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July 7, 2010

## **Congress' Carried Interest Proposals Will Affect Family Partnerships**

You may have read or seen news reports about a proposal advanced by Congressman Sander Levin, the current chair of the House Ways & Means Committee to tax income derived from a "carried interest" at maximum ordinary income tax rates. The proposal, which is endorsed by the Obama Administration, is ostensibly aimed at hedge fund and private equity fund managers who receive a share of partnership profits in exchange for managing fund assets. Under rules which have been a part of the partnership tax law for over 60 years and which are designed to facilitate the pooling of capital, assets and sweat equity to create a profitable venture, a party who contributes his expertise and/or management skills in exchange for an interest in partnership profits is entitled to be taxed on his proportionate share of partnership income in the same manner as any other partner. Thus, if the partnership generates taxable income consisting of both ordinary income and long-term capital gains, the service partner (who, more often than not, also has invested capital in the partnership) will be taxed on his proportionate share of each type of income.

Congressman Levin argues that this is just another example of the favoritism extended by the tax laws to Wall Street titans. He points out that the average Joe who renders services in exchange for compensation must pay taxes on this compensation at ordinary income tax rates and is also subjected to employment taxes in the form of FICA, FUTA and Medicare taxes. Why should hedge fund managers who receive a share of profits consisting of long-term capital gain derived from sales of stock and securities managed by the fund be treated any differently? Despite the fact that Mr. Levin glosses over a number of factors when he states the case for his proposal, few of us in Central Florida are terribly concerned about the plight of hedge fund and private equity fund managers whose annual income may run in the seven figures. **What should concern us, however, is the fact that most of the additional tax revenues projected to be derived from this proposal will come not from Wall Street, but from small businesses organized as partnerships, limited partnerships and LLCs, many of which are family partnerships.**

If you want to understand the breadth and likely consequences of the Administration's proposed carried interest legislation that may become law in the near future, read the editorial entitled, "The Family Business Revenue Act", in the June 24, 2010 edition of *The Wall Street Journal*.

The article cuts through the political hyperbole and correctly identifies family partnerships, particularly those holding real estate and securities, as the source of the greatest portion of the revenue that will be raised by this legislation.

If you are concerned about the possible enactment of the carried interest legislation, we encourage you to contact your U.S. Senators and/or Congressional Representatives. Click on these links to locate contact information for your U.S. Senators and Congressional Representatives: [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm?State=FL](http://www.senate.gov/general/contact_information/senators_cfm.cfm?State=FL)

[http://www.house.gov/house/MemberWWW\\_by\\_State.shtml#fl](http://www.house.gov/house/MemberWWW_by_State.shtml#fl)

For more information on this proposed legislation, contact one of the tax attorneys at Dean Mead. <http://www.deanmead.com/PracticeAreas/CorporateTax.asp>

### **Dean Mead's Tax Department:**

Dean Mead's Tax Team provides full service tax planning and advice to businesses and individuals. Our extensive experience and expertise enables us to identify and solve the complex tax problems that are a part of today's business and personal transactions.

### **Business Entity Formation and Operation**

We assist our business clients in selecting and establishing the best legal entity to conduct a business, including partnerships, LLCs, S corporations, and C corporations. Our Tax Team also assists our clients in all aspects of tax planning related to the operation of their businesses (whether a partnership, LLC, S corporation, or C corporation).

### **Mergers and Acquisitions**

A large part of our tax practice involves providing tax advice to our clients in connection with the sale and purchase of businesses, including mergers and other tax-free reorganizations, stock sales, purchases and redemptions, and asset sales and purchases.

### **Real Estate Tax**

Our Tax Team provides a broad array of tax services in connection with real estate transactions, including the structuring of tax-free exchanges (forward, reverse, and build-to-suit exchanges), planning to preserve long-term capital gains in connection with dispositions of real estate, and the structuring of joint venture arrangements for the acquisition and/or development of real properties. Team member Charlie Egerton is recognized as a national expert in the areas of like-kind exchanges and taxation of real estate development.

We have extensive experience negotiating and drafting RESPA Affiliated Business Arrangements for developers so that they may share in the income generated by the title policies and mortgage loans originating from their developments.

### **Tax-Exempt Organizations**

Our Tax Team also represents many tax-exempt organizations. We assist these clients in selecting the initial structure of the organization, qualifying it as tax-exempt and complying with laws governing tax-exempt organizations. We also handle tax issues that surround the

qualification, operations and transactions of the tax-exempt organization. In addition, we provide legal services to tax-exempt organizations that are operating in combination with taxable entities.

### **Tax Controversies**

Our Tax Team handles federal and state tax controversies at every level. We assist clients with audits, administrative appeals, and litigation of tax issues. Our Tax Team is experienced in dealing with both the Internal Revenue Service and the Florida Department of Revenue.

### **Credentials**

Most of our tax attorneys have Master's Degrees in taxation, many are board certified as experts in tax law by The Florida Bar, several members hold CPA certificates, and two members are Fellows of the American College of Tax Counsel. Three members of our Tax Team have been honored as the “Outstanding Tax Lawyer of the Year” by the Tax Section of The Florida Bar. Additionally, several member of our Tax Team have been named as “Outstanding Tax Attorneys” by The *Best Lawyers in America*, *Chambers USA*, *Florida Trend* magazine, and *Orlando* magazine.

### **Areas of Experience**

- Tax Structuring of Mergers and Acquisitions
- Tax Planning for Real Estate Transactions
- Tax Planning for Individuals
- Tax Planning for Partnerships, LLCs, S Corporations, and C Corporations
- Tax Controversies
- Taxation of Agriculture
- Tax Planning for Tax-Exempt Organizations
- State and Local Taxation