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Carried Interest Unexpectedly Re-emerges for CRE, GlobeSt.com, ft. Joel Shackelford

Joel Shackelford, partner at Kaufman Dolowich & Voluck, LLP. - KD Law - in San Francisco, has been quoted in a *GlobeSt.com article published July 27, 2015. Erika Morphy wrote:*

WASHINGTON, DC—Congress has been trying to change carried interest's tax characterization for years and in some instances, came rather close to suceeding. More recently, the issue died down — at least on the Hill — as the conversation shifted to comprehensive tax reform.

'Carried interest' is safe for now, has been the unspoken message.

Last week that message changed.

On Wednesday the **Internal Revenue Service quietly proposed a rule that would effectively do what numerous proposed acts and measures could not: ban companies such as private equity firms from converting the management fees they receive from their investors — fees that would normally be taxed as ordinary income — into capital contributions invested in their funds. These are taxed at a much lower tax rate.**

As everyone versed on this subject knows, what is applicable to private equity firms is also applicable to commercial real estate companies that use this partnership structure — and so many do — to develop and invest in properties. Joel's comments include:

"The rules could also have the unintended consequence of making brokers more detached from the deals they are structuring," speculates Joel Shackelford, partner at Kaufman Dolowich & Voluck.

"Many investors like it when their brokers have some skin in the game," he tells *GlobeSt.com. "It gives the brokers extra incentive to make sure that a deal is good rather than just doing any deals to make the commission, and it fosters a long-term commitment to the client and the deal. It also aligns the client and the broker on the primary purpose of the deal, which is making thoughtful, profitable investments."*

If you think about it, he says, an investor, especially one who doesn't know that much about real estate market intricacies, wants to work with a broker who is so confident in the deal he's willing to stake his own commission on.

"The regulation seems to create an artificial restraint on the broker's ability to trade on his own expertise without any public policy benefit to the investor," Shackelford. "This regulatory framework also appears to overlook that not every investment goes up in value."