

**POSSIBLE TAX RAMIFICATIONS OF 2004 EVENTS CONCERNING YOUR  
PURCHASE AND LEASEBACK OF MOBILE BILLBOARDS OR PAYPHONES  
FROM MOBILE BILLBOARDS OF AMERICA, INC. AND INTERNATIONAL  
PAYPHONE CORPORATION.**

***The following information concerning these transactions is not tax advice. Each individual should consult with a qualified tax adviser such as a Certified Public Accountant or Attorney to determine the appropriate tax treatment based on their specific set of facts and circumstances.***

As you are aware, the United States Securities and Exchange Commission (“the SEC”) has filed lawsuits against the above companies and responsible individuals for conducting a classic Ponzi scheme for the sale and leaseback of investments in mobile billboards and payphones. The SEC alleges intentional wrongdoing by the defendants in operating this scheme, which is illegal under federal law and the laws of most if not all states. It is now clear that the companies involved could only support monthly lease payments to investors by selling to new investors because the collective businesses did not generate sufficient advertising revenue to support the monthly lease payments.

It appears that approximately \$60.5 million was raised from investors. As of the end of 2004, less than \$1 million of cash remains. The value of the mobile billboards that were manufactured is negligible. None are presently generating advertising revenue. While the payphone business is continuing, there is negligible cash flow compared to total investor claims. It is unclear whether any sale of the payphone business would generate any significant cash for a distribution to investors.

#### THEFT LOSS

Section 165(a) of the Internal Revenue Code provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 165(c) provides that in the case of an individual, losses are limited to losses incurred in a trade or business, losses incurred in a transaction entered in to for profit, and losses from fire, storm shipwreck, other casualty, or theft. Under Section 1.165-8(d) of the Income Tax Regulations, the term “theft” shall be deemed to include, but shall not be limited to, larceny, embezzlement, or robbery. The leading case in this area, Edwards v. Bromberg, states that for tax purposes, theft “is a word of general and broad connotation, intending to cover and covering, any criminal appropriation of another’s property to the use of the taker, particularly including theft by swindling, false pretenses, and any other form of guile”. As obtaining money under false pretenses may constitute fraud and thereby amount to theft under state law, investors in pyramid, or Ponzi, schemes may be entitled to a theft loss as victims of a fraudulent scheme.

Theft losses must be deducted in the year the theft is discovered. The year of discovery is deemed to be the year a “reasonable person” would have discovered the loss. Since 2004

was the year the above-referenced actions were filed by the SEC, it could be considered that 2004 is the year a “reasonable person” would have discovered any theft loss in connection with these transactions.

The amount of the theft loss is the taxpayer’s adjusted basis in the property. Like any loss, a theft loss is not deductible while there is a reasonable prospect of recovery or reimbursement. Such a prospect postpones the deduction until the prospect no longer exists, but only to the extent of any potential recovery. Any excess is deductible in the year of discovery. If a theft loss is claimed and a taxpayer subsequently receives a reimbursement, the taxpayer must recognize income in the year of recovery, subject to the limits of the tax benefit rules of Section 111 of the Internal Revenue Code.

An important point of clarification is that to qualify as a theft loss, the theft must be imposed directly on the taxpayer. Thus, for example, if a person’s IRA or 401(k) plan purchased the billboards or the payphones, the IRA or the 401(k) plan is considered the “taxpayer” and not the individual who is the beneficiary of the IRA or 401(k) plan.

Because lease payments under these sale and leaseback transactions may be taxable to you as “rent”, we are required to issue you a Form 1099. However you and your tax adviser should consider whether, in light of the SEC actions, the 2004 payments you received might instead be considered as a recovery of part of your investment.

We hope the above information may be helpful to you and your tax adviser. Repeating, ***this information is not tax advice. Each individual should consult with a qualified tax adviser such as a Certified Public Accountant or Attorney to determine the appropriate tax treatment based on their specific set of facts and circumstances.***

The receiver suggests that you print the Complaint Filed by the SEC (9/21/04) and the Receiver’s First Interim Report (Filed 12/1/04) and take them to your tax adviser. These may be found at [www.haysconsulting.net/mobilebillboards.html](http://www.haysconsulting.net/mobilebillboards.html).