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Kirkland Alert

Fifth Circuit Withdraws Initial *Sirius Solutions* Opinion and Issues New Opinion Holding That "Limited Partner" Means a Partner Who Plays "No Significant Role in Managing or Running a Business"

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On August 12, 2026, the U.S. Court of Appeals for the Fifth Circuit withdrew its January 16, 2026, opinion in *Sirius Solutions, L.L.L.P. v. Commissioner* (now *K Alain L.L.L.P. v. Commissioner*, No. 24-60240) and issued a new opinion concluding that the term "limited partner" under Section 1402(a)(13) of the Internal Revenue Code means a partner who plays "no significant role in managing or running a business." This is a materially different result from the withdrawn *Sirius* opinion. The Fifth Circuit vacated the Tax Court's holding (which relied on the Tax Court's "passive investor" standard from *Soroban Capital Partners LP v. Commissioner*, 161 T.C. 310 (2023)) and remanded for a determination of whether the K Alain partners met the "no significant role" standard.

Key Holding and Reasoning

The Fifth Circuit's *per curiam* opinion, with one dissenting judge, is binding only within the Fifth Circuit (Louisiana, Mississippi and Texas). It holds that the "original public meaning" of "limited partner" in Section 1402(a)(13) — enacted in 1977 — is "a partner who plays no significant role in managing or running a business." This represents a significant departure from the court's withdrawn January opinion, which had held that "limited partner" simply means "a partner in a state-law limited partnership that is afforded limited liability." The new standard moves from a bright-line status test to a factual inquiry, and although the opinion acknowledges that a limited partner "perhaps could participate in certain *non-managerial* aspects of the business," it does not provide meaningful guidance on what those permissible aspects are.

The court explicitly rejects *Soroban* as "divorced from statutory text" and notes the Commissioner's attempt to shift from decades of IRS guidance defining "limited partner" by reference to limited liability alone. The court still does not address whether members of LLPs, LLCs or other non-LP entities may qualify for the exception.

What's Next?

The court denied the government's April 1, 2026, petition for en banc rehearing but, treating that petition as one for panel rehearing, granted panel rehearing and issued this opinion. Either party may petition for en banc rehearing of the new opinion or seek certiorari directly.

In the First Circuit, *Denham Capital Management LP v. Commissioner* (No. 25-1349) was argued on February 5, 2026; the panel ordered supplemental briefing on a threshold jurisdictional question and may resolve the case without reaching the merits on Section 1402(a)(13). In the Second Circuit, *Soroban Capital Partners LP v. Commissioner* (Nos. 25-2079, 25-2250) was argued on June 25, 2026. If either circuit adopts the Tax Court's "passive investor" standard or a variant thereof, a circuit split will be firmly established, increasing the likelihood of Supreme Court review.

Kirkland Involvement

Kirkland partners David Foster, Richard Husseini and JoAnne Mulder Nagjee filed an amicus brief on behalf of the Managed Funds Association in support of the taxpayer's position in *Soroban* before the Second Circuit and the taxpayer's position in *Denham* in the First Circuit. They previously filed a similar amicus brief in support of *Sirius Solutions* before the Fifth Circuit.

If you have any questions about this decision or its implications for your governance structures, please reach out to a member of your Kirkland tax team.

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Suggested Reading

- 21 January 2026 Kirkland Alert Fifth Circuit Rejects Tax Court's "Passive Investor" Standard for the "Limited Partner Exception" to Self-Employment Tax
- 18 December 2025 Kirkland Alert Treasury and IRS Issue New Section 892 Regulations Impacting Sovereign Investors and Fund Sponsors
- 04 December 2025 Kirkland Alert UK Improves Draft Legislation Relating to Taxation of Carried Interest