

General Instructions

Section references are to the Internal Revenue Code.

Who Must File

Regulated investment companies (RICs) and real estate investment trusts (REITs) file Form 2438 if the RIC (defined below) or REIT is electing to designate undistributed capital gains under section 852(b)(3)(D) or 857(b)(3)(D).

If a RIC has more than one fund, each fund must file a separate Form 2438. The term "fund" as used in these instructions refers to the definition in section 851(g) and to any RIC that does not have more than one portfolio of assets.

Purpose of Form

Form 2438 is used by RICs or REITs to figure income tax on undistributed capital gains designated under section 852(b)(3)(D) or section 857(b)(3)(D).

See the instructions for Schedule D (Form 1120) for a definition of capital assets and information on figuring and reporting capital gains and losses.

When To File

File Form 2438 by the 30th day after the end of the RIC's or the REIT's tax year.

Where To File

File the original form with the:
Internal Revenue Service Center
201 W. Rivercenter Blvd.
Covington, KY 41011

In addition, attach a copy of Form 2438 to Form 1120-RIC or Form 1120-REIT.

Who Must Sign

Form 2438 must be signed and dated by:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer or
- Any other corporate officer (such as tax officer) authorized to sign.

If a return is filed on behalf of a RIC or REIT by a receiver, trustee or assignee, the fiduciary must sign the return, instead of the corporate officer. Returns and forms signed by a receiver or trustee in bankruptcy on behalf of a RIC or REIT must be accompanied by a copy of the order

or instructions of the court authorizing signing of the return or form.

For a return that is being filed for a series fund (discussed in section 851(g)), the return may be signed by any officer authorized to sign for the RIC in which the fund is a series.

If a corporate officer completes Form 2438, the Paid Preparer's space should remain blank. Anyone who prepares Form 2438 but does not charge the RIC or REIT should not sign the return. Generally, anyone who is paid to prepare Form 2438 must sign it and fill in the Paid Preparer's Use Only area.

Paid preparer. The paid preparer must complete the required preparer information and:

- Sign the return in the space provided for the preparer's signature.
- Give a copy of Form 2438 to the taxpayer.

Penalty for Late Filing of Return

A RIC or REIT that does not file its tax return by the due date, including extensions, may have to pay a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if the RIC or REIT can show that the failure to file on time was due to reasonable cause. RICs or REITs that file late must attach a statement explaining the reasonable cause.

Penalty for Late Payment of Tax

A RIC or REIT that does not pay the tax when due generally may have to pay a penalty of ½ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the RIC or REIT can show that the failure to pay on time was due to reasonable cause.

Depository Method of Tax Payment

The two methods of depositing corporate income taxes, including the capital gains tax, are discussed below.

Electronic Deposit Requirement

The RIC or REIT must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS) in 2005 if:

- The total deposits of such taxes in 2003 were more than \$200,000 or
- The RIC or REIT was required to use EFTPS in 2004.

If the RIC or REIT is required to use EFTPS and fails to do so, it may be subject to a 10% penalty. If the RIC or REIT is not required to use EFTPS, it may participate voluntarily. To enroll in or get more information about EFTPS, call 1-800-555-4477 or 1-800-945-8400. To enroll online, visit www.eftps.gov.

Depositing on time. For deposits made by EFTPS to be on time, the RIC or REIT must initiate the transaction at least 1 business day before the date the deposit is due.

Deposits With Form 8109

If the RIC or REIT does not use EFTPS, deposit tax payments (and estimated tax payments) with Form 8109, Federal Tax Deposit Coupon. If you do not have a preprinted Form 8109, use Form 8109-B to make deposits. You can get this form only by calling 1-800-829-4933. Be sure to have your employer identification number (EIN) ready when you call.

Do not send deposits directly to an IRS office; otherwise, the RIC or REIT may have to pay a penalty. Mail or deliver the completed Form 8109 with the payment to an authorized depository, (that is, a commercial bank or other financial institution authorized to accept federal tax deposits). Make checks or money orders payable to the depository.

To help ensure proper crediting, enter the RIC's or REIT's EIN, the tax period to which the deposit applies, and "Form 1120-RIC" or "Form 1120-REIT," whichever applies, on the check or money order. Be sure to darken the "1120" box under "Type of Tax" and the appropriate "Quarter" box under "Tax Period" on the coupon. Records of these deposits will be sent to the IRS. For more

information, see “Marking the Proper Tax Period” in the instructions for Form 8109.

For more information on deposits, see the instructions in the coupon booklet (Form 8109) and Pub. 583, *Starting a Business and Keeping Records*.

If the RIC or REIT owes tax when it files Form 2438, do not include the payment with the tax return. Instead, mail or deliver the payment with Form 8109 to an authorized depository, or use EFTPS.

Specific Instructions

Period covered. File the 2004 return for calendar year 2004 and fiscal years that begin in 2004. For a fiscal year, fill in the tax year space at the top of the form.

Address. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the RIC or REIT has a P.O. box, show the box number instead of the street address.

Lines 1 and 5

Column (b)—Date acquired. A RIC’s or REIT’s acquisition date for an asset it held on January 1, 2001, for which it made an election to recognize any gain (under section 311 of the Taxpayer Relief Act of 1997) is the date of the deemed sale and reacquisition.

Column (d). Enter either gross sales price or net sales price. If net sales price is entered, do not increase the cost or other basis in column (e) by any expenses reflected in the net sales price.

Column (e). If gross sales price is reported in column (d), increase the cost or other basis by any expense of sale such as broker’s fees, commissions, or option premiums before entering an amount in column (e).

A RIC’s or REIT’s basis in an asset it held on January 1, 2001, for which the RIC or REIT made an election to recognize any gain (under section 311 of the Taxpayer Relief Act of 1997) is the asset’s closing market price or fair market value, whichever applies, on the date of the deemed sale and reacquisition, whether the deemed sale resulted in a gain or unallowed loss.

Line 4

Enter any net short-term capital gain from line 4 on line 1 of Schedule D (Form 1120) as “Net short-term capital gain from line 4, Form 2438.”

Line 12

Enter the amount from line 12 on line 6 of Schedule D (Form 1120) as “Undistributed capital gains not designated (from Form 2438).”

Line 13

Deposit the tax due by the 30th day after the end of the tax year.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying

with these laws and to allow us to figure and collect the right amount of tax. Section 6109 requires return preparers to provide their identifying numbers on the return.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

- Recordkeeping** . . . 7 hr., 39 min.
- Learning about the law or the form** 24 min.
- Preparing and sending the form to the IRS** . . . 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service; Tax Products Coordinating Committee; SE:W:CAR:MP:T:T:SP; 1111 Constitution Ave., NW, IR-6406; Washington, DC 20224. Do not send the tax form to this office. Instead, see *Where To File* on page 2.