

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017-50
December 11, 2017

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Proc. 2017-60, page 559.

This procedure provides a safe harbor that allows an individual to deduct amounts paid to repair damage to his or her personal residence caused by deteriorating concrete foundations containing the mineral pyrrhotite.

ADMINISTRATIVE

Rev. Proc. 2017-60, page 559.

This procedure provides a safe harbor that allows an individual to deduct amounts paid to repair damage to his or her personal residence caused by deteriorating concrete foundations containing the mineral pyrrhotite.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 165; 1.165-7(a)(2); 1.165-7(b).)

Rev. Proc. 2017-60

SECTION 1. PURPOSE

This revenue procedure provides guidance to individuals regarding the federal income tax treatment of amounts paid to repair damage to their personal residences resulting from deteriorating concrete foundations caused by the presence of the mineral pyrrhotite.

SECTION 2. BACKGROUND

.01 Residents in the northeastern part of the United States have reported problems with certain residential concrete foundations. In August 2015, the Connecticut Office of the Attorney General and the Connecticut Department of Consumer Protection (DCP) began investigating numerous complaints by homeowners concerning deteriorating concrete foundations. The conclusions of the investigation are available in the “Report on Deteriorating Concrete in Residential Foundations” issued by the DCP on December 30, 2016.

.02 Investigators concluded that the deterioration of the concrete foundations was caused by the presence of pyrrhotite in the concrete mixture used to pour the foundations. Pyrrhotite is a naturally existing mineral in stone aggregate, which is used to produce concrete. Pyrrhotite oxidizes in the presence of water and oxygen, leading to the formation of expansive mineral products, and causing concrete to deteriorate prematurely.

.03 Pursuant to Connecticut Public Act No. 16-45,¹ Connecticut residents with deteriorating concrete foundations may request a reassessment of the assessed value of their homes based on a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete.

.04 The Internal Revenue Service (“Service”) has received inquiries about whether a loss resulting from a deteriorating concrete foundation constitutes a de-

ductible casualty loss within the meaning of § 165 of the Internal Revenue Code, the taxable year any such loss would be deductible, and how the amount of the loss would be computed.

.05 Section 165(a) generally allows taxpayers to deduct losses sustained during the taxable year that are not compensated for by insurance or otherwise. For personal-use property, such as a taxpayer’s personal residence, § 165(c)(3) limits an individual’s deduction to losses arising from fire, storm, shipwreck, or other casualty, or from theft. A casualty is damage, destruction, or loss of property that results from an identifiable event that is sudden, unexpected, and unusual. Rev. Rul. 72-592, 1972-2 C.B. 101. Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. See *Matheson v. Commissioner*, 54 F.2d 537 (2d Cir. 1931).

.06 A casualty loss is allowed as a deduction only for the taxable year in which the loss is sustained. However, if the taxpayer has a claim for reimbursement of the loss from insurance or otherwise, for which there is a reasonable prospect of recovery, no portion of the loss is deductible until it can be ascertained with reasonable certainty whether the reimbursement will be received. See § 1.165-1(c)(4) of the Income Tax Regulations.

.07 If a taxpayer deducted a loss and in a subsequent taxable year receives reimbursement for the loss, the taxpayer does not recompute the tax for the taxable year in which the deduction was taken, but includes the amount of the reimbursement in gross income for the taxable year in which received, subject to the provisions of § 111, relating to recovery of amounts previously deducted. See § 1.165-1(d)(2)(iii).

.08 The amount of a taxpayer’s casualty loss generally is the decrease in the fair market value of the property as a result of the casualty, limited to the taxpayer’s adjusted basis in the property. See § 1.165-7(b). To simplify the computation of a casualty loss deduction, existing regulations permit taxpayers to use the cost to repair the damaged property as

evidence of the decrease in value of the property. See § 1.165-7(a)(2)(ii).

.09 Section 165(h)(1) and (2) imposes two limitations on casualty loss deductions for personal use property. First, a casualty loss deduction is allowable only for the amount of the loss that exceeds \$100 per casualty. Second, the net amount of all of a taxpayer’s casualty losses (in excess of casualty gains, if any) is allowable only for the amount of the losses that exceeds 10 percent of the taxpayer’s adjusted gross income (AGI) for the year.

.10 In view of the unique circumstances surrounding the damage caused by deteriorating concrete foundations containing the mineral pyrrhotite, the Treasury Department and the Service conclude that it is appropriate to provide a safe harbor method that treats certain damage resulting from deteriorating concrete foundations as a casualty loss and provides a formula for determining the amount of the loss. Accordingly, for an individual taxpayer within the scope of this revenue procedure, the Service will not challenge the taxpayer’s treatment of damage resulting from a deteriorating concrete foundation as a casualty loss if the loss is determined and reported as provided in this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to any individual taxpayer who pays to repair damage to that taxpayer’s personal residence caused by a deteriorating concrete foundation that contains the mineral pyrrhotite.

SECTION 4. APPLICATION

.01 A taxpayer who pays to repair damage to that taxpayer’s personal residence caused by a deteriorating concrete foundation may treat the amount paid as a casualty loss in the year of payment. For purposes of this revenue procedure, the term “deteriorating concrete foundation” means a concrete foundation that is damaged as a result of the presence of the mineral pyrrhotite in the concrete mixture used to pour the foundation. The safe har-

¹2016 Conn. Legis. Serv. P.A. No. 16-45 (H.B. No. 5180) (West).

bor under this revenue procedure is available to a taxpayer who has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete, and has requested and received a reassessment report that shows the reduced reassessed value of the residential property based on the written evaluation from the engineer and an inspection pursuant to Connecticut Public Act No. 16–45 (Act). The safe harbor also is available to a taxpayer whose personal residence is either in Connecticut or outside of Connecticut, provided the taxpayer has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete containing the mineral pyrrhotite.

.02 The amount of a taxpayer's loss resulting from the deteriorating concrete foundation is limited to the taxpayer's adjusted basis in the property. In addition, the amount of the loss may be limited depending on whether the taxpayer has a pending claim for reimbursement (or intends to pursue reimbursement) of the loss through property insurance, litigation, or otherwise. A taxpayer who does not have a pending claim for reimbursement, and who does not intend to pursue reimbursement, may claim as a loss all unreimbursed amounts (subject to the adjusted basis limitation) paid during the taxable year to repair damage to the taxpayer's personal residence caused by the deteriorating concrete foundation. A taxpayer

who has a pending claim for reimbursement, or who intends to pursue reimbursement, may claim a loss for 75 percent of the unreimbursed amounts paid during the taxable year to repair damage to the taxpayer's personal residence caused by the deteriorating concrete foundation. A taxpayer who has been fully reimbursed before filing a return for the year the loss was sustained may not claim a loss. A taxpayer who has a pending claim for reimbursement, or who intends to pursue reimbursement, may have income or an additional deduction in subsequent taxable years depending on the actual amount of reimbursement received. *See* § 1.165–1(d).

.03 Amounts paid for improvements or additions that increase the value of the taxpayer's personal residence above its pre-loss value are not allowed as a casualty loss. Only amounts paid to restore the taxpayer's personal residence to the condition existing immediately prior to the damage qualify for loss treatment.

.04 A taxpayer claiming a casualty loss under this revenue procedure must report the amount of the loss on Form 4684 ("Casualties and Thefts") and must mark "Revenue Procedure 2017–60" at the top of that form. Taxpayers are subject to the \$100 limitation imposed by § 165(h)(1) and the 10-percent-of-AGI limitation imposed by § 165(h)(2).

.05 Taxpayers who choose not to apply the safe harbor treatment provided by this revenue procedure are subject to all of the

generally applicable provisions governing the deductibility of losses under § 165. Accordingly, these taxpayers must establish that the damage, destruction, or loss of property resulted from an identifiable event that is sudden, unexpected, and unusual, and was not the result of progressive deterioration through a steadily operating cause. *See* Rev. Rul. 72–592, 1972–2 C.B. 101; *Matheson v. Commissioner*, 54 F.2d 537 (2d Cir. 1931). These taxpayers also must prove that the loss is properly deductible in the taxable year claimed by the taxpayer and not in another year. Further, these taxpayers must prove the amount of the claimed loss and must prove that no claim for reimbursement of any portion of the loss exists for which there is a reasonable prospect of recovery.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for federal income tax returns (including amended federal income tax returns) filed after November 21, 2017.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Susie K. Bird of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure contact Susie K. Bird on (202) 317-5100 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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INTERNAL REVENUE BULLETIN

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We Welcome Comments About the Internal Revenue Bulletin

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