



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear [REDACTED]

This letter responds to your inquiry dated February 29, 2004, relating to capital loss carryovers. Specifically, you asked whether an individual's capital loss carryover can be carried forward indefinitely. We are pleased to provide the following general information.

An individual taxpayer can claim capital losses only to the extent of capital gains, plus (if losses exceed gains) the lower of \$3,000 (\$1,500 for married individuals filing separate returns) or the excess of the capital losses over the capital gains. Section 1211(b) of the Internal Revenue Code.

Individual taxpayers can carry capital losses that exceed the limitation forward to future tax years. Section 1212(b)(1). The excess of net short-term capital loss over net long-term capital gain for the year is carried over as a short-term capital loss in succeeding years. Section 1212(b)(1)(A). The excess of net long-term capital loss over net short-term capital gain for the year is carried over as net long-term capital loss in succeeding years. Section 1212(b)(1)(B). The number of years that the excess losses can be carried forward is unlimited; however the amount that can be carried forward is generally limited.

In determining the amount that can be carried forward to the next taxable year, the lesser of the loss allowed for the current year under section 1211(b) of the Code or the current year's "adjusted taxable income" is treated as *gain* that reduces the carryover. Section 1212(b)(2)(A). The loss allowed under section 1211(b) reduces the carryover whether or not it actually provides a benefit in the taxable year. Rev. Rul. 76-177, 1976-1 C.B. 224.

The phrase "adjusted taxable income" means the taxpayer's taxable income, which is expressed as a negative amount if deductions exceed income, increased by the loss

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allowed by section 1211(b) and the deduction for personal exemptions. Section 1212(b)(2)(B). In this computation it is important to begin with negative taxable income if deductions exceed income, not zero. The capital loss carryover will not be reduced in a year that the taxpayer's deductions exceed income by an amount greater than the sum of the amount allowable as a capital loss for that year (net capital losses or \$3000, whichever is greater) plus the amount allowable as a deduction for personal exemptions.

I hope this information is helpful. Please call [REDACTED], if you have any questions.

Sincerely,

Andrew M. Irving
Senior Counsel, Branch 1
(Income Tax & Accounting)