a series of judicial actions, was first codified into statute.

THE ESSENTIAL CHRONOLOGY OF CONCEPTUAL DEVELOPMENT

Doctrinal prehistory.

The origin of the tax home concept can be traced all the way back to section 214(a)(1) of the Revenue Act of 1921 when Congress first authorized a deduction for "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business."[3] *Home*, as used in the Revenue Act of 1921, was not imbued with any special significance and was therefore meant to be understood in its ordinary linguistic sense. In enacting this rule, Congress apparently did not go beyond the consideration that taxpayers' domestic and vocational lives may be centered in the same location. This observation is in no way meant to imply a shortcoming on the part of Congress since this was the arrangement in most, if not virtually all, cases at the time. Unironically, humankind's propensity to conjure infinite sets of facts would destine this provision to be tested with rigor.

The first court case[4] involving a traveling expenses deduction dispute did not have to contend with the expected, thorny issues of ascertaining the constitution and location of the taxpayer's home.[5] The taxpayer, a field investigator for the Bureau of Pensions, according to the text of the case, in line with both usual arrangements and Congress' expectations, evidently simultaneously lived and primarily worked in Washington, D.C.

The only point of contention in this case was the deductibility of otherwise deductible traveling expenses incurred by the taxpayer while working outside of Washington, D.C. The Commissioner had denied taxpayer's claim for reasons indiscernible from a reading of the text of the case. Nonetheless, what is illuminating for purposes of this paper is that the text of this case is suggestive that the court construed *home*, in all likelihood in accordance with Congressional intent, in its ordinary sense when it stated that the taxpayer was "away from home in connection with his employment" (i.e., the location of his employment was away from his residential home). It would not be long before the simplicity of *home* would lead to doubts.

Home as a word of art.

Eventually *home*, within the context of the traveling expenses deduction, was initially suggested a vocational meaning by the court in *Bixler v. Commissioner*.[6] This case dealt with a taxpayer who maintained a residence in Alabama where his family lived, while he himself lived and worked in Louisiana and Texas for two years before returning to Alabama. The court upheld the Commissioner's denial of the deductions claimed by taxpayer for the expenses he had incurred in traveling to and from, and for meals and lodging in, Louisiana and Texas under the rationale that one could not, based on personal preferences, reside in a location distant from one's place of business or employment and still claim a deduction for such personally-motivated expenditures. In the words of the court:

> "A taxpayer may not keep his place of residence at a point where he is not engaged in carrying on a trade or business, as this petitioner testified was true in this instance, and take a deduction from gross income for his living expenses while away from home. We think section 214(a)(1) intended to allow a taxpayer a deduction of traveling expenses while away from his post of duty or place of employment on duties connected with his employment."

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The articulation of the court's reasoning above is noteworthy because it unambiguously acknowledged that Alabama was taxpayer's home but nonetheless denied him the deduction for his traveling expenses on the basis that the taxpayer's claim was not in line with what it thought was the spirit, no matter how in line with the letter, of the law. In doing so it likened the idea of *home* to, but did not explicitly label it as, a taxpayer's place of business, duty, or employment. This was the prototypical decision that fractured the hitherto seamless continuity between the domestic and vocational impulses intrinsic to a home. By separating these two impulses, by drawing this interpretive divide, the court revealed the extent to which the considerations of any given taxpayer's likely reality assert themselves on legislative language from the very beginning, structuring its very path.

> The text of the dissenting opinion was seminal in the development of tax home as a term of art; in pairing tax and home into a derisive term, it incidentally succeeded in establishing between these two words the link that had to necessarily precede the term's usage and reification over time.

Extending its own logic formulated in earlier cases to its natural conclusion, the court subsequently explicitly gave *home* a vocational meaning in *Lindsay*,[7] a case in which a member of Congress from New York was denied a deduction for the amounts he expended for railroad trips from Washington, D.C. to New York and his lodging in Washington, D.C. on the basis that they represented personal living expenses. The court, citing *Bixler* and *Duncan*,[8] reasoned that "since "home" as used in [the statute] means business location, post, or station," taxpayer was not entitled to a traveling expenses deduction because his "business here was exclusively in Washington."

Obviously, the Tax Court was treating *home* as a word of art, distinct from its plain-English language meaning, in its judicial pronouncements. Based on legal authority it would appear that the vocational component of *home* would resolve the ambiguities vis-à-vis its interpretive difficulties. However, since this was a conception based on speculated Congressional intent of only a trial-level court, the stage was set for a higher court to put this formulation to the test. As we will see, the Fifth Circuit Court of Appeals was thoroughly unconvinced that the lower court's conception of *home* was not completely arbitrary or mysterious.

Home no less ordinary.

The Fifth Circuit Court of Appeals, in a leading traveling expenses deduction case[9] that ultimately went before the Supreme Court,[10] rejected the establishment of the vocational meaning attributed to *home* by the lower court. The question presented in this case was whether deductions taken by a taxpayer for traveling expenses between Mississippi, his place of residence, and Alabama, his principal place of employment, and living expenses while in Alabama were allowable as traveling expenses while away from home in pursuit of a business.

The Tax Court had previously upheld the Commissioner's disallowance of the taxpayer's deductions on the basis that since Alabama, the taxpayer's principal place of employment, was his home, his living expenses in Alabama and traveling expenses to and from Mississippi were nondeductible personal expenses.[11] The Court of Appeals disagreed with the Tax Court's analysis in the following very forceful terms:

> "The Tax Court held that home, as used in [the statute], means the post, station, or place of business, where the taxpayer is employed... We find no basis for this interpretation. There is no indication in the statute of a legislative intention to give the word an unusual or extraordinary meaning. For the court to do so would be an invasion of the legislative domain. We think the word home as used in the statute means the place where one in fact resides. Home is the fundamental idea of domicile, and yet there is a difference in the legal conception of the two words. Domicile expresses the legal relation existing between a person and the place where he has his permanent home in contemplation of law. Home denotes the principal place of abode of one who has the intention to live there permanently."[12]

After firmly stripping *home* of its previously attributed vocational meaning, the appellate court, in applying the law to the taxpayer's factual situation, went on to further say the following:

> "The undisputed facts show that petitioner's home was in Mississippi unless the statute fixes it at the place of employment. There are no facts in this record sufficient to support a finding that the petitioner's home followed his vocation to another state; there is no legal requirement to induce this conclusion; the income tax statutes envisage a home in which the [taxpayer] lives with his dependents."[13]

Thus the Court of Appeals reversed the Tax Court's ruling thereby settling the case in the taxpayer's favor. Dissatisfied with the result, the Commissioner petitioned the Supreme Court to review the appellate court's decision. Upon hearing the case, contrary to all expectations, the Supreme Court sidestepped the slippery issue of the constitution and location of taxpayer's home and instead resolved the case in the Commissioner's favor on the basis that the expenses incurred by the taxpayer did not further the taxpayer's employer's business.[14]

Notwithstanding the Supreme Court's ruling, Justice Rutledge's dissenting opinion, correctly noting that the outcome of the decision hinged on the assumption that Alabama was the taxpayer's home,[15] is critical for the purposes of this paper because it represents the first instance in U.S. tax legal history that the two words *tax* and *home* were not only placed side-by-side, but also in quotations (or, more accurately, in sneer quotes). Consider the following words from Justice Rutledge:

> "I agree with the Court of Appeals that if Congress had meant "business

> headquarters," and not "home," it would have said "business headquarters." When it used "home" instead, I think it meant home in everyday parlance, not in some twisted special meaning of "tax home" or "tax headquarters."[16]

As can be seen, the text of the dissenting opinion was seminal in the development of tax home as a term of art; in pairing *tax* and *home* into a derisive term, it incidentally succeeded in establishing between these two words the link that had to necessarily precede the term's usage and reification over time. Ironically, though in this instance the antecedence of *tax* was meant to undermine the meaning of a home, to mock its very idea, it ultimately provided the support necessary for its doctrinal reification.

Tax as a quotative to Home as a word of art.

The next case to place *tax* and *home* side-by-side was *Stairwalt*.[17] The taxpayer in this case maintained a home with her husband in New York. Her husband was employed in New York and lived there during the entire tax year of dispute. Taxpayer was, for six months, employed in Delaware after which she returned to, and secured employment in, New York. The Commissioner denied her a deduction for her outlays for meals and lodging in Delaware. Alternatively, the court approved of the deductions in the following words:

> "... enough has been shown here for petitioner to be entitled... to treat New York as her post of duty and her tax "home," so that her expenses in [Delaware] were deductible as "traveling expenses***while away from home in the pursuit of***business."

Though the court in this case was, through its evident use of quotations, treating only *home* as a word of art—for which there was, as already discussed, precedent by this juncture—by employing *tax* as a quotative it effectively, though not actually, formulated *tax home* as a term of art. This is because this specific textual arrangement would semantically connote an identical meaning: one's permanent or principal place of business or employment is in fact one's home for tax purposes. The mere conjoining of the two words, irrespective of the punctuation, made clear the way in which the meaningfulness of *home* could be sharpened and enhanced in the statutory context to which it was particular.

Tax Home as an unquoted term of art.

In *Chandler*[18] a married couple brought a petition for a review of a Tax Court decision according to which a deficiency stemming from the disallowance of traveling expenses was determined. In this case the primary taxpayer resided in Attleboro, Massachusetts, where he was employed as a high school principal. He was also partially employed by Boston University as an accounting instructor in Boston, Massachusetts.

In denying taxpayer a deduction for the automobile expenses he incurred in traveling back-and-forth to Boston, the Tax Court did not ascertain the constitution and location of taxpayer's home. Rather, the court denied the deduction on the basis that the automobile expenses did not represent traveling expenses. In the opinion of the court these were nondeductible commuting expenses because taxpayer's travel did not involve an overnight stay. The appellate court reversed the Tax Court's decision on the basis that "petitioner Chandler was clearly 'away from home' in the statutory sense when he traveled to Boston from his tax home in Attleboro despite the fact that he did not remain in Boston overnight."[19]

Unlike the Tax Court which had previously employed *tax* as a quotative to *home*, the appellate court in *Chandler*[20] was the first to use tax home as a proper term of art in the very sense in which it continues to be used till present day. Though this decision can reasonably be credited with birthing *tax home* as a legal term with a specific—although not necessarily precise—meaning, what should be of interest to us is how the courts in succeeding cases took half a step backward by invoking this term in quotations, a clear indication that the term would not become solidified and suffused with the force of law without time-honored customary usage.

Tax Home as a quoted term of art.

In *Conner*[21] the Tax Court dealt with another married couple disputing the Commissioner's denial of its traveling expenses deduction. The husband of the couple was employed at the U.S. Naval Ammunition Depot in Indiana whereas the wife resided on her late father's farm in Ohio. Husband would travel to Ohio every Friday to spend the weekend with his wife where they bred, raised, and sold Persian cats.[22] On Sunday evenings he would return to Indiana. He deducted the expenses he incurred for traveling between Indiana and Ohio and for the cost of meals and lodging incurred in Indiana. The Tax Court, in upholding the IRS's disallowance of the deduction, stated the following:

> "[The petitioners] argue that [husband] was only temporarily employed in [Indiana] and that his "tax home" was in [Ohio] where [his wife]... was required to live... [He] had but one occupation... that of an employee... [His] home for the purpose of deducting travel expenses was [Indiana], his place of employment. Accordingly, his expenses of meals and lodging there and his transportation expenses between [Indiana] and [Ohio] are personal expenses and not deductible by the petitioners in computing their gross income."

Conner was the first case after *Chandler* to employ tax home as a term; whereas the latter employed it as an unquoted term, the former employed it as a quoted one. This was also not the last case in which the court would choose the quoted form. But, no matter the differences in punctuation, the court in both cases meant the same thing. The difference in presentation can only be attributed to the fact that the low incidence of *tax home* in judicial pronouncements at

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the time made its punctuation, lest there be any confusion, useful in order to signify its special meaning.

Hallowed by usage, consecrated by time.

After *Conner* the courts began regularly employing *tax home* as both quoted and unquoted terms. The courts initially did not have a preference for one over the other. However, once the tax home concept became solidified as a judicial doctrine through usage over a protracted period, the courts developed a clear preference for *tax home* as an unquoted term. Naturally, as the meaning of this legal term became a commonly-understood standard, the quotation marks, signifiers that the term was being used in some special way, became superfluous. Though still not an entirely extinct judicial practice, it is now rare for the courts to primarily employ *tax home* as a quoted term.[23]

This historical study is illustrative of the extent to which the meaning of legal verbiage depends on the factual circumstances to which it is to be related.

The inevitable semantic implication of pairing *tax* and *home* to form a proper legal term would be such that it would facilitate the term's adaptability for tax purposes beyond only the tax-deductibility of business or employment-related traveling expenses. So, it is not entirely unsurprising that when this term was eventually introduced and codified into the Internal Revenue Code, it was done so for purposes of qualifying a given claimant for the foreign earned income exclusion.[24] Indeed, it would not be unreasonable to surmise that in contemporary tax practice the incidence of *tax home*'s invocation for purposes of the foreign earned income exclusion far exceeds its invocation for purposes of the traveling expenses deduction.

CLOSING THOUGHTS

Contemporary authoritative tax guidance is often rooted, in one way or another, in long-established principles. Not uncommonly, such long-established principles underwent development or evolution in very different settings to very different ends. This inescapably contributes to the internal incongruities within the makeup of authoritative guidance which, in turn, contributes to challenges in its construction. As we can glean from the case of the tax home doctrine, the ambiguities of the principles of a storied past can be resolved through an understanding of their historical evolution.

This historical study is illustrative of the extent to which the meaning of legal verbiage depends on the factual circumstances to which it is to be related. The key to comprehending *tax home* is to grasp its underwhelming ordinariness. Whereas *home* would ordinarily connote residence and *tax home* would connote the place where one is responsible for taxes, the law purposefully extracts the qualitative ordinariness of these two terms, rendering them replete with their residual extraordinariness in order to adapt them to specific usage.

It is possible that, and appears as if, Congress in 1921 had no confusion about the meaning of *home*, that it had no less than a normal, objective linguistic conception of the word. Despite the fact that such intentional objectivity was not separate and apart from a contemplated idea of how the law would be implicated, in practice such objectivity can be empirically undermined thereby necessitating reliance on a subjective linguistic conception, as the courts did with *home* in this case.

End Notes

1 See *Johnson*, 7 TC 1040 (1946); *Scheuren*, TC Memo 1961-52 (1961); and *Michel*, TC Memo 1977-345 (1977).

2 The preponderance of the authoritative guidance holds that one's tax home is one's principal place of business or employment, not one's place of residence; but, there are some exceptions. See *Burns v. Gray*, 287 F.2d 698 (1961); *Rosenspan*, 438 F.2d 905 (1971); and *Coombs*, 608 F.2d 1269 (1979).

3 Pub. Law No. 67-98, 42 Stat. 227 (November 23, 1921). Obviously enough, § 214(a)(1) of the Revenue Act of 1921 was the predecessor to Section 162(a)(2) of the current version of the Internal Revenue Code of 1986.

4 Technically, the U.S. Tax Court, originally known as the U.S. Board of Tax Appeals, was at the time an administrative review board instead of a proper court of law. It was not until the passage of the Revenue Act of 1942 that the Board of Tax Appeals was retitled as the U.S. Tax Court. See § 504(a), Revenue Act of 1942, Pub. Law No. 753, 56 Stat. 798 (October 21, 1942). Notwithstanding, due to its power to establish precedent, this paper will refer to the Board of Tax Appeals as a *court* instead of as a *board*.

5 *Appeal of Palmer*, 1 BTA 882 (1925).

6 5 BTA 1181 (1927).

7 34 BTA 18 (1936).

8 17 BTA 1088 (1929). *Duncan* involved a traveling salesman who had neither a fixed residence nor place of business. The court ostensibly suggested that in order for the relevant expenses to be deductible, the business had to require the taxpayer to be away from one of either his home *or* usual place of business and to also incur outlays incident to the furtherance of said business. It did not liken a home to, much less define it as, a place of business. Since taxpayer had none, the court denied him the deductions he sought.

9 *Flowers*, 148 F.2d 163 (1945).

10 See Note 14, *infra*.

11 *Flowers*, PH TMC ¶44263, 3 CCH TCM 803 (8/7/1944).

12 Note 9, *supra*.

13 *Ibid*.

14 *Commissioner v. Flowers*, 326 U.S. 465 (1946).

15 Due to the Supreme Court's reluctance to decide the tax home issue, it has only ever tacitly approved its vocational meaning. See *Commissioner v. Stidger*, 386 U.S. 287 (1967) and *United States v. Correll*, 389 U.S. 299 (1967).

16 Note 14, *supra*.

17 PH TCM ¶52261, 11 CCH TCM. 902 (1952).

18 22 F.2d 467 (1955).

19 It should be at least tangentially mentioned that subsequent to this case the Supreme Court adopted the IRS's position that in order for one to be considered away from one's tax home the trip would have to be such that it would require one to stop for sleep or rest. *United States v. Correll*, 389 U.S. 299 (1967).

20 Note 18, supra.

21 TC Memo 1956-290 (1956).

22 One of taxpayers' assertion in this case was that their feline occupation rose to the level of a trade or business which the court ruled to be a hobby.

23 For example, the District Court for the Northern District of Georgia was the last to have a clear preference for the quoted, over the unquoted, term. *Deeb et. al. v. United States*, No. 1:20-cv-01456 (N.D. Ga. 2020).

24 Section 911(d)(1).