

The Ponzi Scheme & Tax Loss

Tax Refunds from Ponzi Scheme Losses Are Extremely Valuable

PRESENTED BY RICHARD S. LEHMAN, P.A.



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I. Ponzi Schemes and Theft Loss

- A. The Theft Loss
- B. Privity of Investor
- C. Character of Loss
- D. 5 Year Statute of Limitations/New Legislation
- E. Limitations on Deductions

II. The Amount and Timing of the Theft Loss

- A. Amount of the Theft Loss
- B. Year of Theft Loss Deduction
- C. Amount of Theft Loss Deduction in Year of Discovery
- D. Amount of Theft Loss Deduction in Later Years and Recoveries in Excess of Theft Loss Deductions
- E. The Johnson Cases — A Case Study

III. Theft Loss vs Amended Returns

- A. Circumstances for Amended Returns – Statute of Limitations
- B. Tax Planning for Amended Returns – 5 Year Statute and Future Income
- C. I.R.S. Position
- D. Interest Income

IV. Claw Backs

- A. Explanation of a Claw Back
- B. Internal Revenue Code §1341

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V. Tax Planning for Maximum Use of Loss

- A. Income Tax Planning

VI. Estate, Gift and Trust — Theft Deduction Rules

I. Ponzi Schemes and Theft Loss

- A. The Theft Loss allows a deduction for loss sustained during the taxable year and not compensated by insurance or otherwise.
- B. Privity of Investor
- C. Character of the Loss
- D. Five Year Loss Carry Back of Net Operating Losses.
- E. The Deduction is not Reduced by the Application of Certain Percentage or Dollar Limitations.

II. The Amount and Timing of the Theft Loss.

- A. The Amount of the Loss (Basis) and Phantom Income.
- B. The Year of the Theft Loss Discovery
- C. Amount of the Loss in the Year of Discovery. The Timing of the Deduction.
- D. Amount of Loss in Later Years

III. Theft of Loss vs. Amended Returns

VII. Estates and Trusts

VIII. Tax Planning

Richard S. Lehman, P.A.

Richard S. Lehman is a graduate of Georgetown Law School and obtained his Master's degree in taxation from New York University. With four years of U.S. Tax Court and Internal Revenue Service experience in Washington D.C., Lehman has built a boutique tax law firm with a national reputation for being able to handle the toughest tax cases, structure the most sophisticated income tax and estate tax plans, and defend clients before the Internal Revenue Service. It regularly works with law firms, accountants, businesses and individuals struggling to find their way through the complexities of the tax law. In short, the firm is a valuable resource to each of these audiences.

Mr. Lehman has been practicing in South Florida for more than 35 years. During Mr. Lehman's career his tax practice has caused him to be involved in an extremely wide array of commercial transactions involving an international and domestic client base.

Comparison of Revenue Procedure/Revenue Ruling

The Determination	The Revenue Procedure & THE SAFE HARBOR	THE LAW & The Revenue Ruling
A Ponzi Scheme Loss is a Theft Loss Deductible as an Ordinary Loss	AGREED - Result similar to Revenue Ruling	AGREED - Result similar to Safe Harbor
The Amount of the Loss (Basis) Includes Phantom Income	AGREED - Result similar to Revenue Ruling	AGREED – Result similar to Safe Harbor
Three -Five Year Loss Carry Back of Net Operating Losses	AGREED - Result similar to Revenue Ruling Applies	AGREED - Result similar to Safe Harbor
The Deduction is not Reduced by the Application of Certain Percentage or Dollar Limitations	AGREED – Result similar to Revenue Ruling	AGREED – Result similar to Safe harbor
Respect for Pass Through Entities	AGREED -Result similar to Revenue Ruling	AGREED - Result similar to Safe Harbor
Year of Discovery Deductibility	Agreement by I.R.S. to a defined set of events	Taxpayer must rely on case law for similar results
Amount of Loss Recognized in Year of Discovery	Agreement by I.R.S. to specific percentage amounts	Taxpayer must rely on case law for similar results
Waiver of the Right to File Amended Returns	Potential Tax Benefit Waived	Potential Tax Benefit Available
Claw backs and the Right to Use Code Section 1341	Potential Tax Benefit Waived	Potential Tax Benefit Available
Interest Paid on Refunds	Potential Economic Benefit Waived	Potential Economic Benefit Available
I.R.S. Administrative Issues	Administrative Ease	Increased Proof Requirement Increased Audit Potential