



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

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

This letter responds to your inquiry dated March 16, 2008, relating to capital loss carryovers. 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 losses over gains [Section 1211 of the Code].

Individual taxpayers can carry capital losses that exceed the limitation forward to future tax years. [Section 1212(b)(1) of the Code]. 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) of the Code]. 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) of the Code]. The number of years that the excess losses can be carried forward is not specifically limited; however the amount that can be carried forward is limited.

In determining the amount that can be carried forward to the next taxable year, the lesser of the \$3000 loss allowed under section 1211(b) of the Code, or the "adjusted taxable income" is treated as a *gain* which will reduce the carryover [Section 1212(b)(2)(A) of the Code]. The loss allowed under section 1211(b) is considered whether or not it is taken 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 may be expressed as a negative amount if deductions exceed income, increased by the \$3000 loss allowed by section 1211(b) and the deduction for personal exemptions [Section 1212(b)(2)(B) of the Code]. In a year that the taxpayer's deductions exceed income by an amount greater than the sum of \$3000 and the amount allowable as a deduction for personal exemptions, the capital loss carryover will not be reduced.

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I hope this information is helpful. Please call _____, at _____, if you have any questions.

Sincerely,

JOHN P. MORIARTY
Chief, Branch 1
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