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## The Madoff Tax Advantage

By [STEPHEN J. DUBNER](#)

I just received the following e-mail from my accountants, who have several clients invested with **Bernard Madoff**. They are passing along some year-end tax advice that contains at least a sliver of good news:

Taxpayers who invested in Bernard L. Madoff Investment Securities LLC directly, or through a fund of funds, have a loss that is most probably categorized as a theft loss for tax purposes. This loss has a more favorable tax treatment than theft losses of personal non-business property. Theft loss is determined and applied to get you back taxes for the current year of loss and the three years prior. These losses remain available beyond that four year period, and they can be carried forward for 20 years...

*Income for taxpayers who received tax reports from Madoff during the last several years has most likely been overstated, resulting in taxes being paid that should not have been paid. Those taxes should be refunded. The inter-relationship of carrying back theft losses and amending those years during which income was overstated is extremely complex and requires professional advice from tax practitioners skilled and experienced in these matters. Furthermore, in many cases, there will be years affected that are closed by the three year statute of limitations. We will endeavor to use special Internal Revenue Code sections to secure tax benefits from closed years where excessive taxes were paid by clients.*

While many advisers are focused on how many dollars can be retrieved for victimized clients, we are also focused on the manner in which we pursue refunds. We may use alternative methods that will give our clients the best opportunity to receive monies quickly and, in the event of challenge by taxing authorities, the best chance of prevailing.

There are many other special situations not mentioned (e.g., how to deal with partnership interests, Roth IRAs) which we would be happy to address on an individual basis. Each state may treat the losses differently, therefore our discussion has been confined exclusively to federal tax treatment. We have established a special task force devoted to assisting clients with these complex tax issues and to help guide them through the process of restoring some of the wealth that was taken away from them by Bernard L. Madoff.

It should also be noted that my accountant, when I spoke to him the other day about routine end-of-year tax issues — I was thankfully never invited to invest with Madoff — said that his firm has never been busier. Just another reminder that an economic cloud, even as thick and black as our current one, does have **the occasional silver lining**, at least for someone.

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