

## POLICY & PROCEDURES

# Claiming Bernie Madoff Ponzi Scheme Losses

APRIL 21, 2009

### BE IN A POSITION OF STRENGTH

The New Jersey Division of Taxation has revised its instructions for those taxpayers victimized by the Madoff Ponzi scheme, who have inquired about the proper way to go about deducting the losses suffered on their New Jersey gross income tax returns.

The IRS has issued a recent ruling which states that the Madoff investment losses should be written off in the tax year 2008 as a theft loss. The New Jersey Gross Income Tax Act requires taxpayers to claim losses in accordance with federal accounting methods, including federal basis rules; accordingly, taxpayers should calculate the theft loss deduction as follows: the original investment, plus income reported in prior years, minus distributions received in prior years.

Nevertheless, the New Jersey Gross Income Tax Act does not follow federal law regarding carry forward losses and carryback losses; furthermore, the loss on the 2008 New Jersey return is limited to the category of "Net Gains" or income from disposition of property. Therefore, the loss cannot be taken on a prior year New Jersey gross income tax return.

Given that Madoff investment income reported in prior years is included in the IRS theft loss deduction allowed in the tax year 2008, there is no basis for filing amended returns for prior years. If a taxpayer has already filed a 2008 New Jersey Gross Income Tax return and needs to amend the return to include the Madoff theft loss deduction, the amended return should be sent to: New Jersey Division of Taxation Office of the Director, P.O. Box 240, 50 Barracks Street, Trenton, NJ 08646. The taxpayer should indicate "MADOFF" at the top of the amended return.

*If you have any questions, please contact the WS+B tax department.*

#316

**THE NEW JERSEY DIVISION OF TAXATION HAS ISSUED A REVISED GUIDANCE TO VICTIMS OF THE MADOFF PONZI SCHEME.**

**Questions or comments?**

**E-mail us at [taxbriefs@withum.com](mailto:taxbriefs@withum.com)**



**WithumSmith+Brown, PC**  
Certified Public Accountants and Consultants  
New Jersey, New York, Pennsylvania, Maryland, Florida, Colorado