



OFFICE OF THE CHIEF COUNSEL

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

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Dear \_\_\_\_\_ :

This letter responds to your inquiry dated August 30, 2016. You requested our opinion regarding: (1) whether you are entitled to a loss deduction for an amount subtracted from a bank account; and (2) the proper year of the deduction. Below is a brief description of the types of deductible losses and the rules on the timing of loss deductions under section 165 of the Internal Revenue Code (the Code) and the Income Tax Regulations.

The law allows a deduction for any loss not compensated by insurance or otherwise. To be allowed as a deduction under section 165(a) of the Code, a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and actually sustained during the taxable year, except for a special rule relating to disaster losses that is not relevant here (section 1.165-1(b) of the Income Tax Regulations). For individuals, a loss 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 or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

Whether a loss constitutes a theft under section 165 of the Code is determined by examining the law of the state where the alleged theft occurred. Edwards v. Bromberg, 232 F.2d 107, 111 (5<sup>th</sup> Cir. 1956). The taxpayer must prove that the taking is illegal under the law of state where it occurred and that the taking was done with criminal intent. Rev. Rul. 2009-9, 2009-1 C.B. 735; Rev. Rul. 72-112, 1972-1 C.B. 60.

With regard to when a taxpayer may take the loss deduction, under section 165(e) of the Code, a theft loss is sustained in the taxable year the taxpayer discovers the loss. If there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, a taxpayer does not sustain any portion of the loss until the taxable year in which it can be ascertained with reasonable certainty whether or not the taxpayer will receive reimbursement. Sections 1.165-1(d) and 1.165-8(a)(2) of the Income Tax Regulations.

This letter calls attention to general principles of tax law without applying them to a specific set of facts. See section 2.04 of Revenue Procedure 2016-1, 2016-1 I.R.B. 1, 8. In order to receive a written response applying the tax law to your specific set of facts, you must request a private letter ruling. Section 7 of Revenue Procedure 2016-1, 2016-1 I.R.B. at 22, provides the general instructions for requesting a private letter ruling, which include the payment of the applicable user fee. However, we ordinarily do not issue a private letter ruling on any matter in which the determination requested is primarily one of fact. Section 4.02(1) of Revenue Procedure 2016-3, 2016-1 I.R.B. 126, 137. Please note that a request for a private letter ruling must be filed before the tax return is filed for the year in which the transaction is completed. Sections 2.01 and 5.01 of Revenue Procedure 2016-1, 2016-1 I.R.B. at 8, 12.

Additional information on the rules for reporting theft losses is in the enclosed Publication 547, *Casualties, Disasters, and Thefts*.

I hope this information is helpful. If you have any questions, please contact \_\_\_\_\_, Identification Number \_\_\_\_\_, at \_\_\_\_\_.

Sincerely,

Norma C. Rotunno  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure