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

OFFICE OF
CHIEF COUNSEL

June 7, 2010

Number: **2010-0170**
Release Date: 9/24/2010

CONEX-121238-10

Index Number: 1211.00-00

The Honorable Mark R. Warner
United States Senator
180 West Main Street
Abingdon, VA 24210

Attention:

Dear Senator Warner:

I am responding to your letter of May 11, 2010, on behalf of your constituent, , who wrote to you about the annual limit on the deduction of capital losses. suggested that the law allow seniors to deduct all their capital losses in the taxable year that they sustained the losses and not to be subject to the $3,000 annual limitation.

The $3,000 limitation on capital losses greater than capital gains on Form 1040, Schedule D, reflects a statutory limitation that the Congress set in 1978 in section 1211(b) of the Internal Revenue Code (the Code). Any change to this limitation requires congressional action.

The law limits only the amount deductible per year. (Section 1211(b) of the Code). 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 this 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