



OFFICE OF  
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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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The Honorable Jim Webb  
United States Senator  
1501 Lee Highway, Suite 130  
Arlington, VA 22209

Attention:

Dear Senator Webb:

This letter responds to your inquiry dated January 12, 2009, on behalf of your constituent, . asked about the tax treatment of investor losses arising from .

The allegations against . are that . was operating a large scale Ponzi scheme. If these allegations are true, investors may qualify to claim a theft loss deduction. Generally, the law considers investor losses from a Ponzi scheme as arising from theft. Theft generally includes the taking of money or property through blackmail, burglary, embezzlement, extortion, kidnapping for ransom, larceny, robbery, fraud, or misrepresentation. The taking of property must be illegal under the law of the state where it occurred and carried out with criminal intent.

Individuals can deduct a theft loss in the year they discover the theft, except where a reasonable prospect of recovery exists. Whether a reasonable prospect of recovery exists depends on all the facts known at the end of the tax year. Therefore, until individuals can determine the potential recovery with reasonable certainty (either through insurance, asset recovery, or other means), they cannot establish the year of the loss deduction.

We are closely following the developments in this matter, including . As further information develops, we will be in a better position to advise your constituent on the tax consequences with more specificity. In the meantime, the rules for reporting losses arising from theft are in Publication 547, *Casualties, Disasters, and Thefts*. For your convenience, I am enclosing a copy of the publication.

I hope this information is helpful. If you have any questions, please call me or  
, Office of Chief Counsel, Income Tax and Accounting Division, at (  
) .

Sincerely,

John P. Moriarty  
Chief, Branch 1  
(Income Tax and Accounting)

Enclosure