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Kirkland Alert

Second Circuit Affirms Tax Court in *Soroban*, Holding That the Exercise of Managerial Control Disqualifies a Partner From "Limited Partner" Status

18 September 2026

On September 17, 2026, the U.S. Court of Appeals for the Second Circuit affirmed the Tax Court in *Soroban Capital Partners LP v. Commissioner* and held that a "limited partner" claiming exemption from self-employment tax under Section 1402(a)(13) cannot "run, manage, or control the partnership's business." At the same time, the Second Circuit was careful to note that "[s]o long as the activities in question do not constitute controlling, managing, or running the business, a partner may play a role in the partnership and still qualify as 'limited' under § 1402(a)(13)."

The Second Circuit's opinion (which is binding, when and if it becomes final, in New York, Connecticut and Vermont) provides little guidance on how to determine whether any particular partner's activities rise to the level of controlling, managing, or running a business. The *Soroban* test is articulated differently from the Fifth Circuit's test, which asks whether the partner plays a "significant role in managing or running a business." *See K Alain, L.L.L.P. v. Commissioner*, 184 F.4th 766 (5th Cir. 2026) (formerly known as *Sirius Solutions* and binding, when and if it becomes final, in Texas, Louisiana and Mississippi). For a more detailed discussion of the Fifth Circuit's opinion, see our previous *Alert*.

Soroban — released between the deadlines for partnerships and their partners to file their respective 2025 tax returns — raises pressing and challenging questions for partnerships and their partners in all jurisdictions. Adding further complexity is the possibility that the U.S. Court of Appeals for the First Circuit (which covers Massachusetts, Maine, New Hampshire, Rhode Island and Puerto Rico) is poised to address these issues at any time with an opinion in *Denham Capital Management LP v.*

Commissioner. Partnerships and their partners claiming the benefit of the limited partner exception should reach out to their Kirkland tax team.

Key Holding and Reasoning

After a lengthy historical review, the Second Circuit concluded that the "original meaning" of "limited partner" when Congress enacted Section 1402(a)(13) in 1977 had two features: limited liability and not taking part in running the partnership's business.

The court recognized that limited partners in 1977 could provide some services to the partnership and held explicitly that the provision of some services is not disqualifying: "[M]erely providing services does not necessarily equate to running the business."

In holding that the Soroban partners at issue were not limited partners for self-employment tax purposes, the court observed that they worked full-time for the business, managed its investments, played critical roles in generating its income, sat on all of its governing committees in one of the years at issue, and participated in hiring, firing, promotion and evaluation of employees.

The court addressed the Fifth Circuit's recent decision in *K Alain*, which held that a "limited partner" is "a partner who plays no significant role in managing or running a business." The Second Circuit took the view that, to the extent *K Alain* allows a limited partner to provide some services short of controlling, managing, or running the business, there "appears to be little daylight" between the two circuits' positions. Like the Fifth Circuit's opinion, the Second Circuit's opinion offers little guidance on the boundary between permissible nonmanagerial activities and disqualifying control.

Moreover, neither opinion addresses whether members of LLCs or LLPs treated as partnerships for tax purposes may qualify for the exception if they satisfy the Second Circuit's "does not run, manage, or control" standard.

None of these appellate proceedings is final; there is time remaining for seeking *en banc* rehearing or Supreme Court review in both *K Alain* and *Soroban*.

What's Next?

The deadline, on extension, for filing 2025 partner Forms 1040 is rapidly approaching, and those partners received Schedules K-1 prepared with 2025 Forms 1065 before issuance of the *Soroban* decision. The First Circuit could issue its *Denham* decision at any time, and the time for seeking Supreme Court review in both *Soroban* and *K Alain* will not expire until after the Form 1040 filing deadline. These procedural dynamics, combined with the absence of guidance in the appellate opinions for how to determine what constitutes controlling, managing or running a business, leave many unanswered and challenging questions for partnerships and their partners.

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 positions in each of *Soroban*, *K Alain* and *Denham*.

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.

Authors

Stephen Butler, P.C.

Partner / Austin / Houston

David W. Foster, P.C.

Partner / Washington, D.C.

Richard A. Husseini, P.C.

Partner / Houston

Lee Morlock, P.C.

Partner / Chicago

JoAnne Mulder Nagjee

Partner / Chicago

Donald E. Rocap, P.C.

Partner / Chicago

Brandon Short

Partner / Boston

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Suggested Reading

- 14 August 2026 Kirkland Alert Fifth Circuit Withdraws Initial Sirius Solutions Opinion
- 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