



# TaxNewsFlash

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## U.S. Tax Court: Court has jurisdiction to determine in partnership-level proceeding application of limited partner exception to self-employment income

The U.S. Tax Court today held that it had jurisdiction in the partnership-level proceedings to determine whether the taxpayer's ordinary business income allocated to its state law limited partners is excludable from net earnings from self-employment under section 1402(a)(13).

The case is: *Soroban Capital Partners LP v. Commissioner*, 161 T.C. No. 12 (November 28, 2023).  
Read text of the Tax Court's [opinion](#) [PDF 187 KB]

### Summary

The taxpayer, a Delaware limited partnership subject to the TEFRA audit and litigation procedures, made guaranteed payments and distributed ordinary business income to its limited partners and its general partner. On its partnership tax returns for the years at issue, the taxpayer reported as net earnings from self-employment its guaranteed payments to its limited partners and the general partner's share of ordinary business income.

The IRS adjusted the taxpayer's reported net earnings from self-employment by increasing such amount to include the shares of ordinary business income allocated to the limited partners, taking the position that they were limited partners in name only.

The taxpayer filed a motion for summary judgment asking the Tax Court to hold that ordinary business income allocated to the taxpayer's limited partners is excluded from net earnings from self-employment by virtue of such partners being labeled limited partners. Additionally, the parties had cross-moved asking the Tax Court to determine whether the court had jurisdiction in the partnership-level proceedings to inquire into the functional roles of the taxpayer's limited partners.

The Tax Court concluded that although section 1402(a)(13) contains a limited partner exception that excludes from net earnings from self-employment "the distributive share of any item of income or loss of a limited partner, as such," that exception does not apply to a partner who is limited in name only. In support of its conclusion, the court pointed to the inclusion of the phrase "as such" in the statute and its finding that at the time of enactment of section 1402(a)(13), Congress intended for the limited partner

exception to apply to earnings of an investment nature. Therefore, the court held that determining whether a partner is a limited partner in name only requires an inquiry into the functions and roles of the limited partner.

The Tax Court further found that because a partnership is required to calculate net earnings from self-employment at the partnership level, any adjustment to the calculation must be made in a partnership level proceeding. Thus, the court held that an inquiry into the functions and roles of a limited partner is a factual determination that underlies a partnership item that is properly determined in a TEFRA proceeding.

Accordingly, the Tax Court denied the taxpayer's motion for summary judgment and granted the IRS motion for partial summary judgment with respect to the issue of whether it had jurisdiction in the partnership-level proceedings to determine whether the ordinary business income allocated by the taxpayer to its limited partners is excludable from net earnings from self-employment.

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