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Proposed Legislation Presents Tax Benefits for PTPs and Opportunities for Fund Managers Contemplating Going Public

On December 9th, the House of Representatives passed the House Extenders Act of 2009. The Act contains provisions that would tax "carried interest" as ordinary income. The same provisions would also treat carried interest income as non-qualifying income for purposes of determining whether a publicly traded partnership (a PTP) meets the so-called 90% good income test. Partnerships that (i) satisfy the 90% good income test and (ii) are not registered under the Investment Company Act of 1940, in general, continue to be treated as partnerships and not as Subchapter C corporations for U.S. federal income tax purposes.

Solely for purposes of the good income provision, the Act contains a grandfather rule whereby, with respect to a partnership which is a PTP on the date of the enactment of this provision, carried interest income continues to be qualifying (i.e., good) income for any taxable year of the partnership beginning before the 10th anniversary of enactment. Should the Act pass, and do so in its current form, the grandfather rule will be welcome news for existing PTPs that receive material amounts of carried interest income.

Although the Senate has yet to act on this legislation and its passage is uncertain, the grandfather rule also presents (urgent) planning opportunities for private equity, hedge and other fund managers that contemplate going public as partnerships but who may otherwise have done so only after the passage of the Act. (Note that a similar bill introduced by Congressman Levin in April only required the partnership to be in existence (not be a PTP) on the date of enactment of these provisions in order to benefit from the grandfather rule).

For more information regarding the proposed legislation, please contact a member of the Tax & Benefits Department or your regular Ropes & Gray attorney.