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## **Poker Ponzi Scheme May Net Deduction**

September 25, 2011

Recently the U.S Attorney for the Southern District of NY referred to one of the poker site as a “ponzi scheme”. The use of this specific language may be of tax benefit to poker players who have as of this moment be unable to withdraw funds for their player accounts.

The use of the words “ponzi scheme” have a technical implication in U.S. income tax cases, going back to 1972, in Tharp TC Memo 1972-10. The U.S. Tax Court in an interesting decision held that even though the activity of the taxpayers may have been illegal, the nature of the loss that they sustained was still deductible. Now, the poker cases have different facts but the compelling part of the decision is that even if the Department of Justice claims that Internet poker is an illegal activity, the loss of player funds may still be deductible under IRC § 165c3.

To be deductible the players would have to show that they (1) had an account at the site, (2) that they had a positive balance, (3) that they reported their net gambling winnings and (4) that they have not or will not be repaid. None of these steps will be easy in light of the pending civil and criminal charges, but, for some players with substantial funds on deposit the possibility of claiming a loss may worth considering.

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