PENbrief

Senate Considers Carried Interest Taxation Bill

On June 8, 2010, the Chairman of the Senate Finance Committee introduced a carried interest bill that would tax carried interest from an investment services partnership/LLC at effective rates slightly reduced from the House bill passed on May 28 (discussed in our May 21 *KirklandPEN* and June 1 *KirklandPEN*).

Under both the Senate and House bills, 50% of an investment professional's carried interest net income flowing through from a partnership would be treated as ordinary compensation income for 2011 and 2012. Beginning in 2013, the Senate bill would treat 65% of an investment professional's carried interest net income flowing through from a partnership as ordinary compensation, as compared to 75% under the House bill. However, under the Senate bill only 55% of post-2012 carried interest income flowing through from a partnership would be treated as ordinary compensation income if the income relates to an asset held for at least seven years.

All of these rules would also apply to gain on sale of a carried interest partnership interest (i.e., 50% of the gain for 2011 and 2012 and 65% thereafter would be ordinary income), except that the post-2012 reduced 55% rate for gain from an asset held at least seven years apparently does not apply to gain on sale of a carried interest partnership interest.

For carried interest income that otherwise would have been taxable as long term capital gain, this bill would produce an effective federal income tax rate (before taking into account any Medicare tax) of:

- 29.8% for 2011 and 2012 (the same as the House bill) and
- 32.7% for 2013 and later years for assets held less than seven years and 30.8% for assets held seven years or more (compared to 34.7% under the House bill).

The Senate is expected to consider this bill in the next week or so.

If you have any questions about the matters addressed in this *KirklandPEN,* please contact the following Kirkland authors or your regular Kirkland contact.

Jack S. Levin, P.C.
http://www.kirkland.com/jlevin
+1 312-862-2004

Donald E. Rocap
http://www.kirkland.com/drocap
+1 312-862-2266

William R. Welke, P.C.
http://www.kirkland.com/wwelke
+1 312-862-2143

Paul D. Patrow
http://www.kirkland.com/ppatrow
+1 312-862-2219

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
+1 312-862-2000

© 2010 KIRKLAND & ELLIS LLP. All rights reserved.