



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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The Honorable Howard L. Berman
Member, U.S. House of Representatives
14546 Hamlin Street, Suite 202
Van Nuys, CA 91411

Dear Congressman Berman:

This letter responds to your inquiry dated December 22, 2008, on behalf of your constituent, . asked about the tax treatment of investor losses arising from

. In particular, he asked whether we will allow taxpayers to amend returns in closed years to claim refunds of taxes paid on income reported from these investments.

was allegedly operating a large scale Ponzi scheme. If this allegation is 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.

We are closely following developments relating to the allegations against . We are aware of questions about the ability of taxpayers to amend returns to remove previously reported "phantom earnings." As further information develops, we will be in a better position to advise on the tax consequences of these issues. 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.

CONEX-104207-09

2

I hope this information is helpful. If you have further questions, please call me or
at () .

Sincerely,

JOHN P. MORIARTY
Chief, Branch 1
(Income Tax and Accounting)

Enclosure