



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

OFFICE OF THE CHIEF COUNSEL

November 4, 2009

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CONEX-144873-09

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Dear _____ :

This letter responds to your inquiry to Senator Richard Shelby dated August 26, 2009. He wrote to us on your behalf and asked us to respond directly to you. We spoke with you by telephone on October 20, 2009, to better understand your request. You ask that we extend the rationale of Revenue Ruling 2009-9 (2009-14 Internal Revenue Bulletin 735) and Revenue Procedure 2009-20 (2009-14 I.R.B. 749) to permit a theft loss deduction to taxpayers who suffer a loss in the value of corporate stock due to fraudulent or criminal acts committed by the corporate officers or directors.

The law does not allow taxpayers to claim such losses as theft losses. See Notice 2004-27, 2004-16 I.R.B. 782. The courts have consistently disallowed theft loss deductions for a decline in the value of stock that resulted from corporate officers misrepresenting the financial condition of the corporation, even when the officers were indicted for securities fraud or other criminal violations. See Paine v. Commissioner, 63 T.C. 736 (1975). According to the courts, investors who purchased their stock on the open market are not victims of theft at the hands of a misrepresenting corporate officer.

The situation described in Revenue Ruling 2009-9 and Revenue Procedure 2009-20 is distinguishable. There, the investor invested directly with the promoter of the fraudulent scheme based on misrepresentations by that promoter. The promoter specifically intended to and did deprive the investor of money by criminal acts. The law permits a theft loss deduction in these circumstances.

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I hope this information is helpful. If you have any questions, please contact _____, Identification Number _____, at _____.

Sincerely,

Andrew J. Keyso
Deputy Associate Chief Counsel
(Income Tax & Accounting)

cc: The Honorable Richard Shelby
Attention: