

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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[REDACTED]
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Refer Reply To:
CC:IT&A:1/COR-137066-01
Date:
October 4, 2001

Dear [REDACTED]:

This letter is in response to your inquiry dated July 9, 2001, in which you ask for guidance regarding losses by taxpayers. You represent an elderly client with Alzheimer's disease who has sent cashier checks to telemarketers after being told he had won certain sweepstakes.

The federal tax treatment of losses is addressed in § 165 of the Internal Revenue Code. Section 165 generally allows a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise. In the case of an individual the deduction is limited to losses incurred in a trade or business; losses incurred in any transaction entered into for profit though not connected with a trade or business; and losses of property not connected with a trade or business, if the losses arise from fire, storm, shipwreck, or other casualty, or from theft. Pursuant to § 165(e), a theft loss is allowable in the year in which the taxpayer discovers the loss. Section 1.165-8(d) of the Income Tax Regulations provides that the term "theft" includes, but is not necessarily limited to, larceny, embezzlement, and robbery.

In order for a loss to be a theft, the taking of the property must be illegal under the law of the state where it occurred and the taking must have been done with criminal intent. In addition, for a theft loss the taxpayer should be able to show when the property was discovered missing, that the property was stolen, not mislaid, and that the taxpayer is the owner of the property.

For your information, we are enclosing Internal Revenue Service Publication 547, Casualties, Disasters, and Thefts (Business and Nonbusiness). The publication describes types of losses and provides information on proving losses and related expenses, computing losses, and reporting losses.

We hope that this information letter is helpful. An information letter is advisory only and has no binding effect on the Internal Revenue Service. Section 2.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1. For more specific guidance, your client may request a private letter ruling from the national office of the Internal Revenue Service. We have enclosed a copy of Rev. Proc. 2000-1, which contains the procedures for a taxpayer to request a private letter ruling. If you have any additional questions, please contact Beverly Baughman [REDACTED] at (202) 622-5020.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

Kimberly Koch
Assistant to Chief, Branch 1

Enclosures: Publication 547
Rev. Proc. 2001-1