Rev. Rul. 74-175

Advice has been requested whether, under the circumstances described below, the estate of a decedent is entitled to deduct certain losses sustained by the decedent prior to his death.

The decedent, who filed his Federal income tax returns on a calendar year basis, died on June 15, 1972. During 1972, but prior to his death, the decedent sold all his stock at a loss. In addition, the decedent sustained a net loss from his business operations for the period ending with the date of his death.

Section 165(a) of the Internal Revenue Code of 1954 provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 165(c) of the Code provides, in part, that in the case of an individual, the deduction under subsection (a) shall be limited to (1) losses incurred in a trade or business, and (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business.

Section 165(f) of the Code provides that losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

Section 172 of the Code allows as a deduction in computing taxable income the aggregate of the net operating loss carryovers and net operating loss carrybacks to such taxable year.

In the absence of any express statutory language, only the taxpayer who sustains a loss is entitled to take the deduction. See Calvin v. United States,354 F. 2d 202 (10th Cir. 1965). Therefore, the business loss and the capital loss sustained by the decedent for the period ending with the date of his death are deductible only on his final income tax return. Thus, no part of such net operating loss or capital loss is deductible by the decedent's estate or carried over to subsequent years. However, a net operating loss carryback resulting from a net business loss on the decedent's final return may be carried back to prior years as provided for in section 172 of the Code.

Compare Rev. Rul. 65-140, 1965-1 C.B. 127, which holds that if there is a change in the marital status because of the death of one of the parties to a marriage, and in a succeeding year the survivor sustains a net operating loss, the loss may be carried back only to that portion of the income reported in a joint return previously filed with the decedent, which vested in the survivor.

Rev. Rul. 54-207, 1954-1 C.B. 147, which holds that a capital loss sustained during the decedent's lifetime is not deductible by his estate, is superseded, since the position set forth therein is restated in this Revenue Ruling.