back to article

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Printed on page D1

IRS plans some scam relief

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It was a sign of the times: The commissioner of the IRS on Tuesday assured Congress that the agency had come up with new rules to give taxpayers a juicy deduction if they were burned on a Ponzi scheme.

A special task force trotted out the new guidelines, which may get tweaked before they are officially released on April 6, that are supposed to help victims of schemes like those alleged against Sarasota's Arthur G. Nadel, or on a bigger scale, against New York's Bernard Madoff.

"It's obviously not going to make them whole, but it will help," said Jessica Clayton, a tax attorney with Sarasota's Johnson, Browning and Clayton.

Her firm alone has fielded inquiries from 65 separate investors who were left holding the bag when officials involved in Nadel's Scoop Investments announced in mid-January that the $300 million-plus that was supposed to be invested had evaporated.

A receiver appointed by a federal judge has taken over the business and is now trying to figure out where the money went. Nadel has at least 500 victims who are out $300 million or so.

Madoff had nearly 13,000 whose losses could reach $65billion.

"It is unfortunate in these otherwise difficult economic times that we are here today to discuss a situation where thousands of taxpayers have been victimized by dozens of fraudulent investment schemes," IRS Commissioner Doug Shulman told the Senate Finance Committee.

For many victims, like Roger Johnson of Natick, Mass., their investments with Scoop Management on Main Street in Sarasota accounted for at least half of their net worth.

"I didn't know what to expect," said Johnson, who lost hundreds of thousands he entrusted to Scoop. "I didn't know whether I could deduct all of it or part of it."

The bottom line is that the IRS will give a Ponzi scheme victim "safe harbor" if he or she claims a theft loss deduction of 95 percent of his or her net, out-of-pocket losses. But if former clients are suing Nadel or Scoop, they can only claim a deduction of 75 percent of their net investment. The government's logic is that the suit could result in getting some money back, so the deduction should be less.

As with all things IRS, there are big gray areas in Ruling 2009-09 and the accompanying Procedure 2009-20.

One of the biggies is how or whether these generous rules apply to investors in hedge funds that were allegedly structured as limited partnerships. That is what Nadel did, with partnerships such as Valhalla Investment Partners LP.

"It is not as clear-cut for those in the Nadel situation as those who invested with Madoff," said Robert Clarke, a principal at certified public accounting business Kerkering Barberio and Co. in Sarasota.

There is a lot at stake.

Say an investor had made a net, out-of-pocket investment in Nadel's bogus funds that totaled $100,000. If 95 percent of that qualified as a theft loss, that would mean $95,000 in deductions that could be subtracted dollar-for-dollar against regular earned income for the current year. Leftover theft loss deductions can be used against the three previous years and the next 20, too.

That is much bigger IRS medicine than a regular investment loss, called a "capital loss," which can only be applied against capital gains and that include tight dollar limits on how much can be carried forward each year.

A customer does not have to wait to see whether Nadel, who is facing criminal and civil fraud charges, is convicted.

"We know the money is gone," said Clayton, noting that a federal judge has put a receiver in charge of all of the Nadel's and Scoop's assets, however meager. "I think that is enough evidence to support a theft loss deduction."

Bob Parrish, a Longboat Key CPA, acknowledges the ambiguities in the new ruling regarding Nadel's investors, who were supposed to be partners in limited partnerships, but he still sees a green light for them to file for the deduction given the new IRS guidelines.

"It looks to me like they should be able to take this as a theft loss one way or another," Parrish said. "One way it is treated as a separate investment account. The second is if they have a share in a partnership, the LLC."

To make it work -- if there really is a valid partnership -- the federally appointed receiver will have to file paperwork with the IRS that passes the theft loss through to the individual investors, Parrish said.

Because the problems at Scoop arose in January 2009 and not 2008, this year ends up being the year for which investors can claim a theft loss.

"But they could go to their tax advisors and have their quarterly estimates adjusted downward, based upon the theft loss that they expect," Parrish said. "The first one would be due in April."

Clayton strongly recommends that Nadel victims employ a professional accountant in making their claim for a theft loss, even though it may be painful to write the check.

"There is still a lot of gray with this," she said. "It is complicated."

This story appeared in print on page D1