

Tax Insights | December 6, 2023

## Tracking Tax News You Need to Know



### Tax Court Rules on Self-Employment Taxes

The U.S. Tax Court held on Nov. 28 that partners who are limited in name only but otherwise active in a limited partnership are not exempt from the self-employment tax on their business profits. In [Soroban Capital Partners v. Commissioner](#), the court found that Soroban Capital Partners LP, a hedge fund organized as a limited partnership in Delaware, could not claim an exception under Section 1402(a)(13) to exclude ordinary business income distributed to its limited partners from its net earnings from self-employment. Section 1401(a) of the Tax Code imposes a tax on self-employment, and each partner must account separately for their distributive share of the partnership's taxable income or loss. However, Section 1402(a)(13) says income from a "limited partner, as such" can be excluded from net earnings from self-employment. The Tax Court said a "functional inquiry into the roles and activities" of those limited partners must be made in a Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) proceeding, something that Soroban argued the court didn't have jurisdiction to decide. The court emphasized the ordinary meaning of "limited partner, as such" language and said Congress clarified the exception was applied to truly limited partners.

### Supreme Court Set to Hear Tax Case on Meaning of Income

The U.S. Supreme Court is set to hear oral arguments in a case that concerns whether imposing a tax on the past foreign earnings of a company is constitutional and whether income that taxpayers have not realized can be taxed. In [Moore v. United States](#), a retired couple from Washington state challenged a tax bill they had to pay under the mandatory repatriation tax, first imposed by the Tax Cuts and Jobs Act of 2017 as a one-time levy on past foreign corporate profits. The couple was taxed on the profits of an Indian company in which they had invested, although their earnings had not been distributed to them.



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