



OFFICE OF
CHIEF COUNSEL

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

January 26, 2009

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The Honorable Mel Martinez
United States Senate
Washington, DC 20510

Dear Senator Martinez:

I am responding to your letter of December 9, 2008, on behalf of your constituent, . . . recommended removing 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 at . . . or . . . at . . .

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax and Accounting)

Enclosure



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January 26, 2009

Dear _____ :

I am responding to your inquiry to Senator Mel Martinez. Senator Martinez wrote to us on your behalf and asked us to respond directly to you. You recommended removing 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. Section 1211(b) of the Internal Revenue Code limits an individual's capital loss deduction (for capital losses greater than capital gains) to \$3,000 each year. The IRS does not have the authority to change that statutory requirement. The statutory amendment you recommend requires an act of Congress.

Please note that section 1211(b) limits only the amount deductible per year. Section 1211(b) does not deny a deduction for capital losses in excess of \$3,000. For example, if you have a capital loss that is greater than \$3,000, you may deduct \$3,000 in the year of the loss then deduct the excess (up to the \$3,000 yearly limit) in later years until the entire capital loss is fully deducted.

I hope this information is helpful. Please see the enclosed copy of the *2008 Instructions for Schedule D*, Form 1040 for further information. If you have additional questions, please contact _____, identification number _____, or _____, identification number _____, at _____.

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

cc: The Honorable Mel Martinez