



## Tax Deductions May Be Available for Madoff Investors

Many individuals and entities have been adversely impacted by the apparent loss of their investments with Bernard L. Madoff Investment Securities LLC. As has been reported in the popular press, Madoff investors may be eligible for several valuable tax benefits. It is important to note, however, that a portion of these benefits (including certain tax refunds) may be obtained only by taxpayers who act quickly, *generally before April 15, 2009*. Unlike most investment losses, taxpayers may be able to take *ordinary* loss (as opposed to *capital* loss) deductions in connection with the alleged “Ponzi Scheme.”

By way of background, capital losses are generally less beneficial than ordinary losses in that capital losses may generally be utilized solely to offset capital gains, whereas ordinary losses (subject to applicable limitations) may generally be utilized to offset most types of income—including both ordinary income and capital gains. In addition, unused capital losses may not be carried back and utilized to offset income for prior tax years.

The Internal Revenue Code of 1986, as amended, provides that individual taxpayers may be eligible for ordinary loss deductions for business losses, losses incurred in a transaction entered into for profit, and nonbusiness losses that arise from casualty or theft. If characterized as a nonbusiness loss that arises from casualty or theft (as opposed to a business loss or a loss in connection with a transaction entered into for profit), there are certain limits on available deductions (e.g., the first \$100 of losses are disallowed, and losses may be taken solely to the extent that the

amount of the loss exceeds 10 percent of the taxpayers “adjusted gross income” for the tax year in which the loss is sustained).

There are many strategic issues that must be addressed when dealing with losses incurred in connection with a Madoff investment, including:

- The nature and amount of the loss sustained (business, for-profit activity, or nonbusiness);
- The proper year for reporting the loss;
- The possibility of filing amended returns to recharacterize taxable interest reported in prior years for tax years that are not barred from the 3-year statute of limitations (e.g., the 2005 tax year will close for many taxpayers on *April 15, 2009*); and
- The ability of investors to carry back for up to 3 years and/or carry forward losses that exceed their taxable income in the year the loss is sustained as a net operating loss (regardless of whether actually incurred in connection with a trade or business).

Time is of the essence if you or one of your clients has been adversely impacted by an investment with Madoff. In some cases, the proper course of action will be to file amended income tax returns for 2005, 2006, and 2007 (as well as the regular 2008 tax return) by *April 15, 2009*. The members of Blank Rome’s Business Tax Group and Private Client Group are available to provide additional information and assist in addressing the strategic issues discussed above. ■

### Business Tax Group

Joseph T. Gulant, Practice Chair  
212.885.5304 • JGulant@BlankRome.com

Sarah S. Barris  
215.569.5360 • Barris@BlankRome.com

Daniel R. Blickman  
215.569.5373 • Blickman@BlankRome.com

Robert M. Broder  
215.569.5717 • Broder@BlankRome.com

Megan A. Christensen  
202.772.5897 • Christensen@BlankRome.com

Susan A. Cobb  
202.772.5859 • Cobb-S@BlankRome.com

R. Todd Faciana  
215.569.5638 • Faciana@BlankRome.com

Robert P. Harrill, Jr.  
215.569.5743 • Harrill@BlankRome.com

Cory G. Jacobs  
215.569.5481 • Jacobs-C@BlankRome.com

David M. Kuchinos  
215.569.5729 • Kuchinos@BlankRome.com

Harold N. Pappas  
212.885.5370 • HPappas@BlankRome.com

Michael J. Semes  
215.569.5476 • Semes@BlankRome.com

Barry E. Sweet  
215.569.5722 • Sweet@BlankRome.com

Justin U. Trakimas  
215.569.5659 • Trakimas@BlankRome.com

### Private Client Group

Lawrence S. Chane, Practice Chair  
215.569.5721 • Chane@BlankRome.com

Gregory K. Black  
212.885.5229 • GBlack@BlankRome.com

Herbert Bockstein  
212.885.5312 • HBockstein@BlankRome.com

Gina A. Crossey  
215.569.5492 • Crossey@BlankRome.com

Bernard Glassman  
215.569.5571 • Glassman@BlankRome.com

Maira A. Jabir  
212.885.5598 • MJabir@BlankRome.com

Michael H. Leeds  
561.417.8120 • Leeds@BlankRome.com

Robert E. Madden  
202.772.5857 • Madden@BlankRome.com

Leonard P. Nalencz  
215.569.5719 • Nalencz@BlankRome.com

Shari J. Odenheimer  
215.569.5761 • Odenheimer@BlankRome.com

Alexis Krotec Peskin  
215.569.5529 • Peskin@BlankRome.com

Mary-Noelle Rasi  
215.569.5674 • Rasi@BlankRome.com

Morey S. Rosenbloom  
215.569.5599 • Rosenbloom@BlankRome.com

Peter C. Valente  
212.885.5320 • PValente@BlankRome.com