

# Ponzi Schemes – Casualty Loss Due to Theft



Small Business/Self-Employed Division  
Date 5/2009





# Revenue Ruling 2009-9

- Casualty Loss, not capital loss.
- Itemized deduction not subject to \$100 or % AGI reductions.
- Deducted in year of discovery – unless there is a claim with a prospect of recovery.
- Revenue Procedure provides safe harbor for year of discovery.



# Revenue Ruling 2009-9

- Amount = unrecovered investment & fictitious income
- Safe harbor procedure conditional on not amending prior year returns.
- But theft loss that produces NOL can be carried back and forward.





# Revenue Ruling 2009-9

- NOL Carryover Rules



# Revenue Procedure 2009-20

## OPTIONAL

- Deemed theft loss if :
  - promoter charged with fraud, embezzlement, or similar crime or
  - promoter subject of criminal complaint and there is evidence of admission of guilt by promoter or trustee appointed to freeze assets.



# Revenue Procedure 2009-20

- Safe Harbor Prospect of Recovery
  - Deducted in year of discovery
  - Amount Deducted = 95% of “Qualified” Investment
    - Less actual recovery in year of discovery
    - Less expected recovery from insurance
  - Substitute 75% for 95% if investor is pursuing third party recovery.

# Revenue Procedure 2009-20

- Claiming the Loss



## Part 1. Identification

1. Name of Taxpayer \_\_\_\_\_

2. Taxpayer Identification Number \_\_\_\_\_

## Part II. Computation of deduction

(See Rev. Proc. 2009-20 for the definitions of the terms used in this worksheet.)

Line	Computation of Deductible Theft Loss Pursuant to Rev. Proc. 2009-20		
1	Initial investment		
2	Plus: Subsequent investments		
3	Plus: Income reported in prior years		
4	Less: Withdrawals	( )	
5	Total qualified investment (combine lines 1 through 4)		
6	Percentage of qualified investment (95% of line 5 for investors with no potential third-party recovery; 75% of line 5 for investors with potential third-party recovery)		
7	Actual recovery		
8	Potential insurance/SIPC recovery		
9	Total recoveries (add lines 7 and 8)		( )
10	Deductible theft loss (line 6 minus line 9)		

Part III. Required statements and declarations

1. I am claiming a theft loss deduction pursuant to Rev. Proc. 2009-20 from a specified fraudulent arrangement conducted by the following individual or entity (provide the name, address, and taxpayer identification number (if known)).

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2 I have written documentation to support the amounts reported in Part II of this document.

3. I am a qualified investor as defined in § 4.03 of Rev. Proc. 2009-20.

4. If I have determined the amount of my theft loss deduction under § 5.02(1)(a) of Rev. Proc. 2009-20, I declare that I have not pursued and do not intend to

pursue any potential third-party recovery, as that term is defined in § 4.10 of Rev. Proc. 2009-20.

5. If I have already filed a return or amended return that does not satisfy the conditions in § 6.02 of Rev. Proc 2009-20, I agree to all adjustments or actions that are necessary to comply with those conditions. The tax year or years for which I filed the return(s) or amended return(s) and the date(s) on which they were filed are as follows:

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Part IV. Signature

I make the following agreements and declarations:

1. I agree to comply with the conditions and agreements set forth in Rev. Proc. 2009-20 and this document.

2. Under penalties of perjury, I declare that the information provided in Parts I-III of this document is, to the best of my knowledge and belief, true, correct and complete.

Your signature here \_\_\_\_\_ Date signed: \_\_\_\_\_

Your spouse's signature here \_\_\_\_\_ Date signed: \_\_\_\_\_

Corporate Name \_\_\_\_\_

Corporate Officer's signature \_\_\_\_\_

Title \_\_\_\_\_

Date signed \_\_\_\_\_

Entity Name \_\_\_\_\_

S-corporation, Partnership, Limited Liability Company, Trust

Entity Officer's signature \_\_\_\_\_

Date signed \_\_\_\_\_

# Revenue Procedure 2009-20





Ponzi Schemes

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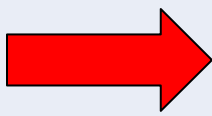
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## Ponzi Scheme Questions and Answers

*Note: the answer to Q3 was updated on April 8, 2009.*

### Q1. I invested my money directly in an investment that turned out to be a Ponzi scheme. How do I deduct my loss?

A. See [Revenue Ruling 2009-9](#) and [Revenue Procedure 2009-20](#).

### Q2. I invested in a Ponzi scheme through an intermediary such as a partnership. How do I claim my loss?

A. Partnerships ordinarily flow through all of their items of income, loss and deduction to their partners and do not pay tax or receive refund at the partnership level. The partnership should provide you with a statement (on Schedule K-1 or a substitute), separately stating flow-through items of the partnership, including the theft loss deduction, which you will then include on your own return. You may need to request an extension to file your return. The partnership should also advise you of its gross business receipts, which will help you determine whether you are eligible to carry back a 2008 theft loss as a net operating loss for up to five years instead of the normal three years for theft and casualty losses. See [Revenue Procedure 2009-19](#).

### Q3. I invested in a Ponzi scheme through a trust. How do I claim my loss?

A. The tax consequences for taxpayers with investments through trusts will vary depending upon the type of trust arrangement. Certain trusts known as grantor trusts, do not ordinarily pay tax or receive refunds at the trust level. Instead, the items of income, loss or deduction of the trust appear on the grantor's own individual tax return. The most common form of grantor trust is a revocable trust, but certain irrevocable trusts may also be treated as grantor trusts, depending on the grantor's powers over the trust. If a trust is not a grantor trust, then it may pay tax or receive a refund at the trust level, depending on the distributions it makes to its beneficiaries. These non-grantor trusts will take the theft loss into account on their own returns, but beneficiaries will generally receive an indirect benefit from the loss, to the extent that the trust allows the trust to make greater tax-free distributions to the beneficiaries.

You may wish to consult a tax professional for assistance.