
TAX PRACTICE

Tax Court Showdown Over SECA Taxes and Limited Partners: Exploring the Catalyst for the Second Case of Many

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Several cases and IRS Rulings have wrestled with the limited partner exception.

Introduction

Popular culture is full of iconic phrases, one of which is "Don't hate the player, hate the game." This expression means that people should not get upset with those who utilize the rules to their advantage, but rather they should rage against the faulty system itself. To be clear, tax laws are not a game, and taxpayers are not players, but the saying undeniably has some application in the tax context. This is particularly true when it comes to partnerships, self-employment taxes, and exceptions for limited partners. Congress enacted the relevant law nearly 50 years ago, without defining the key term. Decades passed and the variety of entities treated as partnerships expanded significantly, yet neither Congress nor the Internal Revenue Service ("IRS") provided definitive guidance. This inaction triggered a predictable result: Tax disputes.

This article explains the antiquated general rule and exception, the garbled guidance from the IRS over the years, and the essence of two pending Tax Court cases, which likely constitute just a small sample of the numerous battles to come.[1]

Overview of SECA Taxes

Compensation earned by taxpayers ordinarily is subject to employment taxes. In situations involving sole proprietors, independent contractors, and partners, they are comprised of federal income taxes and Self-Employment Contributions Act ("SECA") taxes.[2] The SECA tax rate has been 15.3 percent of "net earnings from self-employment" in recent years.[3] This term generally means gross income derived by an individual from any trade or business carried on by such individual, minus certain business-related deductions, plus his distributive share of income from any partnership in which he is a partner.[4]

A number of exceptions to the general rule exist. Importantly for this article, Section 1402(a)(13) *excludes* from the definition of net earnings from self-employment, and thus from SECA taxes, the distributive share to a "limited partner," as a limited partner.[5] This exception does not apply, however, in cases involving "guaranteed payments" by the partnership to a limited partner in exchange for services rendered.[6]

Garbled Guidance throughout the Years

Confusion over SECA taxes in the partnership context has persisted for decades. This segment of the article examines some of the major items, from 1950 to the present.

SECA Taxes Start in 1950

Congress introduced SECA taxes in 1950.[7] Distributive shares to *all* partners, both general and limited, were initially subject to such taxes.[8]

Limited Partner Exception in 1977

Things changed when Congress developed a carve-out for limited partners about a quarter-century later. In 1977, Congress enacted the predecessor to Section 1402(a)(13) , which was an exemption from SECA taxes for certain "limited partners."[9] This critical provision states the following: "[T]here *shall be excluded* the distributive share of any item of income or loss of a *limited partner, as such,* other than guaranteed payments described in Section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services."[10]

Understanding why Congress created Section 1402(a)(13) is pivotal. The IRS and several courts have focused on the following portion of the legislative history: "Under [the previous law enacted in 1950], *each partner's share* of partnership income is *includable* in his net earnings from self-employment for Social Security purposes, irrespective of the nature of his membership in the partnership. The bill would *exclude* from Social Security coverage the distributive share of income or loss received by a *limited partner* from the trade or business of a limited partnership. *This is to exclude for [Social Security] coverage purposes certain earnings which are basically of an investment nature* . . . ."[11]

A careful reading of the *entire* legislative history reveals that Congress was concerned in 1977 that (i) unscrupulous persons were selling limited partner interests solely for purposes of allowing individuals who were otherwise ineligible for Social Security benefits to gain access to them, (ii) the limited partners were not investing in the normal sense of the word, not risking money with hopes of getting passive income in return, (iii) the limited partners were not paying significant SECA taxes because of the minimum distributive shares they received, (iv) the limited partners were obtaining unfairly large Social Security benefits to the detriment of all workers financing the system, (v) many government workers were participating in this improper scheme, and (vi) allowing abuse of the Social Security system would trigger widespread ill will.

Readers might ask themselves why anyone would take pro-active steps to expose themselves to SECA taxes. Well, it made sense decades ago, because the SECA tax rate was low (it was 2.25 percent initially and only 7.9 percent in 1977), the individuals only planned to subject a small amount of income to SECA taxes, and the value of the Social Security benefits far outweighed the taxes.[12]

First Proposed Regulations in 1994

After chewing on the matter for about two decades, the IRS issued its first set of proposed regulations about Section 1402(a)(13) in 1994 ("First Proposed Regulations").[13] They contained rules for treatment of limited partners in partnerships, as well as members of limited liability companies ("LLCs") treated as partnerships.[14] The First Proposed Regulations explained that a member of an LLC would be treated as a "limited partner" for purposes of Section 1402(a)(13) , and thereby *not* obligated to pay SECA taxes, if the member met two criteria. First, the member could not be a "manager" of the LLC.[15] Second, the LLC could have been formed as a limited partnership, instead of an LLC, and the member could have qualified as a limited partner, instead of a member.[16]

Second Proposed Regulations in 1997

The IRS decided to revamp its approach after reviewing public comments to the First Proposed Regulations and holding a hearing. In 1997, it withdrew the First Proposed Regulations and replaced them with a new set ("Second Proposed Regulations").[17] This time, the IRS provided guidance covering *all* entities classified as partnerships for federal tax purposes. The updated rules arguably encompassed limited partnerships, LLCs, limited liability partnerships ("LLPs"), and other entities that had emerged since Congress introduced the limited partner exception to SECA taxes 20 years earlier.[18]

New Definition of Limited Partner

The Second Proposed Regulations maintained the exception in Section 1402(a)(13) , but they changed the definition of "limited partner."[19] They stated that an individual was *presumed* to be a limited partner, *unless* (i) he was personally liable for the debts or other claims against the partnership based on his status as a partner, *or* (ii) he had authority under state law to engage in contracts for the partnership, *or* (iii) he participated in the partnership's business more than 500 hours during a year.[20]

The IRS explained that it decided to use these "functional tests" to ensure that different individuals, owning interests in similar entities formed under different state laws, would be treated the same.[21] It then suggested that "functional tests" were necessary because of the proliferation of new types of business entities since Section 1402(a)(13) was enacted in 1977 and because of the evolution of limited partnership statutes in various states. In particular, the IRS observed that state laws back in 1977 ordinarily prohibited limited partners from participating in the operations of the partnership, but that had changed. Thus, even in situations involving a limited partnership formed under state law, the IRS supposedly needed to rely on "functional tests" to ensure that SECA tax consequences were similar for all individuals, regardless of the state in which the relevant partnership was organized.[22]

The Second Proposed Regulations also indicated that an individual who was a "service partner" in a "service partnership" would *not* be a limited partner.[23] For these purposes, the term "service partner" meant a partner who provided services either to a partnership or on behalf of its trade or business.[24] A "service partnership," meanwhile, was a partnership substantially all of whose activities involved the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.[25]

Congressional Moratorium in 1997

Congress stopped the IRS in its proverbial tracks in 1997 by enacting a law expressly prohibiting the IRS from finalizing the Second Proposed Regulations, at least temporarily. The law stated that "[n]o temporary or final regulation with respect to the definition of limited partner under Section 1402(a)(13) . . . . may be issued or made effective before July 1, 1998."[26] This essentially created a moratorium on regulations for about 18 months. If that were not enough, Congress suggested in the legislative history that the IRS should withdraw the Second Proposed Regulations and that only "Congress should determine the tax law governing self-employment income."[27] In summary, Congress halted the IRS in 1997, declaring that the legislative branch (*i.e.*, Congress), and not an agency of the executive branch (*i.e.*, the IRS), had authority to create laws regarding SECA taxes and the definition of limited partner.

Relevant Cases

Several cases and IRS rulings have wrestled with the limited partner exception.[28] The most famous dispute, and arguably the only one with precedential value, was *Renkemeyer, Campbell & Weaver, LLP v. Commissioner.*[29] The taxpayers formed an LLP under Kansas law to operate their law practice

("Law Firm"). The Law Firm had three individual partners, each of whom held a General Manager Partner Interest and an Investment Partner Interest, had equal authority, and was entitled to an equal distributive share. The Law Firm filed timely Forms 1065 showing revenues primarily generated from performance of legal services. Such revenues were distributed to the individual partners, not reported as net earnings from self-employment, and thus not subjected to SECA taxes.

The IRS audited the Law Firm and made some adjustments, the most important of which was recharacterizing the distributive shares as net earnings from self-employment, not protected by the limited partner exception.

The Law Firm challenged the IRS in Tax Court. It argued that its three partners should be treated as limited partners under Section 1402(a)(13) because (i) the were partners in an LLP formed under Kansas law, (ii) their interests were called limited partner interests in the Law Firm's organizational documents, and (iii) each of the partners had limited liability under Kansas law.

The Tax Court disagreed. It began by explaining the major differences between general partners and limited partners, in terms of management power and personal liability. The Tax Court concluded that a limited partner interest "is generally akin to that of a passive investor."[30] The Tax Court went on to explain that the predecessor to Section 1402(a)(13) , which used the phrase "limited partner," was enacted *before* LLPs and other modern entities came into existence. It then recognized that the IRS attempted to address this issue many years ago, in 1997, by issuing the Second Proposed Regulations, but Congress prevented the IRS from finalizing them. Without any additional guidance since then, from Congress or the IRS, the Tax Court indicated that it had to engage in an exercise of statutory interpretation to determine what, exactly, Congress meant when it used the term "limited partner." The Tax Court looked to just one small portion of the legislative history, which stated that Congress introduced Section 1402(a)(13) to exclude from SECA taxes "certain earnings which are basically of an investment nature."[31] The Tax Court held that the Law Firm derived nearly all its revenue by providing legal services, the partners contributed only a nominal amount for their partnership interests, and the distributive shares that they received were not "earnings which are basically of an investment nature." Accordingly, the Tax Court concluded that the partners had to pay SECA taxes on the amounts received, and the exception under Section 1402(a)(13) did not apply.[32]

Compliance Campaign in 2018

The IRS believed that certain taxpayers persisted in improperly taking advantage of Section 1402(a)(13) . According to the IRS, some entities treated as partnerships were classifying *all* members as limited partners, thereby avoiding SECA taxes altogether. Other partnerships were taking a more moderate approach, arguing that only a portion of the distributions were hit by SECA taxes. They accomplished this by labeling small amounts as wages or guaranteed payments to partners, while classifying the majority as distributive shares to limited partners. The IRS initiated a Compliance Campaign in 2018 to scrutinize these practices.[33]

Concept Unit in 2019

The IRS introduced a Concept Unit to its personnel to assist them in implementing the Compliance Campaign. It contained a few noteworthy items. First, the Concept Unit instructed IRS personnel to ignore a long list of Tax Court cases holding in favor of taxpayers, which focused on limited partners and the passive activity loss rules under Section 469 . The Concept Unit stated that "the material participation rules under [Section] 469 have no bearing on whether an individual partner may be subject to self-employment taxes under [Section] 1402."[34] Second, the Concept Unit indicated that taxpayers could rely on the Second Proposed Regulations, despite the fact that they were never finalized.[35]

Loss of Priority Status in 2019

In what cannot be a coincidence, the IRS discretely removed the limited partner and SECA tax issue from its list of priorities, just around the time that it announced its Compliance Campaign. For many years, the IRS's annual “Priority Guidance Plan” expressly stated its intent to issue guidance about the application of the limited partner exception to LLCs and other entities treated as partnerships.[36] This disappeared after 2018, without the IRS issuing the promised guidance.[37]

Presidential Recommendations in 2021

The Biden Administration issued its revenue proposals for 2022 (“Green Book”).[38] One goal was to “rationalize” conflicting rules relating to SECA taxes. The Green Book explained that, because Section 1402(a)(13) only refers to limited partners, questions have arisen regarding whether it encompasses members of LLCs and owners of other entities treated as partnerships.[39] The Green Book contained various proposals aimed at solving the perceived problem. One such proposal was having Congress pass legislation that would cause limited partners and members who “materially participate” in a business to pay SECA taxes on their distributions until reaching a certain threshold.[40]

Threats of More Litigation in 2021

Attorneys from the IRS's National Office announced in 2021 that the IRS planned to continue auditing and litigating SECA tax cases involving limited partners.[41]

Administrative Guidance in 2021

Certain IRS guidance in 2021 seems at odds with many of the actions chronicled earlier in this article. For instance, the current IRS website expressly tells taxpayers the following: “If you're a limited partner of a partnership that carries on a trade or business, only guaranteed payments for services you rendered to, or on behalf of, the partnership are net earnings from self-employment. Limited partners don't pay self-employment tax on their distributive share of partnership income, but do pay self-employment tax on guaranteed payments.”[42]

Two Pending Tax Court Cases

The IRS has advanced its agenda of attacking partnerships that exclude all or part of their distributions from SECA taxes. This article surveys below two disputes that have reached the Tax Court.

First Case

The first case is *Sirius Solutions, LLLP v. Commissioner.*[43] Sirius Solutions, LLLP ("Sirius") is a limited liability limited partnership formed in Delaware in 2002 and governed by a Limited Partnership Agreement. Sirius is a consulting firm with over 200 employees located in various offices. It is managed by Sirius Solutions GP, LLC ("General Partner"), which must act through a Board of Directors. The Limited Partnership Agreement generally prohibits limited partners from participating in management or control of the business. It also forbids limited partners from transacting business for, acting on behalf of, or binding Sirius. Finally, it does not permit any "guaranteed payments" to partners, and Sirius made no such payments.

At the start of 2014, the only year in dispute with the IRS, nine individual limited partners and the General Partner owned Sirius. Two individual partners retired and liquidated their ownership interests during the year, and two others voluntarily withdrew as partners. Thus, at the end of 2014, five individual partners and the General Partner remained. All limited partners made capital contributions to Sirius, some of which were significant. Some partners, in addition to providing cash, contributed services to Sirius.

Sirius made distributions of "net cash flow" to the limited partners in 2014 in accordance with their ownership interests. Such distributions were not linked to, or dependent on, hours worked, revenues generated, or any other formula related to services provided by the limited partners. Indeed, the limited partners who provided few or no services received the same pro-rata distributions. Sirius took the position on its Form 1065 for 2014 that the distributions to the limited partners were not subject to SECA thanks to the exception in Section 1402(a)(13) .

The IRS later audited Sirius and issued a notice of Final Partnership Administrative Adjustment ("FPAA") alleging that (i) the ordinary income generated by the business consulting services should be included in net earnings from self-employment, (ii) the individual partners do not fall within the exception for limited partners, and (iii) the amount of net earnings from self-employment should increase from $0 to approximately $6 million.

Summary Judgment Motion and Opposition

Sirius disagreed with the IRS's position in the FPAA, of course, and challenged it by tendering a Petition to the Tax Court. The parties completed their initial pleadings, the trial was postponed, and Sirius submitted a Motion for Summary Judgment during the reprieve. Sirius asked the Tax Court to determine, without a trial, that distributions to individuals who are limited partners according to relevant state law are excluded from SECA taxes under Section 1402(a)(13) , period. The IRS opposed the Motion for Summary Judgment.

Positions of the Parties

The legal briefing by the parties was extensive and detailed; capturing it all in this article would be unfeasible. The following, therefore, is merely a summary of the main points.

Main Positions by Sirius

Sirius explained that Section 1402(a)(13) generally states that "the distributive share of any item of income or loss of a limited partner" is excused from SECA taxes. The Internal Revenue Code does not define the term "limited partner," and the IRS has never issued any final regulations containing such definition. Therefore, the Tax Court should look to the "ordinary meaning" of the term at the time that Section 1402(a)(13) was enacted, in 1977. The ordinary meaning of limited partner is a person who satisfies the definition of limited partner under relevant state law. A limited partner under the laws of Delaware, the state in which

Sirius was formed, is a person admitted to a limited partnership as a limited partner.

In 1997, Congress “confirmed” that the term limited partner for purposes of Section 1402(a)(13) means a limited partner under applicable state law. It did so by imposing a moratorium against the IRS finalizing the Second Proposed Regulations. The moratorium is “important evidence” that Congress “made a considered judgment to retain the relevant statutory text.” Congress has amended Section 1402 a total of 32 times since adding Section 1402(a)(13) in 1977, and 14 of these times occurred *after* Congress imposed the moratorium in 1997. Despite all those opportunities, Congress never defined the term “limited partner.”

When it comes to statutory interpretation, it is unnecessary to consider outside sources, including legislative history, when a statute is clear on its face. Section 1402(a)(13) is clear in that the exception to SECA taxes applies to limited partners, unless they received guaranteed payments in exchange for services rendered to the partnership. In light of the clarity of Section 1402(a)(13) , the analysis should begin and end with that provision.

Even if it were necessary to turn to outside sources, like legislative history, it “corroborates” that the limited partners in Sirius satisfy the definition. Moreover, the legislative history recognizes the appropriateness of bifurcating distributions (with some being subject to SECA taxes and some not) when a partner is acting as both a general partner and limited partner. Thus, any participation by the limited partners of Sirius in the Board of Directors would not trigger blanket exposure to SECA taxes.

The IRS has issued various administrative rulings and Instructions to returns indicating that the term “limited partner” for purposes of Section 1042(a)(13) means a person defined as such under applicable state law. For instance, the Instructions to Form 1065 for 2014 informed taxpayers that a limited partner was “a partner in a partnership formed under a state law limited partnership law, whose personal liability for debts is limited to the amount of money or other property contributed or is required to contribute to the partnership.” Additionally, the Instructions for Schedule SE (Self-Employment Tax) for 2014 explained that, in calculating self-employment taxes, limited partners “should include only guaranteed payments for services actually rendered to or on behalf of the partnership.” Sirius warned the Tax Court that accepting the IRS's position would effectively mean telling all taxpayers that they cannot rely on express guidance from the IRS in completing returns, which would make compliance virtually impossible for ordinary taxpayers.

The “functional test,” which the Tax Court used in *Renkemeyer*, only applies to modern entities that are *not* limited partnerships under state law. It is improper to utilize the “functional test” in other scenarios. Sirius is a Delaware limited liability limited partnership, whereas *Renkemeyer* involved a special entity treated as a Kansas general partnership.

Decisions in various federal cases support the notion that the term “limited partner” for purposes of Section 1402(a)(13) means a limited partner as defined by state law. Courts frequently look to state law, such as Delaware partnership law, in applying federal tax law.

Delaware law contains a non-exclusive list of activities (*i.e.*, safe harbors), the performance of which by limited partners does not constitute participation in the management or control of the partnership, and does not cause them to lose their status as limited partners. In particular, Delaware law states that a limited partner does not “participate in the control of the business” as a result of the following: (i) Transacting business with a limited partnership or its general partner; (ii) Being a member, manager, agent, or employee of a limited liability company that serves as a general partner of a limited partnership; (iii) Consulting with or advising a general partner or any other person with respect to any matter, including the business of the limited partnership; (iv) Guarantying or assuming any obligations of the limited partnership or general partner; or (v) Convoking, requesting, attending, or participating in a meeting of the partners or limited partners. Therefore, none of the allegations by the IRS about supposed activities of the limited partners in Sirius rises to the level of “management or control” under Delaware law.

There are no genuine disputes of fact regarding material issues in this case; therefore, the Tax Court should be able to resolve matters by ruling on the Summary Judgment Motion. Indeed, the only fact necessary for the Tax Court to rule in favor of Sirius is that the limited partners meet the definition of “limited partner” under Delaware law. The IRS is trying to fabricate a factual dispute to prevent a swift Tax Court ruling on this fundamental issue.

Main Positions by the IRS

The Internal Revenue Code does not define “limited partner” for purposes of Section 1402(a)(13) . The term is nuanced, complex, and based on the functions performed by particular individuals; state law does not determine it. The IRS agrees with Sirius in that the term “limited partner” should be given its “ordinary meaning,” but it disagrees on how it should be determined. The IRS urges the Tax Court to ignore the large number of dictionary definitions introduced by Sirius and, instead, focus solely on its earlier decision in *Renkemeyer.* The IRS insists that such case looked to the legislative history from 1977, concluded that limited partners are equivalent to passive investors, and held that it is necessary to utilize a “functional test” that evaluates the actions and abilities of the partners, not merely their state law titles. The Tax Court has “continued to follow and build upon” the holding in *Renkemeyer* in subsequent cases.

Reports by the Joint Committee on Taxation, Private Letter Rulings, and Instructions to returns do not constitute federal tax authorities, and the Tax Court should ignore them.

The regulatory moratorium in 1997 does not mean that Congress “confirmed” or “made clear” the proper definition of “limited partner.” Rather, the moratorium merely shows that Congress was concerned that the Second Proposed Regulations might contain rules that exceed the IRS's regulatory authority. The only legislative history that might be relevant to this case is that from the time Section 1402(a)(13) was enacted, in 1977, not from 20 years later when the moratorium occurred, in 1997.

Contrary to what Sirius suggests, federal courts do not commonly look to state law in applying federal tax law. In fact, federal law supersedes state law thanks to the Supremacy Clause of the U.S. Constitution. State law controls only when the relevant federal law, by express language or necessary implication, makes interpretation of federal law dependent on state law. Section 1402(a)(13) never mentioned state law, and entity-classification at the federal level is done in accordance with specific tax regulations. If the Tax Court were to accept the contention by Sirius that state law dictates the outcome for purposes of Section 1402(a)(13) , this would spark a bad overall result. Specifically, the IRS urges the Tax Court to ponder 50 different states, with 50 different partnership laws, rendering 50 different results.

The Revenue Proposals for 2022 of the Biden Administration, as found in the Green Book, do not constitute precedent and do not warrant inclusion in the analysis. Even if the Tax Court were to consider the Green Book, Sirius allegedly misinterprets what it signifies. The IRS claims that the presidential suggestions are designed to ensure consistent tax treatment for all business income from pass-through entities, not solely to address the definition of "limited partner" for purposes of Section 1402(a)(13) .

Material facts remain in dispute, such that resolution of the case, without a trial, through a Motion for Summary Judgment, is improper. Moreover, because the "functional test" described in *Renkemeyer* mandates a review of all facts and circumstances, including the actions and abilities of the partners, a trial is necessary to develop more evidence.

Decision by Tax Court

The Tax Court, stingy on details, released an Order in August 2022 denying the Motion for Summary Judgment filed by Sirius. The Order indicated that a comprehensive ruling was premature because material facts remain unresolved with respect to the ordinary meaning of the term "limited partner" as used in

Section 1402(a)(13) , as well as the involvement of the partners in business operations.[44] The dispute, therefore, appears to be heading to trial.

Second Case

Next up is *Soroban Capital Partners, LP v. Commissioner.* [45] The dispute is just getting underway, but the parties have presented the following data to the Tax Court thus far.[46]

Overview from the Pleadings

The entity at issue, Soroban, was a Delaware limited partnership during the relevant years. To be clear, it was a limited partnership, consistent with the terminology in the SECA tax exception in Section 1402(a)(13) , not another type of entity merely treated as a partnership for tax purposes. Soroban was a hedge fund. It provided various services related to the management of private investment funds, including buying and selling securities and other instruments.

The IRS apparently audited Forms 1065 for 2016 and 2017, concluding in its FPAAs that Soroban had understated net earnings from self-employment by approximately $142 million. The IRS did *not* propose any penalties, though.

Soroban disputed the IRS's allegations by filing Petitions with the Tax Court. They indicate that Soroban had one general partner, three limited partners, and 27 individual employees whose work contributed to the profits. Two of the limited partners held their interests in Soroban through single-member LLCs treated as disregarded entities, while one held his interest personally. The Limited Partnership Agreement dictated that (i) only the general partner could manage, operate, and control Soroban, (ii) although the limited partners had to approve certain events related to Soroban before they could occur, the general partner had the “ultimate authority” to take actions or make decisions, (iii) the partners had limited liability, and (iv) the partners would receive allocations of profit and loss pursuant to their ownership percentages. The Petition pointed out that the limited partners had limited liability for any problems stemming from Soroban under Delaware law, too.

The Petitions underscored that everyone respected the limited partnership form. They alleged, in particular, that the general partner performed all management functions, the limited partners did not participate in the management of Soroban “to any extent” in their capacities as limited partners, the limited partners received Schedules K-1 (Partner's Share of Current Year Income, Deductions, Credits, and Other Income) identifying them as limited partners, the general partner paid SECA taxes on its distributive share, and the 27 employees paid federal income taxes on their compensation through withholding.

The Petitions acknowledged that the three limited partners (i) devoted considerable hours to working for Soroban, the general partner, and other affiliates, (ii) held different positions for Soroban, including Managing Partner, Co-Managing Partner, Chief Investment Officer, and Head of Trading and Risk Management, and (iii) were members of the Management Committee. The Petitions explained that Soroban made “guaranteed payments” to the limited partners for providing such services and subjected those payments to SECA taxes. The Petitions further indicated that the other amounts directed to each of the three limited partners (*i.e.*, their distributive shares) did not constitute compensation for services rendered to or on behalf of Soroban, such that they were *not* exposed to SECA taxes.

The IRS, predictably, filed Answers with the Tax Court denying essentially all the allegations Soroban made in its Petitions.

Questioning IRS Motivations

Some have ventured that the IRS has little to lose by attacking Sirius, Soroban and others, regardless of how unjustified it might be, because the IRS wins either way. They suggest that if the IRS prevails in Tax Court, it will declare victory, and if the IRS loses, it will just blame Congress for not updating the law since 1977 and prohibiting the IRS from doing so.[47]

Observations about Bifurcation

Litigation in *Soroban Capital Partners, LP v. Commissioner* likely will involve *many* different factual, legal and procedural issues. Based solely on the Petitions filed with the Tax Court, it appears that one such issue will be bifurcation of amounts received by the limited partners. Below are some observations on that critical matter.

Congressional Approval of Bifurcation

The legislative history shows that Congress expressly contemplated at least one type of bifurcation; that is, different tax treatment in situations where a partner plays two roles, as a general partner and a limited partner. It stated the following about allocations between SECA amounts and non-SECA amounts in that context: “Distributive shares received as a general partner would continue to be covered [by SECA taxes]. Also, if a person is *both a limited partner and a general partner* in the same partnership, [only] the distributive share received as a general partner would continue to be covered [by SECA taxes]. ”[48]

Additional Congressional Approval

Section 1402(a)(13) states that the IRS “shall” exclude from net earnings from self-employment the distributive share of any income “of a limited partner, as such,” other than certain guaranteed payments. This article is not the place for a comprehensive discussion about how courts should construe statutes. It suffices to introduce a few notions to make the point that Congress seemingly approved multiple roles of partners and, by extension, bifurcation.

First, courts have consistently held that when Congress uses the term “shall” in a statute, as it did in Section 1402(a)(13) , it means “must,” not “might” or “should.”[49]

Second, courts have a duty to interpret statutes such that, whenever possible, no provision, clause, sentence, or word in a particular statute becomes superfluous, void or meaningless.[50] Interpreting Section 1402(a)(13) as to ignore the phrase "as such" (meaning "as a limited partner" or "in his capacity as a limited partner") would be inconsistent with the rules of statutory construction.

Third, just as courts ordinarily construe a contract in favor of the party that did *not* draft it, numerous tax cases have held that, in situations involving ambiguity or governmental inaction, tax provisions should be settled in favor of taxpayers.[51] This supports the idea that any uncertainty triggered by the phrase "as such" or by the non-existent definition of "limited partner" should be resolved in favor of the taxpayers.

IRS Initially Approved of Bifurcation

As explained above, the legislative history illustrates that Congress approved of bifurcation in situations where a partner fulfilled two roles, acting as a general partner and a limited partner. The IRS authorized another type of bifurcation in the Second Proposed Regulations. Specifically, it sanctioned differential treatment where a limited partner provided services to the partnership and received a distributive share from the partnership. The Second Proposed Regulations "permit an individual who participates in the trade or business of the partnership *to bifurcate his or her distributive share* by disregarding guaranteed payments for services."[52] The IRS clarified that such bifurcation was allowed only to the extent that the distributive share allocated to the relevant individual was identical to that received by others who qualify as limited partners and who own a substantial interest in the partnership. These rules, concluded the IRS, functioned to exclude from SECA taxes amounts that "are demonstrably returns on capital invested in the partnership."[53]

The Second Proposed Regulations offered an example. It showed a situation in which the IRS accepted that a member of an LLC could receive *both* a guaranteed payment, subject to SECA taxes, and a distributive share, free from such taxes. The example is set forth below in abbreviated form, with several modifications by the author to make it more understandable.[54]

> *Facts.* A, B, and C form LLC under state law to engage in a business that is not a “service partnership.” LLC, which is a partnership for federal tax purposes, allocates all items of income, deduction, and credit to A, B, and C in proportion to their ownership interests in LLC. A contributes $1 for one LLC unit, B contributes $2 for two LLC units, and C contributes $1 for one LLC unit. Each LLC unit entitles its holder to receive 25 percent of tax items of the LLC, including profits. A does not perform services for LLC. Each year, B receives a guaranteed payment of $6 for 600 hours of services rendered to LLC. Each year, C receives a guaranteed payment of $10 for 1,000 hours of services rendered to LLC. C is also manager of the LLC and has the authority to contract on behalf of LLC under state law.[55]
>
> *Treatment of B.* B's guaranteed payment of $6 per year is *included* in net earnings from self-employment. *However*, B is treated as a limited partner with respect to the distribution he receives from LLC because (i) B is not treated as a limited partner solely because B participated in LLC's business for more than 500 hours, and (ii) A is a limited partner who owns a substantial interest with rights and obligations that are identical to those of B. In this example, B's distributive share is a return on B's investment in LLC and not remuneration for B's service to LLC. Thus, B's distributive share attributable to his two LLC units is *excluded* net earnings from self-employment.[56]

IRS Continues Approval of Bifurcation

The Second Proposed Regulations evoke a syllogism: The IRS accepts bifurcation of payments to a limited partner; The IRS has told taxpayers over the years that they can rely on the Second Proposed Regulations, even though they were never finalized; Therefore, taxpayers can bifurcate payments to limited partners, subjecting them to SECA taxes only where necessary.

The preceding logic is rooted in several statements from the IRS. For instance, an IRS official stated at a public event in 2003 that "[if] the taxpayers conform to the latest set of proposed rules [*i.e.*, the Second Proposed Regulations], we generally will not challenge what they do or don't do with regard to self-employment taxes."[57] Likewise, an attorney in the IRS's National Office announced during a conference in 2011 that, despite the holding in *Renkemeyer*, the Second Proposed Regulations had not been withdrawn and taxpayers "could rely" on them.[58] In addition, others have explained that "IRS officials have said many times that the [IRS] will not challenge positions taken by taxpayers who rely on the proposed regulations to determine that a partner's earnings are not subject to self-employment tax."[59] Finally, the IRS's Concept Unit, released in 2019, devotes three pages to the Second Proposed Regulations.[60] It tells IRS personnel that taxpayers "may rely on the [Second] Proposed Regulations [and] the IRS will respect a partner's status as a limited partner if the partner qualifies as a limited partner under the [Second] Proposed Regulations."[61]

Prevalence of Bifurcation

Tax professionals have pointed out that the method utilized by Soroban, of providing limited partners "reasonable compensation" for their services in the form of guaranteed payments, while classifying entrepreneurial profits as distributive shares, is quite common and "nothing more than a self-help remedy that levels the playing field between S corporation shareholders and limited partner status for service providers."[62]

Not a Service Partnership

In various cases and rulings concerning the limited partner exception to SECA taxes, the IRS has emphasized the idea that partners working in "service partnerships" cannot get returns that are "of an investment nature." The IRS solidified its position in the Second Proposed Regulations. They define a “service partnership” as one whose activities substantially consist of performing services “in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.”[63] The Second Proposed Regulations do *not* leave room for expansion of the relevant fields, with phrases like “including,” “among others,” or “for example.” Consequently, Soroban, a hedge fund providing investment services, would *not* fall within the definition of “service partnership,” even if the Second Proposed Regulations had legal authority.

Likely Position by IRS

Notwithstanding all the points discussed above, the IRS probably will argue in *Soroban Capital Partners, LP v. Commissioner* that bifurcation (between guaranteed payments for services rendered and distributive shares) is improper. What would make one think that? Well, the IRS has adopted this position in several cases and administrative rulings over the years.[64] More telling, perhaps, the IRS has challenged bifurcation in another situation, arguably similar to that of Soroban, involving a partnership acting as an investment manager to various funds.

Chief Counsel Advice 201436409 centered on Management Company, which was an LLC treated as a partnership for federal tax purposes.[65] It was the successor to a Subchapter S corporation. Management Company controlled the business of various investment funds, conducted market research, and implemented trading activity. Management Company's primary source of income was management fees paid by the funds.

Several individuals were partners in Management Company. They worked on a full-time basis, providing a wide range of investment-related services. The partners each held “units” in Management Company, pursuant to which they received a distributive share. Management Company bifurcated payments to the partners, classifying certain amounts as guaranteed payments and subjecting them to SECA taxes, while labeling the majority as distributions to limited partners exempt from SECA taxes under Section 1402(a)(13) . Management Company reasoned that it played the same role as the S corporation that it had succeeded, such that it was entitled to continue utilizing the same “reasonable compensation” principles applicable to S corporations.

The IRS indicated that the partners of Management Company performed extensive services, as partners, and generated essentially all the income. Accordingly, such income was “not income which is basically of an investment nature of the sort that Congress sought to exclude from self-employment tax when it enacted the predecessor to Section 1402(a)(13) . ” The IRS also opined that the amounts the partners received were not passive, even though the partners paid more than a nominal amount for their units in Management Company. The IRS further indicated that taxpayers, like Management Company, cannot unilaterally change the character of distributions by simply labeling a portion as guaranteed payments. Finally, the IRS concluded that Management Company was a partnership, not an S corporation, such that it could not rely on the “reasonable compensation” rules.

Conclusion

Two cases focused on the limited partner exception to SECA taxes have reached the Tax Court litigation phase thus far. Many more are on the way, though. This prediction derives from the ongoing Compliance Campaign, rigid positions adopted by the IRS, pervasiveness of partnerships excluding amounts to limited partners based on a law unchanged since 1977, enormous potential tax liabilities, threats of litigation by IRS National Office attorneys, and various cases currently being defended by the author of this article and his firm. One hopes that the Tax Court will hate the “game,” and not the involuntarily “players,” by ruling in favor of Sirius and Soroban, thereby obligating Congress to amend the law and/or the IRS to finalize regulations if they insist on a different result.

[1] This article supplements earlier ones by the same author. *See* Hale E. Sheppard, “Analyzing the Long Journey to Chaos: SECA Taxes, Limited Partner Exception, and Effects of Government Inaction,” 48(6) Journal of Corporate Taxation 3 (2021); Hale E. Sheppard, “Heads the IRS Wins, Tails Taxpayers Lose: Analyzing Inconsistent Positions on the Meaning of 'Limited Partners,'” 49(2) Journal of Corporate Taxation 3 (2022); Hale E. Sheppard, “The Resurgence of IRS Disputes about Which Limited Partners Escape SECA Taxes Thanks to the Section 1402(a)(13) Exception,” 49(1) Journal of Corporate Taxation 18 (2022); Hale E. Sheppard, “New Tax Court Case Shows that the IRS is Getting 'Sirius' about SECA Taxes and the Limited Partner Exception,” 49(6) Journal of Corporate Taxation 13 (2022).

[2] Section 1401(a) and (b); Revenue Ruling 69-184 .

[3] Section 1401(a) and (b). This is the SECA rate from 2020.

[4] Section 1402(a) .

[5] Section 1402(a)(13) .

[6] *Id.*

[7] Congressional Budget Office. The Taxation of Capital and Labor Through the Self-Employment Tax (Sept. 2012), pg. 1.

[8] T.D. 7333 (Dec. 19, 1974); Treas. Reg. § 1.1402(a)-2(d) .

[9] Social Security Amendments of 1977, Public Law No. 95-216, Section 313(b) .

[10] Section 1402(a)(13) (emphasis added).

[11] U.S. House of Representatives, Committee on Ways and Means, Social Security Financing Amendments of 1977, 95th Congress, 1st Session, House Report 702 – Part 1 (Oct. 12, 1977), pg. 11 (emphasis added).

[12] Laura E. Erdman, "Reinterpreting the Limited Partner Exclusion to Maximize Labor Income in the Self-Employment Tax Base," 70(4) Washington and Lee Law Review 2389 (2013) (explaining that the SECA tax rate was merely 7.9 percent and it applied only to the first $16,500 of net earnings).

[13] 59 Fed. Reg. 67253, EE-45-94 (Dec. 29, 1994).

[14] 59 Fed. Reg. 67253, EE-45-94, Proposed Treas. Reg. § 1.1402(a)-18 (Dec. 29, 1994) .

[15] 59 Fed. Reg. 67253, EE-45-94, Proposed Treas. Reg. § 1.1402(a)-18(b)(1) (Dec. 29, 1994) .

[16] 59 Fed. Reg. 67253, EE-45-94, Proposed Treas. Reg. § 1.1402(a)-18(b)(2) (Dec. 29, 1994) .

[17] 62(8) Fed. Reg. 1701 (Jan. 13, 1997); 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96.

[18] 62(8) Fed. Reg. 1701 (Jan. 13, 1997); 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96 (stating that "[t]hese proposed regulations apply to all entities classified as a partnership for federal tax purposes, regardless of the state law characterization of the entity.")

[19] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(g) .

[20] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(h)(2) .

[21] 62(8) Fed. Reg. 1703 (Jan. 13, 1997); REG-209824-96; Preamble – Explanation of Provisions.

[22] 62(8) Fed. Reg. 1703 (Jan. 13, 1997); REG-209824-96; Preamble – Explanation of Provisions.

[23] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(h)(5) .

[24] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(h)(6)(i) .

[25] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(h)(6)(ii) .

[26] Taxpayer Relief Act of 1997, Public Law 105-34, Section 935 (Aug. 5, 1997).

[27] U.S. House of Representatives. Taxpayer Relief Act of 1997, Conference Report, 105th Congress, 1st Session, Report 105-220, July 30, 1997, pg. 765.

[28] *See*, *e.g.*, *Johnson v. Commissioner*, T.C. Memo 1990-461; *Perry v. United States*, T.C. Memo 1994-215; Private Letter Ruling 9432018 ; Private Letter Ruling 9452024 ; Private Letter Ruling 9525058 ; *Norwood v. Commissioner*, T.C. Memo 2000-84; *Riether v. United States*, 919 F. Supp. 2d 1140 (2012); *Howell v. Commissioner*, T.C. Memo 2012-281; Chief Counsel Advice 201436409; Chief Counsel Advice 201640014; *Hardy v. Commissioner*, T.C. Memo 2017-16; *Castigliola v. Commissioner*, T.C. Memo 2017-62; *Joseph v. Commissioner*, T.C. Memo 2020-65.

[29] *Renkemeyer, Campbell & Weaver, LLP v. Commissioner*, 136 T.C. 137 (2011).

[30] *Renkemeyer, Campbell & Weaver, LLP v. Commissioner*, 136 T.C. 137, 147 (2011).

[31] *Renkemeyer, Campbell & Weaver, LLP v. Commissioner*, 136 T.C. 137, 150 (2011) (citing the Social Security Amendments of 1977, Public Law 95-216, Section 313(b)).

[32] *Renkemeyer, Campbell & Weaver, LLP v. Commissioner*, 136 T.C. 137, 150 (2011).

[33] *www.irs.gov/businesses/corporations/lbi-active-campaigns*

[34] Internal Revenue Service. LB&I Concept Unit – Partnerships, Self-Employment Tax and Partners, February 13, 2019, pg. 13.

[35] Internal Revenue Service. LB&I Concept Unit – Partnerships, Self-Employment Tax and Partners, February 13, 2019, pg. 19 (emphasis added).

[36] *See*, *e.g.*, U.S. Treasury Department, Office of Tax Policy and Internal Revenue Service. 2015-2016 Priority Guidance Plan (July 31, 2015), pg. 11.

[37] U.S. Treasury Department, Office of Tax Policy and Internal Revenue Service. 2019-2020 Priority Guidance Plan – Fourth Quarter Update (Sept. 2, 2020).

[38] U.S. Treasury Department. General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals (May 2021).

[39] U.S. Treasury Department. General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals (May 2021), pg. 65.

[40] U.S. Treasury Department. General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals (May 2021), pgs. 66-67. Note the incongruity here. The IRS stated in its Concept Unit that the SECA tax rules in Section 1402(a)(13) and the passive activity loss rules in Section 469 are unrelated. The Biden Administration took the opposite approach in the Green Book, encouraging Congress to pass laws linking the two sets of rules.

[41] Kelley R. Taylor, “Clarity regarding 'Limited Partner' under SECA Remains Elusive,” 2021 Tax Notes Today Federal 112-2 (June 11, 2021).

[42] *www.irs.gov/faqs/small-business-self-employed-other-business/entities/entities-1*; *See also* Internal Revenue Service. 2021

Instructions for Form 1065 (U.S. Return of Partnership Income), pg. 39.

[43] *Sirius Solutions, LLLP v. Commissioner*, Tax Court Docket No. 11587-20. The facts, arguments and issues described in this article derive from the following sources: Notice of Final Partnership Administrative Adjustment dated June 12, 2020; Petition filed September 3, 2020; Answer filed November 11, 2020; Joint Motion for Continuance filed March 8, 2021; First Stipulation of Facts filed June 2, 2021; Motion for Summary Judgment filed June 4, 2021; Brief in Support of Motion for Summary Judgment filed June 4, 2021; Reply in Support of Petitioner's Motion for Summary Judgment and to Petitioner's Brief in Support of Motion for Summary Judgment filed August 13, 2021; Sur-Reply in Opposition of Petitioner's Motion for Summary Judgment and Petitioner's Brief in Support of Motion for Summary Judgment filed September 13, 2021; First Supplemental Stipulation of Facts filed December 3, 2021; and Respondent's Response and Brief in Opposition to Petitioner's Motion for Summary Judgment and to Petitioner's Brief in Support of Motion for Summary Judgment filed December 16, 2021.

[44] *Sirius Solutions, LLLP v. Commissioner*, Tax Court Docket No. 11587-20, Order issued Aug. 8, 2022.

[45] *Soroban Capital Partners, LP v. Commissioner*, Tax Court Docket Nos. 16217-22 and 16218-22.

[46] *Soroban Capital Partners, LP v. Commissioner*, Tax Court Docket Nos. 16217-22 and 16218-22. Petitions dated July 22, 2022, and Answers dated September 15, 2022.

[47] Kristen A. Parillo. “IRS Doubles Down on Limited Partner Exception,” 177 Tax Notes Federal 129 (Oct. 3, 2022).

[48] U.S. House of Representatives, Committee on Ways and Means, Social Security Financing Amendments of 1977, 95th Congress, 1st Session, House Report 702 – Part 1 (Oct. 12, 1977), pg. 40 (emphasis added).

[49] *See*, *e.g.*, *Middle Rio Grande Conservancy Dist. v. Babbitt*, 206 F. Supp. 2d 1156, 1176 (N.M. 2000) ("[W]hen a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command."); *Commonwealth of Pa. v. Weinberger*, 367 F. Supp. 1378, 1381 (D.C. 1973) ("Statutory language that an official 'shall' perform an act has been repeatedly held to be mandatory in nature."); *Campbell v. Pan American World Airways, Inc*., 668 F. Supp. 139, 142 (E.D. N.Y. 1987) ("*Will*, like *shall*, is a mandatory word."); *In re Davenport*, 175 B.R. 355, 358 (E.D. Ca. 1994) ("There is perhaps no less ambiguous word used in statutes than 'shall.' "); *Keith v. Rizzuto*, 212 F.3d 1190, 1193 (10th Cir. 2000) ("It is a basic canon of statutory construction that use of the word 'shall' indicates a mandatory intent."); *Lexecon Inc. v. Milberg*, 523 U.S. 26, 35 (1998) ("The [statute's] instruction comes in terms of the mandatory 'shall,' which normally creates an obligation impervious to judicial discretion."); *In re Barbieri v. Raj Acquisition Corp*., 199 F.3d 616, 619 (2nd Cir. 1999) ("The term 'shall,' as the Supreme Court has reminded us, generally is mandatory and leaves no room for the exercise of discretion by the trial court."); *McMullen v. United States*, 50 Fed. Cl. 718, 725 (2001) ("As a matter of statutory construction, the word 'may' usually connotes permissive discretion, as opposed to the word 'shall' which connotes a mandatory task."); *Ace Prop. & Cas. Ins. Co. v. Federal Crop Ins. Corp*., 357 F. Supp. 2d 1140, 1150 (S.D. Iowa 2005) ("The term 'shall' is mandatory in nature."); *International Data Products Corp. v. United States*, 64 Fed. Cl. 642, 650 (2005) ("It is well settled that 'shall' indicates a command."); *Association of Civilian Technicians v. Federal Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. 1994) ("The word 'shall' generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive."); *Plaut v. Spendthrift Farm, Inc*. 1 F. 3d 1487, 1490 (6th Cir. 1993) ("Where the word 'shall' appears in a statutory directive, Congress could not have chosen stronger words to express its intent that [the specific action] be mandatory."); *Forest Guardians v Babbitt*, 174 F.3d 1178, 1187 (10th Cir. 1999) ("The Supreme Court and this circuit have made it clear that when a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command."); *United States v. Myers*, 106 F.3d

936, 941 (10th Cir. 1997) ("It is a basic canon of statutory construction that use of the word 'shall' indicates a mandatory intent.").

50 *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-539 (1955) ("The cardinal principle of statutory construction is to save and not to destroy. It is our duty to give effect, if possible, to every clause and word of a statute.") (citations omitted); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."); *Crawford v. United States*, 376 F.2d 266, 272 (Ct. Cl. 1967) ("It is a cardinal principle of statutory construction to give effect to every clause, sentence and word of a statute, if possible, rather than to distort the language so as to defeat the plain intent of the Congress.").

51 *See, e.g.*, *United States v, Merriam*, 263 U.S. 179, 187-188 (1923) ("But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer."); *United States v. Maryland Casualty Co*., 49 F.2d 556, 558 (7th Cir. 1931) ("[Tax] statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. Such acts, including provisions of limitation embodied therein, are to be construed liberally in favor of the taxpayer. There must be certainty as to the meaning and scope of language imposing any tax, and doubt in respect to its meaning is to be resolved in favor of the taxpayer.") (citations omitted); *Commissioner v. Bryson*, 79 F.2d 397, 402 (9th Cir. 1935) ("It is familiar doctrine that taxing acts, including provisions of limitation embodied therein [are] to be construed liberally in favor of the taxpayer."); *Holmes Limestone Co. v. United States*, 946 F. Supp. 1310, 1319 (N.D. Ohio 1996) ("These rules of construction guide this court in most situations, however, materially different rules have been adopted for the

interpretation of a revenue statute . . . [A]s a special rule in tax cases, 'if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer.'")

52 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96, Preamble.

53 *Id.*

54 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(i) .

55 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(i)(i) .

56 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(i)(iii) .

57 Allison Bennett. Taxpayers Can Rely on Proposed Regulations for LLC Self-Employment Taxes, Clark Says, 114 Daily Tax Report G-3 (June 13, 2003).

58 Monte A. Jackel. "Has Politics Trumped Policy?" 131 Tax Notes 745 (May 16, 2011); Shamik Trivedi. "After Renkemeyer, Passthroughs Can Still Rely Safely on Proposed Regs, Officials Say," 131 Tax Notes 675 (May 16, 2011).

59 Amy S. Elliott. "Tax Court Decision Could Reignite Debate Over Partnerships and Employment Taxes," Tax Analysts Doc. 2011-5140 (March 11, 2011).

60 Internal Revenue Service. LB&I Concept Unit – Partnerships, Self-Employment Tax and Partners, February 13, 2019, pgs. 19-21.

61 Internal Revenue Service. LB&I Concept Unit – Partnerships, Self-Employment Tax and Partners, February 13, 2019, pg. 19 (emphasis added).

[62] Kristen A. Parillo. “Hedge Fund Protests IRS Position on Limited Partner Exception,” 176 Tax Notes Federal 1749 (Sept. 12, 2022).

[63] 62(8) Fed. Reg. 1702 (Jan. 13, 1997); REG-209824-96; Proposed Treas. Reg. § 1.1402(a)-2(h)(6)(ii) .

[64] *See*, *e.g.*, *Riether v. United States*, 919 F. Supp. 2d 1140 (2012); *Howell v. Commissioner*, T.C. Memo 2012-281; Chief Counsel Advice 201640014; and *Castigliola v. Commissioner*, T.C. Memo 2017-62.

[65] Chief Counsel Advice 201436409.

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