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

OFFICE OF CHIEF COUNSEL

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Dear :

This letter responds to your request for information dated November 01, 2004.

You asked to what extent you may use your capital loss from to claim a capital loss deduction on your income tax return. Under the Internal Revenue Code and Income Tax Regulations, you may claim a capital loss deduction in the year the loss was realized and future years. Although corporations may carry capital losses back as well as forward, no Code provision exists to allow an individual to carry a loss from the sale of stock back to prior years.

Securities (stocks) are capital assets. Upon the sale or exchange of a capital asset, a taxpayer realizes gain or loss. The taxpayer's gain or loss is either long- or short-term. Long-term capital gains and losses exist for assets held for more than one year. For securities traded on an established market, the taxpayer's holding period begins the day after the trade date the taxpayer bought the securities. We cannot determine whether your capital loss is long- or short-term based on the information your letter provides. Because you sold your stock in , you realized a long- or short-term capital loss in that year.

If a taxpayer's capital losses exceed his capital gains, the taxpayer may claim a capital loss deduction on Schedule D of Form 1040 in the year the loss was realized. Under Code section 1211, the allowable capital loss deduction for an individual is the lesser of $3,000 ($1,500 if the taxpayer is married and files a separate return) or the taxpayer's total net loss. Under Code section 1212, if the taxpayer has a net capital loss exceeding $3,000, the taxpayer may carry forward an unused loss to the next taxable year and treat it as if the loss were realized in that next year. The loss may be carried forward indefinitely. When a taxpayer carries forward a loss, it retains its long- or short-term character.

IRS Publication 550 contains detailed information regarding capital gains and losses, including loss carry-forward worksheets. You may obtain a copy at www.irs.gov, by telephone (1-800-829-3676), or by sending a written request to: IRS Eastern Area Distribution Center, P.O. Box 85074, Richmond, VA 23261-5074.

Your letter indicates that the income you received in that you wish to offset with your capital loss was from a car accident settlement. Certain payments in such situations need not be included in income for tax purposes. Whether or to what extent these payments are excludable would depend on the type of payment and the specific situation, and you may already have made this determination. However, you may wish to review IRS Publication 525, *Taxable and Nontaxable Income*, and Publication 547, *Casualties, Disasters, and Thefts*, or consult a tax advisor, to ensure that you treated the settlement payments correctly.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2005-1, §2.04, 2005-1 IRB 7. If you have any additional questions, please contact our office at .

Sincerely,

Office of Associate Chief Counsel
(Income Tax & Accounting)