



OFFICE OF
CHIEF COUNSEL

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

April 1, 2009

Number: **INFO 2009-0078**

Release Date: 6/26/2009

CONEX-112825-09

UIL: 1211.00-00

Dear :

I am responding to your inquiry to Senator Martinez. Senator Martinez wrote to us on your behalf and asked us to respond directly to you. You recommended increasing to \$10,000 the \$3,000 limit on capital loss deductions that an individual taxpayer may claim each year.

The \$3,000 limitation on capital losses on Form 1040, Schedule D, reflects a statutory limitation. The law limits an individual's deduction for a net capital loss (capital losses greater than capital gains) for each year to \$3,000 (\$1,500 if married filing separately) (Section 1211(b) of the Internal Revenue Code (the Code)). We do not have the authority to change this statutory requirement. The statutory amendment you recommend requires an act of the Congress.

Although the law limits the amount deductible per year, it does not completely deny a deduction for a net capital loss greater than the deductible amount. If you have a net capital loss that is greater than \$3,000 for the tax year, you may deduct \$3,000 in the year of the loss, then deduct the excess in later years (up to the deductible amount) until you have fully deducted the entire net capital loss (Section 1212(b) of the Code).

I hope this information is helpful. I am enclosing a copy of the form and instructions for Form 1040, Schedule D, *Capital Gains and Losses*, and Publication 550, *Investment Income and Expenses*, with appropriate portions highlighted. If you have additional questions, please contact _____, Identification Number _____, or _____, Identification Number _____, at _____.

Sincerely,

John P. Moriarty
Chief, Branch I
(Income Tax & Accounting)

Enclosure

cc: The Honorable Mel Martinez
Attention:



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

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April 1, 2009

CONEX-112825-09

UIL: 1211.00-11

The Honorable Mel Martinez
United States Senate
Washington, DC 20510

Attention:

Dear Senator Martinez:

I am responding to your letter of _____, on behalf of your constituent, _____ . He recommended increasing to \$10,000 the \$3,000 limit on capital loss deductions that an individual taxpayer may claim each year.

As you requested, I responded directly to _____ . I am enclosing a copy of my response.

I hope this information is helpful. If you need further assistance, please call me, _____, or _____ at _____.

Sincerely,

John Moriarty
Chief, Branch 1
(Income Tax & Accounting)

Enclosure