



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Kirsten E. Gillibrand
United States Senator
780 Third Avenue, Suite 2601
New York, NY 10017

Attention:

Dear Senator Gillibrand:

This letter responds to your inquiry dated July 1, 2009, on behalf of your constituent, asked about changing the limit on capital loss deductions that a corporate taxpayer may claim.

The law treats certain losses that banks and other financial institutions recognize on the sale or exchange of preferred stock of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) as ordinary. However, the treatment does not apply to sales of such stock that occurred before January 1, 2008. (Section 301 of the Emergency Economic Stabilization Act of 2008 (EESA)). Otherwise, losses sustained on preferred stock are generally capital losses. A corporation's capital losses are limited by section 1212(a) of the Internal Revenue Code.

Although the law limits the amount deductible per year to the amount of the corporation's net capital gain, in general it allows the taxpayer eight years to absorb the loss. A corporation may carry back a net capital loss to the three preceding years and forward, to the five succeeding years, at which time the loss would expire.

The EESA was, as its name implies, the legislative reaction to a crisis in global financial markets. As discussed above, the tax treatment it provides differs from the general rules applicable to losses on dispositions of preferred stock. Its scope is, therefore, limited to losses that arose during the crisis. Unfortunately, but inevitably, disparate

treatment for some taxpayers will result from such measures. However, rarely does the tax treatment of a loss provide a greater benefit than reducing the loss.

I hope this information is helpful. If you have any questions, please call me or
() , Office of Chief Counsel, Income Tax and Accounting Division, at

Sincerely,

SEAN M. DWYER
Acting Chief, Branch 1
Associate Chief Counsel
(Income Tax & Accounting)