



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

OFFICE OF  
CHIEF COUNSEL

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The Honorable Dianne Feinstein  
United States Senate  
Washington, DC 20510

Attention:

Dear Senator Feinstein:

This letter responds to your inquiry dated March 9, 2010, on behalf of your constituent, [REDACTED], asked about the income tax consequences to investors arising from [REDACTED] an entity in which he was an investor.

[REDACTED] asserts that the purported investment was a Ponzi scheme and asks what relief is available to investors. We issued guidance in 2009 addressing the income tax treatment of losses from fraudulent investment schemes. Revenue Ruling 2009-9 provides that:

- An investor who was the victim of a fraudulent investment arrangement is entitled to an ordinary theft loss deduction that is not limited by the rules that apply to capital losses.
- Investment theft losses are not subject to limitations that apply to personal casualty and theft losses.
- The theft loss is deductible in the year the fraud is discovered, except to the extent the investor has a reasonable prospect of recovery.
- The amount of the theft loss includes not only the investor's unrecovered investment, but also amounts reported as income from the investment in prior years and reinvested in the fraudulent investment arrangement.

- A theft loss deduction that creates a net operating loss for the investor can be carried back to generate a refund of taxes paid in earlier taxable years, and then forward to later taxable years.

To claim a theft loss deduction in any taxable year, an investor must prove that the loss was due to theft and that no reasonable prospect exists of recovering the investment. Investors often cannot determine their prospect of recovery in the year the loss is discovered. For this reason, Revenue Procedure 2009-20 provides a simplified method for investors to compute and report their losses from fraudulent investment schemes. This revenue procedure generally allows an investor who was a victim of fraud to claim a theft loss in the year the fraud is discovered. For this simplified method to apply someone must have brought a criminal charge against the alleged perpetrator of the scheme. I have enclosed a copy of both the revenue ruling and revenue procedure.

also wrote about like kind exchanges under section 1031 of the Internal Revenue Code and income from the cancellation of indebtedness. Our office spoke directly to \_\_\_\_\_ by telephone regarding those issues.

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

Sincerely,

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

Enclosures (2)