



OFFICE OF  
CHIEF COUNSEL

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

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The Honorable David Vitter  
United States Senator  
2201 Kaliste Saloom Road, Suite 201  
Lafayette, LA 70508

Attention:

Dear Senator Vitter:

I apologize for the delay in responding to your inquiry dated April 19, 2013, on behalf of your constituent, . said he is a victim of a Ponzi scheme and that the IRS had not recognized his theft loss.

An employee in our Small Business/Self Employed Division Counsel's office ( ) spoke with and received additional information from him.

invested \$ in with . was indicted in federal court in 2009 for various counts of fraud. pled guilty and is currently in prison. None of investment was recovered, although the sentencing court ordered restitution.

Taxpayers can take a deduction for losses, including theft losses, that they sustained during the taxable year and that insurance or other sources did not compensate them for [section 165(a) of the Internal Revenue Code (the Code)]. A taxpayer claiming a theft loss, however, must prove that the loss resulted from a taking of property or cash that was:

- Illegal
- Done with criminal intent

[Revenue Ruling 2009-9, 2009-14 Internal Revenue Bulletin 735 (April 6, 2009)]

A taxpayer can generally deduct a loss from theft or embezzlement for the tax year in which he or she discovers the loss [section 165(e) of the Code], unless a claim for reimbursement exists for which the taxpayer has a reasonable prospect of recovery [section 1.165-8(a)(2) of the Regulations]. Rather, the law treats the theft loss as sustained in the taxable year when the taxpayer can determine with reasonable certainty if he or she will receive reimbursement.

Taxpayers generally report a theft loss on Form 4684. Amounts on Form 4684 are then transferred to Schedule A (Itemized Deductions) of the Form 1040. If a theft loss deduction is so large that it causes your deductions to be more than your income for the year you claim the loss, then you may have a net operating loss, which can be carried back or carried forward to other tax years to lower your tax in those years [section 172(b)(1)(F) of the Code; Revenue Ruling 2009-9 (Issue 5)].

Based on the \_\_\_\_\_ office's investigation, \_\_\_\_\_ filed an amended return to claim a theft loss for his \_\_\_\_\_ tax return, and applied a carryback of the loss to prior years' tax returns. He then filed additional amended returns for \_\_\_\_\_.

For the \_\_\_\_\_ and \_\_\_\_\_ tax years, \_\_\_\_\_ did not claim a theft loss on his original filed tax returns. However, he later amended both \_\_\_\_\_ and \_\_\_\_\_ tax returns, claiming the theft loss, which he already claimed on the \_\_\_\_\_ amended returns. These amended returns, and the duplicative requests for the theft loss treatment in multiple tax years (\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_), likely delayed the IRS in accepting and recognizing \_\_\_\_\_ theft loss deduction, and resulted in his frustration with the IRS.

The investigation by our \_\_\_\_\_ office found that \_\_\_\_\_ received a refund of \$ \_\_\_\_\_ on \_\_\_\_\_, for the \_\_\_\_\_ tax year, associated with his theft loss. He also received refunds for the \_\_\_\_\_ through \_\_\_\_\_ tax years that also appear to be attributable to his theft loss deduction.

I hope this information is helpful. Please contact me or \_\_\_\_\_ at (\_\_\_\_\_) \_\_\_\_\_ if you need further assistance.

Sincerely,

Thomas D. Moffitt  
Chief, Branch 2  
(Income Tax and Accounting)