



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

OFFICE OF THE CHIEF COUNSEL

April 5, 2012

Number: **2012-0043**
Release Date: 6/29/2012

CC:ITA:B02
GENIN-101022-12

UIL: 165.00-00

Dear _____ :

This letter responds to your request for information dated January 5, 2012. You asked whether taxpayers may amend their returns to claim an investment theft loss deduction under Rev. Proc. 2009-20, 2009-14 I.R.B. 749, as modified by Rev. Proc. 2011-58, 2011-50 I.R.B. 849.

Section 2.04 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 7, provides that the Internal Revenue Service may issue an "information letter," the purpose of which is to call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. Accordingly, the following discussion is provided for general information purposes only and does not constitute a ruling.

Rev. Proc. 2009-20 provides an optional safe harbor for taxpayers to deduct losses from certain criminally fraudulent investment arrangements, or so-called "Ponzi" schemes. Rev. Proc. 2009-20 allows a "qualified investor" to deduct a "qualified loss" as a theft loss under § 165 of the Internal Revenue Code and provides simplified procedures to determine the amount of the theft loss deduction. See section 5 of Rev. Proc. 2009-20. The procedure defines a qualified loss as a loss resulting from a "specified fraudulent arrangement" in which, as a result of the conduct that caused the loss, the lead figure or figures of the scheme is criminally charged under state or federal law with the commission of fraud, embezzlement, or a similar crime that if proven would meet the definition of theft for purposes of § 165.¹ See section 4.02 of Rev. Proc. 2009-20.

¹ There are additional requirements relating to the type of criminal charge, whether an admission by the lead figure is alleged, and appointment of a receiver or trustee for the fraudulent arrangement or assets of the arrangement being frozen.

Deaths of lead figures in certain Ponzi schemes prevented government authorities from charging them with criminal theft. In these situations, qualified investors would have been unable to meet the definition of a qualified loss in Rev. Proc. 2009-20 solely due to the death of the lead figure. Rev. Proc. 2011-58 provides additional procedures that address these situations.

Rev. Proc. 2009-20 and Rev. Proc. 2011-58 apply to losses for which the discovery year is a taxable year beginning after December 31, 2007. Section 7 of Rev. Proc. 2009-20 and section 4 of Rev. Proc. 2011-58.

To claim a theft loss deduction using the safe harbor, the qualified investor must attach a completed and signed statement provided in Appendix A of Rev. Proc. 2009-20 and a completed and properly marked Form 4684, *Casualties and Thefts*, to the qualified investor's timely filed federal income tax return for the discovery year. See section 6.01(3) of Rev. Proc. 2009-20. Section 6.01(3) of Rev. Proc. 2009-20 does not specify that the required information be included only on an *original* federal income tax return. Section 6.01(3) does not prevent a qualified investor from claiming a deduction under the safe harbor on a timely filed amended return for years before the publication of Rev. Proc. 2011-58 for which the statute of limitations has not expired. Rev. Proc. 2011-58 does not modify section 6 of Rev. Proc. 2009-20.

Investors that did not qualify to claim a theft loss deduction under Rev. Proc. 2009-20 because of the death of the lead figure that would be eligible under Rev. Proc. 2011-58 may have filed income tax returns for the discovery year. The identical effective dates for both revenue procedures reflects a determination that qualified investors may amend previously filed returns to claim a theft loss deduction using the safe harbor provided by Rev. Proc. 2009-20 and modified by Rev. Proc. 2011-58 if the other requirements to use the safe harbor are met.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. If you have any additional questions, please contact _____ or myself at _____.

Sincerely,

Norma C. Rotunno
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)

CC: