

# ASSET PROTECTION UPDATE

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## STRATEGIES TO PROTECT BUSINESS ASSETS AND PERSONAL NET WORTH



**By Richard J. Alan Cahan, J.D., L.L.M.**

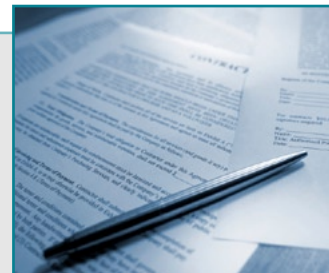
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### **Madoff and Other Ponzi Scheme Investors: IRS Refunds (The “Refunds”) May be at Risk**

*March 23, 2009*

Recently the Internal Revenue Service (the ‘IRS’) issued guidance on claiming Tax Refunds from theft and losses in Ponzi Schemes (including Madoff Investments) discovered in 2008. Revenue Procedure 2009-20 provides a very tax-friendly, safe harbor provision that allows taxpayers to deduct most of the losses from fraudulent investment arrangements (a/k/a “Ponzi Schemes”) discovered in 2008 on the 2008 tax returns. This safe harbor allows taxpayers to get an immediate tax benefit even though the ultimate outcome of the claims may not be known with certainty for several years.

In addition, the IRS issued Revenue Ruling 2009-9 clarifying that those losses are not subject to the limitations on deducting capital losses. Those losses can be carried back by the taxpayers for three years.<sup>1</sup>

Taxes are not the subject of this Asset Protection Update. Rather, our goal is

to alert Madoff and other Ponzi Scheme investors and their advisors that the Refunds which may emanate from losses associated with Ponzi Schemes may not be exempt from the claims of creditors. Unless there is a monumental change in current fraudulent transfer and preferential payment laws, creditors including creditors such as U.S. Trustees and Receivers may seek to take an investor’s interest in some or all of the Refunds based on “claw back” provisions of bankruptcy law.

Any investor who may receive a Refund from losses claimed on Ponzi Schemes should seek advice on methodologies and alternatives to possibly protect the investor’s interest in the Refunds. Investors must note that the Refunds are also exposed to any creditor of an investor regardless of whether that creditor is in anyway associated with cases currently pending on Madoff and other such Ponzi Schemes.

## Madoff and Other Ponzi Scheme Investors: IRS Refunds (The “Refunds”) May be at Risk *(continued)*

Each investor’s case is conditioned upon the facts and circumstances unique to that case.

Investors who may have an interest in the Refunds should seek advice and guidance of

counsel on asset protection matters. Please contact me if you or clients want additional information on asset protection planning matters. I can be reached at 305-262-1012 or [rcahan@becker-poliakoff.com](mailto:rcahan@becker-poliakoff.com).

*<sup>1</sup>All Ponzi Scheme investors should consult with their Federal Income Tax Advisors on issues concerning tax refunds.*

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