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

**OFFICE OF
CHIEF COUNSEL**

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The Honorable David Scott
House of Representatives
173 North Main Street
Jonesboro, GA 30236

Attention:

Dear Congressman Scott:

I am responding to your inquiry on behalf of your constituents, . They asked about an amendment to section 55(b)(3) of the Internal Revenue Code (the Code) that the Congress included as part of the Working Families Tax Relief Act of 2004 (2004 Act). The law changed the way capital gains are taxed for purposes of calculating the alternative minimum tax (AMT).

To determine whether a taxpayer is liable for the AMT, the taxpayer must first calculate his or her regular tax liability, taking into account appropriate deductions and exclusions. The taxpayer then makes a separate calculation to determine an alternative amount of taxable income, the AMTI. A taxpayer calculates the AMTI by taking into account a number of adjustments and preferences, which generally are income and deduction items treated less favorably in computing AMTI than when calculating regular taxable income. After the taxpayer has computed AMTI, he or she determines tentative minimum tax, or TMT, which is the excess of AMTI over an AMT exemption amount, multiplied by the applicable AMT tax rate. If TMT is greater than the regular tax liability, the taxpayer has an AMT liability. If TMT is the same as or less than the taxpayer's regular tax liability, the taxpayer has no AMT liability.

Your constituent asked how capital gains are taxed for the AMT. In general, if the sale of a capital asset (almost everything an individual owns and uses for personal purposes or investment is a capital asset) held for more than one year results in a gain, the gain is taxed at a lower tax rate than ordinary income. Similarly, for the AMT, if a taxpayer's AMTI includes a capital gain, the AMT capital gain is taxed at the reduced capital gain rate.

The 2004 Act increased the amount of AMT capital gain permitted to be taxed at the lowest capital gain rate (presently 5 percent). Prior to the change, section 55(b)(3) of the Code limited the amount of AMT capital gain taxed at the lowest rate to the amount of capital gain actually taxed at the lowest capital gain rate for regular tax purposes. Thus, while this amendment to the law did not change the AMT capital gain rate, it ensured that the amount of AMT capital gain allowed to be taxed at the lowest capital gain rate would be determined independent of the amount actually taxed at the lowest rate for regular tax purposes.

The 2004 change to section 55(b)(3) of the Code was effective for tax years ending after May 6, 1997. Taxpayers entitled to a refund as a result of the law change can file an amended tax return, Form 1040X, for the tax years for which they are entitled to a refund. In general, however, to receive a refund, a taxpayer must file a Form 1040X by the later of 3 years from the due date of the return he or she is amending or 2 years from the date the taxpayer paid the tax.

I hope this information is helpful. If we can assist you further, please contact
or me at ( ) .

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)