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## About This Series...

*A periodic update of the tax, due diligence, and business fraud issues for those clients and friends of the firm affected by the alleged fraud of Bernard L. Madoff and his business.*

# MADOFF MATTERS

## Madoff – It's Not Just Income Tax

### Gift and Estate Tax May be Affected

While there has been much written on the income tax aspects of the Bernard Madoff loss, other aspects easy to overlook are the estate and gift tax ramifications.

Many estates may have included Madoff-related investments that, in light of the current situation, may have had an actual value of zero. Because of that, there may have been an overpayment of estate tax based on the actual value of those assets, whether the decedent invested directly with Madoff or through an intermediary entity (partnership or limited liability company, sometimes referred to as a feeder fund). Gifts of interests in Madoff funds also may have been overvalued.

As with income tax, the estate tax statute of limitations is three years from the due date of the return, including extensions. Each day that goes by, another statute of limitations lapses for estates that filed Federal estate tax returns and paid a tax.

The rule for gift tax returns is similar but not exactly the same. The statute for gift tax returns, to the extent that one exists, will begin to lapse for 2005, on April 15, 2009. Action should be taken for any affected returns. Individuals may want to consider filing amended returns for gift taxes or supplemental returns for estate taxes. Technically, there is no such thing as an amended estate tax return; the supplemental return is the only avenue for making a claim. Making the "protective claim" supplemental return should be weighed against extending the examination period for other issues could be raised in the return.

#### Non-Tax Implications

One of the basic tools of estate planning makes use of the decedent's estate exclusion amount, which currently is a property equivalent of \$3,500,000. Wills usually are drafted so that this exclusion amount passes into a trust and the balance passes to a surviving spouse. If the estate held Madoff assets, it is possible that these exclusion trusts (also known as credit shelter trusts or bypass trusts) actually have been under-funded.

For lifetime gift tax planning, the exclusion is a property equivalent of only \$1,000,000. Any gifts that

used that exclusion and contained a Madoff investment should be examined to preserve the more limited lifetime gift exclusion.

#### Not Just Federal

Most people have been concentrating only on the federal income tax effects. The implications of a Madoff investment also apply on the state level. Similar claims should be made with state estate and income tax authorities.

#### Income Tax Ramifications

To the extent that the IRS allows an estate claim as described above, it changes the income tax basis of the asset and it follows, therefore, that amended income tax returns may be required by affected taxpayers and beneficiaries.

*For more information, contact Randi Schuster, principal in charge of trusts and estates, at (212) 697-6900, [RSchuster@hrrllp.com](mailto:RSchuster@hrrllp.com).*

## Notification Requirements of PBGC-Insured Plans

The Pension Benefit Guaranty Corporation ("PBGC") has released guidance for defined benefit pension plans that may have experienced investment losses with Bernard Madoff's investment firm.

If a single-employer plan suffers losses large enough to prevent it from paying benefits when due, they must notify PBGC within 30 days of knowing, or having reason to know, that the event has occurred. The plan administrator should file Form 10 to notify PBGC of such event. Form 10 is available at <http://www.pbgc.gov>.

Multi-employer plans covered by Title IV of ERISA are not obligated to notify PBGC but, if benefits cannot be paid when due, the trustee may have additional legal responsibilities.

*For more information, contact PBGC at (202) 326-4000 ext. 3012 or [Multiemployerprogram@pbgc.com](mailto:Multiemployerprogram@pbgc.com).*



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