No. 2026-016
January 17, 2026

Fifth Circuit: "Limited partner" for purposes of exception to self-employment income means a partner in limited partnership with limited liability

The U.S. Court of Appeals for the Fifth Circuit on January 16, 2026, held that a "limited partner" for purposes of the exception to self-employment income under section 1402(a)(13) means a limited partner in a state-law limited partnership that has limited liability, and not merely a passive investor in a limited partnership as the Tax Court had held.

The case is: *Sirius Solutions v. Commissioner,* No. 24-60240 (5th Cir. January 16, 2026). Read the Fifth Circuit's **decision**

The decision by the three-judge panel was not unanimous, and one judge wrote a lengthy dissenting opinion.

Summary

Under section 1402(a)(13), a limited partner's pass-through share of partnership income (or loss) (excluding certain guaranteed payments described in section 707(c)) is exempt from the Social Security and Medicare tax imposed in section 1401. The IRS determined that the exception under section 1402(a)(13) did not apply to the taxpayer's limited partners because they were not "limited partners" for purposes of section 1402(a)(13) and thus adjusted the taxpayer's net earnings from self-employment to include its limited partners' distributive shares of partnership income (or loss). The taxpayer contested the IRS' adjustments before the Tax Court, and on February 20, 2024, the Tax Court rejected the taxpayer's challenge and upheld the adjustments. It reasoned that it was bound by a recent Tax Court decision, *Soroban Capital Partners LP v. Commissioner*, 161 T.C. 310 (2023), in which it held that for purposes of the section 1402(a)(13) exception, the term "limited partners" only "refer[s] to passive investors."

The taxpayer appealed the Tax Court's decision to the Fifth Circuit, which overturned the Tax Court's decision and held that a "limited partner" is a limited partner in a state-law limited partnership that has limited liability. The court found that the ordinary meaning of "limited partner" when the statute was enacted in 1977 referred to liability status, as supported by contemporaneous dictionary definitions and interpretations of both the IRS and the Social Security Administration. The court concluded that the "passive investor" rule championed by the IRS was not only inconsistent with the statutory text but would also introduce uncertainty and complexity and "a great deal of litigation."

KPMG observation

- The Fifth Circuit majority opinion addressed several counter-arguments offered by the Tax Court, the IRS and the dissent and found that each failed.
- The Fifth Circuit noted with interest that the IRS did not even raise the Tax Court's argument regarding a "limited partner, *as such*" and acknowledged the existence of dual-status arrangements in noting: "People – including limited partners – can have multiple functions or capacities."
- Although the decision of the Fifth Circuit will be well received by taxpayers and practitioners, it is limited to limited partners in state-law limited partnerships and does not specifically apply to members of a limited liability company classified as a partnership for federal tax purposes.

kpmg.com/socialmedia