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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

Proposed Tax Assistance for Ponzi Victims

U.S. Rep. Kendrick Meek (D-FL) has proposed legislation that would help those affected by Madoff and other Ponzi schemes. The bill would allow victims of a Ponzi scheme to take a theft loss deduction for an amount that can be reasonably estimated by the close of the tax year.

The taxpayer would not have to factor in any possible recoveries. If any money was recovered in future years, the amount of the recovery would be taxable in the year of receipt. Under current law, no deduction is allowed for any portion of the loss that can reasonably be expected to be recovered from insurance, SIPC claims, etc.

The bill also provides for an extended net operating loss ("NOL") carryback period for losses related to Ponzi schemes. It allows for NOL carrybacks up to the lesser of 10 years or the period that the taxpayer had amounts invested in the scheme to which the loss applies.

While proposals of this and similar bills are good signs, it is unclear what chances a bill like this has of being passed, as it would be a unique piece of special-interest legislation.

NYSSCPA Holds Madoff Briefing

Last week, the New York State Society of CPAs held a briefing on the Madoff situation. Among the items discussed:

- The IRS might issue guidance related to Ponzi schemes in general at some point in the near future. No specific time frame was given but the suggestion was that it would be weeks, not months.

- As to a SIPC claim, it was noted that the right to a jury trial is waived if a SIPC claim is filed and that the investor is subject to bankruptcy court jurisdiction; therefore, feeder fund investors (who are less likely to recover from SIPC) may not want to file SIPC claims so as to keep their options open. *HRR strongly advises you to consult your attorney on this matter.*

- The Federal statute of limitations for a clawback is two years; but for New York State purposes, it is six years. The trustee can proceed under either the Federal or respective state laws.

- The danger of filing an amended return, or taking a position about which the IRS has not issued guidance, is that your account could be put on hold. This could then cause any other refunds you sought out to be delayed indefinitely.

- The trustee could try and recover money from those invested in feeder funds but there are many more hurdles involved than with direct investors and it may not be worth it.

For more information on any of the above, contact Stephen Aponte, Senior Tax Manager and a member of the Madoff Response Team, at (212) 697-6900, SAponte@hrrllp.com.



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