

## **PEN**brief Senate Introduces Revised Carried Interest Taxation Bill

On June 16, 2010, the Chairman of the Senate Finance Committee introduced a revised carried interest bill that would raise the effective tax rate on net carried interest income in some cases and lower it in others. Under the revised Senate bill, 75% of an investment professional's carried interest net income would be treated as compensation ordinary income ("OI") beginning January 1, 2011. Previous House and Senate bills (discussed in our May 21 [KirklandPEN](#), June 1 [KirklandPEN](#) and June 9 [KirklandPEN](#)) would have treated only 50% of carried interest net income as OI for 2011 and 2012, and a prior Senate bill would have treated only 65% as OI for 2013 and later years.

In a taxpayer-favorable change, the revised Senate bill would treat only 50% of an individual's net carried interest income as OI to the extent the income relates to an asset (e.g., stock in a portfolio company) held for at least five years. This reduced 50% OI recharacterization rate would also apply (subject to extremely opaque

legislative language) to an individual's gain from sale of an interest in an investment services partnership/LLC (the so-called "enterprise tax") held by the selling partner for at least five years to the extent the gain is attributable (1) to an underlying partnership/LLC asset held for at least 5 years (or to all of the gain on such a sale if "substantially all" of the partnership/LLC assets have been held for at least 5 years) and (2) generally to goodwill of the partnership/LLC.

For carried interest income that otherwise would have been taxable as long term capital gain, this bill would produce an effective individual federal income tax rate (before taking into account any Medicare tax) of 34.7% for gain not qualifying for the 50%-5-year recharacterization rate (and hence subject to 75% recharacterization) and 29.8% for gain qualifying for the taxpayer-favorable 50%-5-year recharacterization rate.

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