Theft Losses
Theft Losses

- Theft losses
  - Non-Ponzi/investment
- Investment theft losses
  - Ponzi
- Net Operating Loss
Theft Losses

• Taxpayers (individuals) who discover they are the victims of theft losses may deduct their theft losses:
  – On Schedule A (for non-business thefts),
  – If they have met the conditions outlined in Treasury Regulation sections 1.165-1 and 1.165-8, where applicable.

• Rev. Rul. 72-112-Theft defined
Theft Losses

Internal Revenue Code section 165(a) allows a deduction for a loss sustained in the tax year and not compensated for by insurance or otherwise.

Loss is sustained in year in which it occurs:
(1) as evidenced by closed and completed transactions, and
(2) as fixed by identifiable events
Theft Losses due to Ponzi Schemes

Guidance addressing theft losses from Ponzi-type investment schemes

– Rev. Rul. 2009-9
Theft Losses due to Ponzi Schemes

- Revenue Ruling 2009-9: Provides Service position on theft loss deductions from criminally fraudulent investment arrangements.
- For-profit transactions (under IRC 165(c)(2)) are not subject to limitations that are applicable to personal casualty and theft losses (under IRC 165(h)).
Theft Losses due to Ponzi Schemes

- Rev. Proc. 2009-20 provides an optional safe harbor treatment for taxpayers that experienced losses in certain investment arrangements discovered to be criminally fraudulent.

- Applies to specified fraudulent arrangements for which the discovery year is the taxable year beginning after 12/31/07.
Substantiation for Losses

Written documentation to prove eligibility for a theft loss includes, but is not limited to:

- cancelled checks,
- bank statements,
- wire transfers,
- brokerage records,
- statements of account, and
- substantiation of investments/withdrawals etc.
Net Operating Losses (NOL)

NOL = deductions for the year are more than your income for the year

- 2 year carry back for business NOLs
- 3 year carry back for investment theft losses
Net Operating Losses (NOL)

- We’ll discuss three specific carryback opportunities to be kept in mind
- Taxpayer **MAY** elect to forego carryback
- For more NOL information, see Publication 536, *Net Operating Losses (NOLs) for Individuals, Estates, and Trusts*
Resources on Losses

• Common forms, publications and copies of Revenue Rulings, Revenue Procedures and more that explain loss rules can be found on www.irs.gov.

• Can also use the search term: Losses
## What’s New on IRS.gov

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