

JUL-06-2009 04:34



OFFICE OF THE CHIEF COUNSEL

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

July 2, 2009

The Honorable Bill Nelson
United States Senate
Washington, DC 20510

Dear Senator Nelson:

I am responding to the letter dated June 16, 2009, from you and your colleagues, on behalf of your constituents whose homes were constructed with Chinese drywall. The constituents said that Chinese drywall emits a putrid smell and gas causing various health problems, as well as extreme and unusual corrosion of pipes, air conditioning coils, and electrical appliances. They indicated that these problems arose soon after construction of the homes, with the result that the homes are uninhabitable. You asked whether section 165 of the Internal Revenue Code allows a casualty loss deduction in these circumstances, and, if so, how to value the amount of their loss.

The law allows a deduction for qualifying casualty losses sustained during the taxable year, and not compensated for by insurance or otherwise. A casualty is the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, and unusual. Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. Whether a loss arises from a casualty requires a facts and circumstances analysis.

The Environmental Protection Agency and the Consumer Product Safety Commission are investigating the reported problems with Chinese drywall. If it is determined that Chinese drywall emits an unusual or severe concentration of chemical fumes that causes the extreme and unusual damage you describe, affected taxpayers can qualify for a casualty loss deduction. The amount of their casualty loss is the difference between the fair market value of their home immediately before and immediately after the casualty, limited to the adjusted basis of their home. Unfortunately, costs incident to a casualty (for example, temporary alternative accommodations) are nondeductible personal expenses, not deductible casualty losses.

Additional limitations apply to the timing and the amount of a casualty loss deduction. I am enclosing a copy of Publication 547, *Casualties, Disasters, and Thefts*, which explains in detail the requirements for claiming a casualty loss deduction.

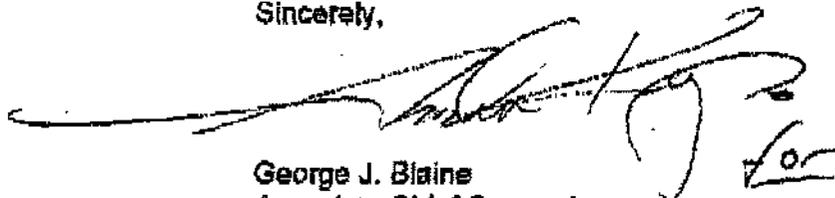
JUL-06-2009 04:35

P.07

2

I appreciate your bringing this issue to our attention. I am sending a similar letter to your colleagues. If you have any questions, please contact me or a member of your staff can contact Floyd Williams, Director, Legislative Affairs at (202) 622-4725.

Sincerely,

A handwritten signature in black ink, appearing to read "George J. Blaine", with a large flourish extending to the left and a smaller mark to the right.

George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

Enclosure