Brief Redux: Further Analysis on "Limited Partner" in Self-Employment Tax Cases

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I. Introduction

Several cases currently in the courts, including *Sirius Solutions, L.L.L.P. v. Comm'r*, a Fifth Circuit case in which the Tax Law Center at NYU Law filed an amicus brief, present the issue of how to interpret the term "limited partner" under section 1402(a)(13).[2] This section was enacted in 1977 as an exception to the general rule that a partner's distributive share of partnership income from a trade or business is subject to self-employment tax. The section 1402(a)(13) exception applies to "limited partners," a term not expressly defined by federal statute. The key question in these cases is whether partners in a state-law limited partnership who have limited liability under state law but who also perform substantial activities in running the partnership's business qualify as "limited partners" under the statute and are thus able to avoid self-employment taxes on their distributive share of the partnership's business income. The IRS has taken the position, which we supported in our amicus brief, that the meaning of "limited partner" at the time of enactment was a partner whose interest in the partnership was functionally that of a passive investor; therefore, whether a partner qualifies for the exception requires a functional analysis of the nature and extent of the partner's participation in the business.

Many arguments have already been made regarding the best interpretation of the relevant statutory language. This article incorporates the arguments made in our previously filed brief and elaborates on some of those arguments to show further how the text and structure of section 1402(a)(13), as well as the interplay between federal and state law, support interpreting "limited partner" to mean a largely passive investor.

II. Statutory text and structure

a. The guaranteed payments clause

A key part of statutory arguments has been section 1402(a)(13)'s guaranteed payments clause. The clause clarifies that "guaranteed payments" for services performed remain subject to self-employment taxes, even for "limited partners."

The taxpayers in these cases have consistently argued that the mere existence of the guaranteed payments clause means that "limited partner" cannot mean passive investor. As this argument goes, the guaranteed payments clause itself contemplates that a "limited partner" may perform

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[2] *See Sirius Solutions, L.L.L.P. v. Comm'r*, No. 24-60240 (5th Cir. May 20, 2024); *Soroban Capital Partners LP v. Comm'r*, Nos. 16217-22 & 16218-22, 161 T.C. 310 (2023); *Denham Capital Management LP v. Comm'r*, No. 9973-23, T.C. Memo. 2024-114 (December 23, 2024); *Point72 Asset Management, L.P. v. Comm'r*, No. 12752-23 (T.C. petition filed August 11, 2023); *Riverstone Equity Partners LP v. Comm'r*, No. 17512-24 (T.C. petition filed November 5, 2024); *Baker Bros. Advisors LP v. Comm'r*, No. 18014-24 (T.C. petition filed November 15, 2024); *MKP Capital Management, L.P. v. Comm'r*, No. 126-25 (T.C. petition filed January 2, 2025).

some services, and therefore interpreting "limited partner" to mean a passive (i.e., non-service) partner would render that portion of the statute meaningless.

The problem with this reasoning is that it assumes an all-or-nothing approach. It conflates the concept of a partner that meets some functional standard of passivity with a partner who provides zero services whatsoever. But, recognizing the more nuanced understanding of "limited partner" that Congress had in 1977 (discussed below), neither we nor the government have argued for such an approach. Rather, as we have explained, the proper construction of the statute reflects a congressional understanding that some level of activity will not be sufficient to turn off "limited partner" status. Further, this reading is entirely consistent with the general understanding of state law that would have informed Congress's enactment of section 1402(a)(13).[3] State law at the time of the 1977 Act reflected a more nuanced understanding of "limited partner" (and passive status) than taxpayer arguments give it credit for. The guaranteed payments clause, far from being surplusage, reflects that section 1402(a)(13) was tailored to this common understanding of "limited partner."

We have highlighted that the guaranteed payments clause can also be understood as a simple clarification that guaranteed payments are not part of the "distributive share" for purposes of this statute.[4] The taxpayer in *Sirius* has suggested that this reading actually supports its position—i.e., since Congress chose to make guaranteed payments the *only* item that is subject to self-employment tax for a limited partner, the statute must exclude all distributive share items of a limited partner regardless of whether the limited partner provides services.[5] But this is simply a restatement of the "surplusage" argument addressed above.

We agree that Congress chose to make guaranteed payments for services the *only* type of partnership income received by a "limited partner" that is subject to self-employment tax, but that does not answer the question of who qualifies as a "limited partner" in the first place.

b. Interaction with section 1402(a)(10)

Statutory arguments have also focused on other aspects of section 1402(a)'s broader framework. In particular, the taxpayers in *Sirius* have pointed out that Congress used a "no services" standard in section 1402(a)(10) to exclude certain payments from self-employment tax and have argued

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[3] For example, a 1968 treatise on partnership law states that a state-law limited partner is "not barred from performing services for some compensation *other than a share of profits* … But doing so raises the question whether he is taking part in control." Alan R. Bromberg, Crane and Bromberg on Partnership 148 (1968) (emphasis added). In other words, under state law at the time, the limited partner would generally be a passive investor but could provide some services for separate compensation (such as a guaranteed payment) but at the risk of ceasing to be a limited partner. *See also* Joseph J. Basile, Jr., *Limited Liability for Limited Partners: An Argument for the Abolition of the Control Rule*, 38 Vand. L. Rev. 1199 (October 1985) (expressing significant concerns over the state-law definition of "control" as of 1985 and making the point that limited partners could not be sure, even under the expansive safe harbors of RULPA, that certain participation or input in the activities of the partnership would not rise to the level of "control"); Mary E. Brumder, *Investor Protection and the Revised Uniform Limited Partnership Act*, 56 Wash. L. Rev. 99 (December 1980) (highlighting ambiguities in the "control" test under state law, including that some partners had become extremely cautious that even "slight participation" would result in unlimited liability).

[4] *See* Brief of Tax Law Center at NYU Law as Amicus Curiae Supporting Respondent at 11, n.2, *Sirius Solutions*, No. 24-60240 (5th Cir. October 18, 2024); *see also* Tax Law Center, Comment on Potential Guidance Project Addressing "Limited Partner" Status under Section 1402(a)(13) (July 22, 2024) [hereinafter "TLC Comment"].

[5] Reply Brief for the Petitioners-Appellants at 5-6, *Sirius Solutions*, No. 24-60240.

that the lack of similar language in section 1402(a)(13) creates a negative inference that "limited partner" does not mean passive investor.[6]

To the extent this line of argument asserts that failure to use the *same* "no services" language in section 1402(a)(13) means that "limited partner" cannot mean passive investor, it runs into the same problem as the guaranteed payment argument above. That is, it assumes a strict "no services" approach to passive (and thus "limited partner") status that the statute does not require (and that we agree does not apply).[7]

Alternatively, taxpayers may mean to suggest that section 1402(a)(10)'s "no services" language creates an inference that any provision that does not use similar phrasing cannot establish a different standard that depends in part on services provided. But such an inference is weak at best. The use of the limitation "no services" in one provision does not require Congress to use the same construction (or even the word "services") in a separate provision that seeks to establish a substantively different limitation.[8] This is especially true when a separate term—"limited partner"—already existed, the contemporaneous understanding of which accomplished Congress's purpose. Giving effect to each of the statute's terms shows that Congress chose to apply a different, more qualitative standard in section 1402(a)(13).[9]

The taxpayers in *Sirius* have objected strongly to the resulting "spectrum" approach whereby a "limited partner" may perform some, albeit limited, services. They argue that such an approach has "no support in the statutory language."[10] But it is difficult to see how this is true. Giving full effect to each word in the statute (including both the guaranteed payments clause and section 1402(a)(10)) while also accounting for Congress's contemporaneous understanding of "limited partner" (as further discussed below and in our brief) leads directly to such an

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[6] Reply Brief for the Petitioners-Appellants, *supra* note 5, at 7. Section 1402(a)(10) exempts from self-employment tax certain retirement payments, where, among other requirements, the "partner rendered no services" during the taxable year.

[7] A similar point can be made regarding other statutes we have offered as evidence for Congress's understanding of the term "limited partner." That is, taxpayers argue that other Code sections that use the term "limited partner" to refer to a passive investor (e.g., sections 1258 and 469) also allow a "limited partner" to provide some level of services. But we do not argue otherwise—the point is not whether these other rules technically allow a "limited partner" to provide some limited services. The point is that these other rules (and, importantly, statements of Congress made in relation to them) are yet more evidence that Congress has, over a period of time that includes the enactment of section 1402(a)(13), understood the term "limited partner" to mean a broadly, if not exclusively, passive investor. This is highly relevant to determining the ordinary meaning of the term as of 1977.

[8] Sirius suggests that the negative inference is "strengthened" where Congress does not "use the existing language" in a later statute, citing *Gallardo v. Marstiller*, 596 U.S. 420 (2022). Reply Brief for the Petitioners-Appellants, *supra* note 5, at 7. However, that case is not applicable here. In that case, one statute contained "precisely the limitation" that the petitioner sought to read into another statute. *Gallardo*, 596 U.S. at 429. The Court held that the two statutes had different meanings (based on their different drafting) and that the limitation that existed in one could not be read into the other, stating "[t]he complementary provisions concern different requirements; they do not conflict just because one is broader than the other." That is the case here as well—neither we nor the IRS argue that section 1402(a)(10)'s "no services" limitation should be read into section 1402(a)(13). *Gallardo* does not require "complementary provisions [that] concern different requirements" to use the same, or even similar, language.

[9] *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174 (West Group, 1st ed. 2012) (stating that "every word and every provision is to be given effect").

[10] Reply Brief for the Petitioners-Appellants, *supra* note 5, at 6.

interpretation. Even if this so-called "spectrum" approach may be harder to apply than a simple bright-line test, that does not mean it is not the best reading of the statute.

c. Focusing on the literal text

The central issue here is the meaning of the term "limited partner." Accordingly, one may wonder whether focusing on that term alone settles the question. A textualist approach determines the plain meaning of a statute's words by looking to its logic, structure, and textual context; accordingly, textualism supports a broader interpretation of "limited partner" that does not simply follow state law.

In focusing on a statute's words, textualism does not ignore the statute's overall structure and context. To the contrary, textualism relies on the overall "statutory structure" to assess "the words as they would sound in the mind of a skilled, objectively reasonable user of words."[11] A statute's "semantic context"[12] is key—the statute's purpose can be derived from its text "consistently with the other aspects of its context."[13]

The text-based approach should thus not be confused with giving the term "limited partner" a meaning based on state-law designations simply because the literal words match. Absent a definition in the statute that necessarily incorporates state law (or a statutory directive to match the term to the state-law designation), there is no reason a labels-based "literal" approach should override a substantive text-based evaluation of the term's plain meaning. Consistent with Supreme Court precedent, we must look to the statute broadly—its logic and structure—in evaluating its specific words.

We have already seen how the structure of section 1402(a)(13) itself supports this reading, in particular with respect to the guaranteed payments clause. Similarly, the broader textual context of section 1402(a) also supports this reading.[14] This is seen in the discussion of section 1402(a)(10) above, as well as in the broader structure of section 1402(a)'s other exclusions and modifications for investment and other passive types of income but not for income from employment.[15] And most importantly, as our brief discussed in depth, an ordinary understanding of the term "limited partner" in 1977, informed by state law as it existed at the time, was that of a generally passive investor.[16]

In *Gitlitz et al. v. Commissioner*, the Supreme Court reasoned that one cannot sidestep the plain reading of a statute's text by arguing that it creates incorrect or even absurd results as a policy matter.[17] Accordingly, we do not assume that the words "limited partner" in section 1402(a)(13)

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[11] Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction*, 11 Harv. J.L. & Pub. Pol'y 59, 65 (1988).

[12] *See* John F. Manning, *What Divides Textualists from Purposivists?*, 106 Colum. L. Rev. 70, 91 (2006).

[13] Scalia & Garner, *supra* note 9, at 33. *See Gitlitz et al. v. Comm'r*, 531 U.S. 206, 213, 215 (2001) (looking to a statute's "text and structure" as well as its "language and logic" to determine its "plain reading").

[14] *See* Scalia & Garner, *supra* note 9, at 33 (stating that the relevant textual context includes "(1) a word's historical associations acquired from recurrent patterns of past usage, and (2) a word's immediate syntactic setting—that is, the words that surround it in a specific utterance").

[15] *See* Brief of Tax Law Center at NYU Law, *supra* note 4, at 11-12.

[16] *See id.* at 5-8.

[17] *Gitlitz*, 531 U.S. at 219-220; *see also id.* at 221-222 (Breyer, J., dissenting).

could only have meant someone with the state-law designation of limited partner in 1977 and then make a results-oriented policy argument against such an approach. Rather, we look first to the text, logic, and structure of the statute itself to determine the best reading of "limited partner" in accordance with relevant case law, including *Gitlitz*.[18]

III. Legislative purpose and history

Our brief explained how the statute's text and structure support reading "limited partner" to mean a generally passive investor, but an examination of the statute's purpose and history makes this even clearer. Section 1402(a)(13)'s original purpose was not to provide a tax benefit to those who meet some definition of "limited partner," but rather to prevent passive investments in partnerships from generating Social Security benefits. It is difficult to square this purpose and history with an interpretation that allows partners actively managing and running a pass-through business to escape self-employment taxes on earnings from those activities merely because they are classified as limited partners under state law.

Congress stated the primary purpose for the enactment of section 1402(a)(13) clearly:

> Your committee has become increasingly concerned about situations in which certain business organizations solicit investments in limited partnerships as a means for an investor to become insured for social security benefits. In these situations the investor in the limited partnership performs no services for the partnership and the social security coverage which results is, in fact, based on income from an investment.[19]

Congress targeted these arrangements because they were inconsistent with the Social Security program's overall design to "partially replace lost earnings from work."[20] Congress's intent was to ensure, via section 1402(a)(13), that the self-employment tax would apply to "earnings from work" and that Social Security would benefit workers and not mere investors.[21] Effectuating this intent requires the statute to incorporate an inherently functional (and activity-based) definition of "limited partner."

Similarly, the legislative history of the roughly contemporaneous Tax Reform Act of 1976 demonstrates the clear understanding that "limited partners" were passive investors. For example, a Joint Committee on Taxation ("JCT") report prepared for Ways and Means explained that "[t]he limited partnership is generally preferred over the general partnership for tax shelter arrangements because the limited partners, who are passive investors, have limited liability for the debts of or claims against the partnership."[22] Thus, Congress has consistently used and

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[18] Interpreting section 1402(a)(13) to reflect simple state-law labels *does* create incorrect and absurd results as a policy matter, as we have discussed elsewhere, but that is not the primary basis for our argument. *See* Brief of Tax Law Center at NYU Law, *supra* note 4, at 22-24; *see also* TLC Comment, *supra* note 4.

[19] H.R. Rep. No. 95-702, pt. 1, at 40-41 (1977) (emphasis added).

[20] *Id.* at 41.

[21] *See also* New York State Bar Association Tax Section, Comments on the Application of Employment Taxes to Partners and on the Interaction of the Section 1401 Tax with the New Section 1411 8, Report No. 1247 (2011); *Renkemeyer, Campbell & Weaver, LLP v. Comm'r*, 136 T.C. 137, 150 (2011); *Soroban*, 161 T.C. at 316-318, 320-21.

[22] Joint Committee on Taxation, JCS-29-75, Tax Shelters: Use of Limited Partnerships, Etc. 2 (1975) [hereinafter "Tax Shelters Report"]; *id.* at 1 ("A limited partner is, in effect, a passive investor who is not personally liable for

understood the term "limited partner" to mean an investor that is generally passive. Prominent commentaries from practitioners and technical experts, including those we have discussed elsewhere, have consistently done the same.[23] And leading treatises, commentaries, and other sources contemporaneous with the 1977 Act (in addition to those cited above) reflect this understanding.[24] Taxpayers and their supporting amici in these cases have thus taken pains to point out that, as a technical matter, "control" may differ from "participation" and that state-law limited partners could participate in a partnership's business to some degree even under certain 1977 state laws.[25] But focusing on this technicality does little to overcome the significant evidence that Congress (and the broader legal community) understood the term "limited partner," both at the time of the 1977 Act as well as long afterward, to mean a generally passive investor.[26]

IV. Federal vs. state law and state law "labels"

a. Federal vs. state law

As discussed above, the issue here is how to determine the meaning of "limited partner" in section 1402(a)(13). One shorthand for that is whether state law labels—"limited partner" or "limited partnership"—matter for the purposes of section 1402(a)(13) or whether what matters is a functional test.

Both in the Fifth Circuit in *Sirius* and in cases in Tax Court, where *Soroban* is binding,[27] taxpayers have tried to sidestep this question. They contend that the real question is not whether section 1402(a)(13) incorporates state law labels but, rather, whether the ordinary meaning of "limited partner" is a "partner with limited liability in a state-law limited partnership."[28] They frame this as a different question than whether section 1402(a)(13) incorporates state law labels.

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any more than his equity contribution to the partnership (plus his agreed future contributions), even though he may benefit by certain partnership provisions allowing him to deduct losses in excess of that contribution."); Jeffrey D. Sperling & Lawrence Lokken, *The Limited Partnership Tax Shelter: An Investment Vehicle Under Attack*, 29 Fla. L. Rev. 1, 2 (1976).

[23] *See* TLC Comment, *supra* note 4 (citing commentaries); *see also, e.g.*, John R. Marquis, *Current Status of Limited Liability Companies and the Self-Employment Income Tax*, 77 Mich. B.J. 440 (May 1998) (stating that state law in 1977 "penalized a limited partner for excessive participation in the partnership's business affairs by taking away his or her limited liability" and that, as a result, Congress based the section 1402(a)(13) exception "on the fundamental assumption that a limited partner does not participate to any significant degree in the management of the partnership").

[24] *See* Brief of Tax Law Center at NYU Law, *supra* note 4, at 5-8; *see also, e.g.*, Sheldon I. Banoff, *Tax Distinctions between Limited and General Partners: An Operational Approac*h, 35 Tax L. Rev. 1 (Fall 1979) ("[a] limited partner is, by design at least, a passive investor who does not take part in the management of the partnership's business.").

[25] *But see* sources cited at note 3, *supra*. The distinction between participation and control under state partnership laws does not seem to have been particularly clear throughout the 1970s and 1980s.

[26] *See* Scalia & Garner, *supra* note 9, at 33 (highlighting in particular the importance of a word's "historical associations acquired from recurrent patterns of past usage" in determining its plain meaning).

[27] 161 T.C. 310.

[28] *See* Reply Brief for the Petitioners-Appellants, *supra* note 5, at 2; *see also, e.g.*, Simultaneous Opening Brief for Respondent at 58, *Denham Capital Management LP*, T.C. Memo. 2024-114 (No. 9973-23) (explaining why the government believes this position is inconsistent with *Soroban*).

While federal tax law does not generally defer to state-law labels,[29] rights created under state law matter in determining how federal tax law applies. Thus, the most generous reading of this argument is that limited liability is a right created under state law that could matter (or even be dispositive) in determining whether a partner is a "limited partner" under section 1402(a)(13).

But although federal tax law looks to rights created under state law, the taxpayers' proposed definition is flawed in a number of ways. For one, it does not fully reflect the actual ordinary understanding of the term "limited partner" as of 1977, as discussed above. Additionally, (i) it does, in fact, incorporate state law labels; and (ii) it overlooks that contemporaneous federal tax law did not defer to state law in determining whether a partner had "limited liability," let alone whether a partner was a "limited partner."

i. *Taxpayers' definition of "limited partner" relies on deferring to state law labels*

While limited liability is a right created by state law that can matter for federal tax purposes, defining a "limited partner" as a "partner with limited liability *in a state-law limited partnership*" plainly relies on state law labels.[30] In other words, it is an argument that state law controls the determination, at least to some degree. But this argument does not hold.

The Supreme Court has explained that:

> In dealing with the meaning and application of an act of Congress enacted in the exercise of its plenary power under the Constitution to tax income and to grant exemptions from that tax, it is the will of Congress which controls, and the expression of its will, in the absence of language evidencing a different purpose, should be interpreted 'so as to give a uniform application to a nation-wide scheme of taxation.' Congress establishes its own criteria and the state law may control only when the federal taxing act by express language or necessary implication makes its operation dependent upon state law.[31]

Thus, in arguing that state law should control, the taxpayers must show that section 1402(a)(13) "by express language or necessary implication makes its operation dependent on state law." But section 1402(a)(13) does neither.

First, section 1402(a)(13) neither refers to nor incorporates state law. Congress knows how to expressly incorporate state law in tax statutes. For example, in 1958, lawmakers amended section 512(b)(13)(B) to create a rule as to certain trusts that were "limited partner[s] in a partnership created *under the laws of a State [] providing for the creation of limited partnerships*[.]"[32] Such express reference to state law is not present in section 1402(a)(13).

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[29] *Lyeth v. Hoey*, 305 U.S. 188, 194 (1938).

[30] It is also in tension with *Renkemeyer*, 136 T.C. 137. If the section 1402(a)(13) definition of "limited partner" only applies to partners in a "state-law limited partnership," then it does not apply to any LLC members. And arguments that cases dealing with LLC or LLP members are not relevant here (because members of those entities are not "limited partners") assume the question at issue—i.e., that section 1402(a)(13) defers to state-law labels.

[31] *Lyeth*, 305 U.S. at 194 (quoting *Burnet v. Harmel*, 287 U.S. 103, 110 (1932)) (internal citations omitted).

[32] An Act to amend section 512 of the Internal Revenue Code of 1954, Pub. L. 85-367, 72 Stat. 80 (1958) (codified at section 512(b)(13)(B) (1958)) (emphasis added); *see also, e.g.*, section 581 (defining "bank" for certain purposes of the Code in part by explicit reference to state law requirements); section 7701(a) (including several definitions for

Second, the "limited partner" language in section 1402(a)(13) does not incorporate state law by necessary implication. Nothing in the statute's text or history suggests that the statute only functions as intended when a potential patchwork of state laws determines its meaning. Indeed, Congress has demonstrated that it can give "limited partner" meaning without deferring to state law. As we explained in our brief, rather than deferring to state law categorizations, Congress excluded from "limited partner" status for the purposes of section 1256(e)(3)(B) anyone "who actively participates . . . in the management" of the partnership.[33] And Congress presumed a "limited partner" does not "materially participate[]" in the business except as provided in regulations for the purposes of section 469.[34] More broadly, as discussed in Part IV.a.ii., as of 1977, Congress understood "limited partner" to have a uniform, functional meaning that did not depend on the law of the state in which the entity was organized.

ii. *Contemporaneous federal tax law did not fully defer to state law on the question of whether a partner had limited liability, let alone on whether a partner was a "limited partner"*

Sources roughly contemporaneous with the 1977 Act demonstrate that, far from necessarily incorporating state law, federal tax law used the term "limited partner" to refer to a passive investor as a matter of ordinary meaning and congressional intent.

For example, Congress and the IRS were both concerned about the use of state-law limited partnerships as tax shelters.[35] Congressmembers desired to prevent tax-sheltering using state-law limited partnerships that Congress and the IRS viewed as partnerships in name only.[36] Therefore, rejection of state-law labels was consistent not only with general principles of tax law (discussed

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certain types of organizations that explicitly incorporate state law requirements); section 513(f)(2) (defining "bingo game" for purposes of an exempt organization's "unrelated trade or business" and including the requirement that it not "violate state or local law").

[33] Brief of Tax Law Center at NYU Law, *supra* note 4, at 13; section 1256(e)(3)(C)(i); *see also* Tax Reform Act of 1976, Pub. L. No. 94-455, § 207(a)(1), 90 Stat. 1520, 1536-37 (1976).

[34] Brief of Tax Law Center at NYU Law, *supra* note 4, at 14; section 469(h)(2).

[35] *See* Sperling & Lokken, *supra* note 22, at 1 & n.2; Tax Shelters Report, *supra* note 22; Treas. Reg. § 301.7701-2(a)(3) (1960); *see also, e.g.*, 122 Cong. Rec. 19605 (1976) (remarks of Sen. Kennedy) ("Tax shelters use the limited partnership form so that tax 'losses' generated by the partnership activity can be used to reduce taxes on other income of the investor-limited partner. The major reason why tax shelters use the limited partnership rather than a corporation is that an old IRS regulation lets the investor-limited partner take tax deductions in excess of the amount of his actual 'at risk' investment. . . . Investors in limited partnerships and in electing small business corporations—subchapter S corporations—should be treated the same. Like a shareholder, the investor-limited partner has no liability for any of the operations of the business—he cannot be sued for nonpayment of the loan, tort liabilities, wage claims, et cetera. Therefore, the same tax rules should apply to both kinds of investments."); *id.* at 19606-7 (remarks of Sen. Bumpers).

[36] *See, e.g.*, 122 Cong. Rec. 19605 (1976) (remarks of Sen. Kennedy); Tax Shelters Report, *supra* note 22; Treas. Reg. § 301.7701-2(a)(3) (1960); *see also* Brief for the Respondent-Appellee at 41, *Sirius Solutions, L.L.L.P.*, No. 24-60240 (citing *Lynn v. Cohen*, 359 F. Supp. 565, 567 (S.D.N.Y. 1973) (finding that, for the purposes of New York's long-arm statute, a limited partnership was analogous to a corporation rather than a partnership); *Lichtyger v. Franchard Corp.*, 18 N.Y.2d 528, 536 (1966) ("[T]he limited partner is in 'a position analogous to that of a corporate shareholder", an investor who likewise has limited liability and no voice in the operation of an enterprise.")).

in our brief and in Part IV.b.) but also with skepticism about the manipulation of state-law labels to achieve improper tax results.

The entity classification regulations in effect at the time clearly had this concern in mind. And Congress was well aware of these regulations—for example, the 1975 JCT report prepared for Ways and Means, discussed in Part III, explained that these regulations required that, for a state-law limited partnership to qualify for pass-through treatment for federal tax purposes, it had to "be lacking in at least two of the following four characteristics peculiar to corporations: (1) centralization of management, (2) continuity of life, (3) free transferability of interest, and (4) limited liability."[37]

Therefore, as of 1977, Congress was aware that state-law labels did not always produce the appropriate federal tax results when it came to limited partnerships, and that federal tax law could and did override those state-law labels when the labels conflicted with the meaning, purpose, and intent of federal tax law provisions governing limited partners. It is hard to imagine that a Congress with such concerns would have nonetheless intended to defer to state-law labels, especially without expressly saying so, in creating the section 1402(a)(13) exception. On the contrary, a better reading is that Congress did not intend to incorporate state-law labels; indeed, in both 1976 and 1977, it demonstrated a consistent understanding that the state-law limited partnership form was being used to subvert the functional tax results that Congress was trying to achieve through legislation.

Elaboration on the entity classification regulations in effect as of 1977 helps demonstrate just how clearly federal tax law rejected state-law labels for classification of entities (and specifically limited partnerships).

First, the regulations in effect at the time (like the current ones) rejected federal tax classification of entities based on state-law labels.[38] More specifically, the regulations provided rules for determining when a state-law limited partnership would be "classified as an association" and thus ineligible for pass-through treatment.[39] In determining whether an entity lacked the relevant

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[37] Tax Shelters Report, *supra* note 22, at 4. Here, JCT describes the test laid out in TD 6503, 1960-2 CB 409, 25 Fed. Reg. 10928 (November 17, 1960). While there were amendments to the regulations between 1960 and 1977, they did not change the test in Treas. Reg. § 301.7701-2 for determining whether a state-law limited partnership qualified for pass-through treatment. *See* Procedure and Administration Relating to the Tax Classification of Professional Service Corporations, Associations, Trusts, and Other Organizations, 6797, 1965-1 CB 553, 30 Fed. Reg. 1116, 1116-17 (February 3, 1965) (amending Treas. Reg. §§ 301.7701-1(c), adding Treas. Regs. §§ 301.7701-2(a)(5), -2(h), and striking Treas. Reg. § 301.7701-2(g) (Example 1)); Revocation of Certain Provisions for Determining the Tax Classification of Professional Service Organizations, 7515, 1977-2 CB 482, 42 Fed. Reg. 55611, 55611-12 (October 18, 1977) (amending Treas. Regs. §§ 301.7701-1(c), -2 (heading) and revoking Treas. Regs. §§ 301.7701-2(a)(5), -2(h)).

[38] Treas. Reg. §301.7701-1(c) (1977).

[39] Treas. Reg. § 301.7701-2(a)(3) (1960) ("An unincorporated organization shall not be classified as an association unless such organization has more corporate characteristics than noncorporate characteristics. In determining whether an organization has more corporate characteristics than noncorporate characteristics, all characteristics common to both types of organizations shall not be considered. *For example, if a limited partnership has centralized management and free transferability of interests but lacks continuity of life and limited liability, and if the limited partnership has no other characteristics which are significant in determining its classification, such limited partnership is not classified as an association.* Although the limited partnership also has associates and an objective to carry on business and divide the gains therefrom, these characteristics are not considered because they are common to both corporations and partnerships.") (emphasis added).

corporate characteristics, the regulations did not defer to state-law labels, even if a state had adopted the Uniform Limited Partnership Act ("ULPA").[40]

Even the question of whether state-law limited partners had limited liability for federal tax purposes was not fully a matter of state law. In determining whether a state-law limited partnership had too many corporate characteristics to qualify for pass-through treatment, federal law did not simply look to state-law labels on the question of whether owners of the entity had or lacked the characteristic of limited liability. In particular, the regulations stated that "[n]otwithstanding the formation of the organization as a limited partnership, when the limited partners act as the principals of such general partner, personal liability will exist with respect to such limited partners."[41]

b. Uniformity vs. disuniformity

As explained above, the Supreme Court has stated that "in the absence of language evidencing a different purpose," Congress's will "should be interpreted 'so as to give a uniform application to a nation-wide scheme of taxation.'"[42]

The concept of uniform federal tax laws is not primarily a matter of simplicity. It is true that a uniform rule is in many cases simpler for the IRS to administer because the IRS does not have to apply different rules in different states. But at its core, the principle that tax law should have a uniform application has constitutional underpinnings.[43]

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[40] *See, e.g.*, Treas. Reg. § 301.7701-2(c)(4) (1960) ("[L]imited partnerships subject to a statute corresponding to the Uniform Limited Partnership Act[] generally do not have centralized management, but centralized management ordinarily does exist in such limited partnership if substantially all the interests in the partnership are owned by the limited partners."); *Larson v. Comm'r*, 66 T.C. 159, 178-79 (1976); 1979-2 CB 1 (IRS ACQ) (finding that two California limited partnerships lacked continuity of life and limited liability and therefore were taxable as partnerships, but, in finding that the limited partnerships had centralized management, declining to decide the factor solely on the basis of California's adoption of ULPA).

[41] Treas. Reg. § 301.7701-2(d)(2) (1960); *see also* Tax Shelters Report, *supra* note 22, at 5 (describing these regulations as of 1975). The IRS was unsuccessful in specific cases seeking to tax state-law limited partnerships as C corporations under these regulations; however, this was primarily because the facts of the cases showed that the relevant partnerships sufficiently lacked corporate characteristics, not because courts sought to follow state law entity classifications. *See, e.g.*, *Larson*, 66 T.C. 159 (finding that two California limited partnerships lacked continuity of life and limited liability and therefore were taxable as partnerships); *Zuckman v. United States*, 524 F.2d 729 (Ct. Cl. 1975) (finding that state-law limited partnership lacked all four corporate characteristics and was therefore taxable as a partnership); Sperling & Lokken, *supra* note 22, at 2. Accordingly, the cases do not undermine the fact that the law did not defer to state-law labels or the fact that Congress, as of 1977, would not have intended to defer to state-law labels when creating the "limited partner" exception in section 1402(a)(13). Similarly, while Treasury and the IRS subsequently adopted rules providing for an increased flexibility as to pass-through treatment for the purposes of the entity classification rules, *see* Simplification of Entity Classification Rules, 8697, 61 Fed. Reg. 66584 (December 18, 1996), this does not undermine the fact that the 1977 Congress was concerned about abuse involving state-law limited partnerships; legislated against the backdrop of a regulatory regime that did not defer to state law on the status of limited partnerships even in states that had adopted Uniform Limited Partnership Act; and, therefore, would not have intended to defer to state law in a way contrary to the functional result it sought to achieve.

[42] *Lyeth*, 305 U.S. at 194 (quoting *Burnet v. Harmel*, 287 U.S. at 110).

[43] *See id.* The U.S. Constitution specifically requires geographic uniformity for duties, imposts, and excises, U.S. Const. art. I, § 8, cl. 1, but other constitutional elements like the breadth of the congressional taxing power and the

Accordingly, it would be wrong to dismiss an argument that tax law should be uniformly construed as a mere policy argument. And a federal tax law does not somehow lack uniformity just because it requires fact-specific determinations or is difficult to apply.[44] Conversely, a rule that, by its terms, incorporates varied and potentially diverging state laws does not somehow become uniform simply because it might be easy to apply. Uniformity is a rule of construction, not a matter of weighing policy results. This means that an interpretation that depends on state law determinations would not be harmless to uniformity principles even if current state laws were quite similar to each other.[45] Regardless of how similar state limited partnership laws are at any given point in time, they could change in ways that are not possible to predict. The principle of uniform construction of federal tax law suggests that federal tax law should not be at the whims of what states may or may not do in the future.

And because "limited partner" in section 1402(a)(13) should be construed uniformly as a passive investor, in line with the contemporaneous ordinary meaning and congressional intent, self-employment tax liability in this case should not turn on whether 1977 Delaware state law would have allowed the Sirius partners to act as they did in this case without forfeiting limited liability.[46]

Supremacy Clause, U.S. Const. art. VI, cl. 2, may contribute to the broader role of uniformity in construing federal tax laws.

[44] *See* Reply Brief for the Petitioners-Appellants, *supra* note 5, at 26-27.

[45] In actual fact, current state law reflects uptake of the Uniform Limited Partnership Act of 2001 by only about half of states. *See* Limited Partnership Act, Revised, Uniform Law Commission (Map and Enactment History) (last visited January 31, 2025).

[46] As Delaware is often on the forefront of adopting more flexible rules, the state of the law in Delaware as of 1977 may be particularly unlikely to represent the common understanding of "limited partner" at the time.