

Congress of the United States
Washington, DC 20515

February 20, 2009

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
United States Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20004

Dear Commissioner Shulman:

The financial world was recently stunned by the revelations of the Bernard Madoff Ponzi scheme, which resulted in thousands of investors being defrauded of approximately \$50 billion. Virtually overnight, entire savings, retirements, and pension accounts were wiped out, leaving the financial well-being of thousands of families in peril. These victims were not only sophisticated financial professionals, but also ordinary people who believed they were making safe, responsible investments for their future.

With the April 15th tax filing deadline approaching, many victimized families in our home states and across the country are anxiously awaiting direction from the IRS as to how they should treat their losses and prior tax liabilities. In light of the extraordinary circumstances concerning the size and scope of Mr. Madoff's fraud, we believe the IRS must provide some uniform guidance for the treatment of their losses, including guidance on certain tax provisions relating to thefts, the documentation taxpayers will need to submit to certify their losses, and the timing of the deadlines they must meet under current law.

Some preliminary questions which our constituents posed include:

- Does the IRS intend to permit investors defrauded by Mr. Madoff, Bernard L. Madoff Investment Securities LLC, or Madoff feeder groups to file for theft losses? What, if any limits will be imposed in regard to the retroactivity of such claims? Will the IRS consider these losses the result of a for-profit transaction, and therefore subject to appropriate deductibility?
- How will the Madoff-related losses of pensioners be treated by the IRS, including those who have observed all ERISA rules and been diligent in their fiduciary responsibilities? Would the IRS consider waiving maximum contribution restrictions for individuals or employees affected by the fraud, to enable employees to rebuild their lost pensions on an accelerated schedule?
- What will be considered proper documentation to establish losses due to the Madoff fraud? Will filers be penalized or subjected to delays if they are unable to provide necessary documents that they did not receive from Mr. Madoff?
- How will the IRS rule on "phantom" dividend income that was reinvested during the course of this fraud?


- Will victims be eligible for refunds on taxes previously paid if the underlying income never in fact existed? Would there be a procedure in place to correct increased Medicare deductions based on artificially high Adjusted Gross Income? What, if any, limits would be imposed in regard to the retroactivity of such claims?
- Will victims be eligible for base refunds on net operating losses for the years they file for such refunds?

There are clearly many tax questions that need to be addressed for victims of Mr. Madoff's criminal enterprise. As defrauded investors scramble to put their lives back in order, clarity on some of these complex tax issues is understandably a high priority. Therefore, we urge the IRS to establish a special unit tasked to process claims related to the Madoff fraud so victims will have access to information in a timely manner. We would also urge you to consider extending existing filing deadlines as necessary for victims of Mr. Madoff to protect their options for tax relief.

Thank you for your consideration of these important requests. We look forward to your prompt response.


Sincerely,


ROBERT MENENDEZ
United States Senator


CHRISTOPHER J. DODD
United States Senator


WILLIAM PASCRELL
Member of Congress


STEVE ROTHMAN
Member of Congress


JOHN ADLER
Member of Congress