



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

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The Honorable Ben R. Lujan
Member, U.S. House of Representatives
3200 Civic Center Circle Northeast
Suite 330
Rio Rancho, New Mexico 87144

Attention:

Dear Congressman Lujan:

I am responding to your letter of December 1, 2010, on behalf of your constituent, . wrote about the annual limit on the deduction of losses and asked if any stimulus or bailout program is available to taxpayers who have suffered losses.

The \$3,000 limitation on capital losses (greater than capital gain) on Form 1040, Schedule D, reflects a statutory limitation that Congress set in 1978 in section 1211(b) of the Internal Revenue Code. Unfortunately, no stimulus legislation or programs provide any exceptions to the statutory limit. Any change to this limitation requires congressional action.

Please note that section 1211(b) limits only the amount deductible per year. It does not deny a deduction for capital losses in excess of \$3,000. An individual with a capital loss greater than \$3,000 can deduct \$3,000 in the year of the loss and then deduct the excess (up to the \$3,000 yearly limit) in later years until he or she fully deducts the entire capital loss. In addition, if in a future year a capital gain occurs, an individual can use the excess capital loss carryover to offset some or all of the capital gain.

I hope this information is helpful. If you have any questions, please contact me or
at .

Sincerely,

Christopher F. Kane
Chief, Branch 3
Office of Associate Chief Counsel
Income Tax & Accounting