

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 fund (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 funds 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 fund's or the REIT's tax year.

Where To File

File the form with the same Internal Revenue Service Center where Form 1120-RIC or Form 1120-REIT will be filed. 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 one of the following individuals:

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

Receivers, trustees, or assignees must also sign and date any return filed on behalf of a fund or REIT.

Note: If this return 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 fund 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, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Furnish a copy of Form 2438 to the taxpayer.

Penalty for Late Filing of Return

A fund 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 fund or REIT can show that the failure to file on time was due to reasonable cause. Funds or REITs that file late must attach a statement explaining the reasonable cause.

Penalty for Late Payment of Tax

A fund or REIT that does not pay the tax when due generally may have to pay a penalty of 1/2 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 fund 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 fund 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 2002 if:

- The total deposits of such taxes in 2000 were more than \$200,000 or

- The fund or REIT was required to use EFTPS in 2001.

If the fund or REIT is required to use EFTPS and fails to do so, it may be subject to a 10% penalty. If the fund 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.

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

Deposits With Form 8109

If the fund or REIT does not use EFTPS, deposit tax payments (and estimated tax payments) with **Form 8109**, Federal Tax Deposit Coupon Book. If you do not have a preprinted Form 8109, use Form 8109-B to make deposits. You can get this form **only** by calling 1-800-829-1040. Be sure to have your employer identification number (EIN) ready when you call.

Do not send deposits directly to an IRS office; otherwise, the fund or REIT may have to pay a penalty. Mail or deliver the completed Form 8109 with the payment to an authorized depository, i.e., 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, write the fund'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 on the coupon. Records of these deposits will be sent to the IRS.

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

Caution: If the fund 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, if applicable.

Election To Recognize Gain on Assets Held on January 1, 2001

RICs and REITs may elect to treat certain assets held on January 1, 2001, as having been sold and then reacquired on the same date. The purpose of the election is to make future gain on the asset eligible for an 18% (instead of 20%) capital gain tax rate at the shareholder level to the extent the gain is designated under section 852(b)(3) or 857(b)(3) by the RIC or REIT as a capital gain distribution or undistributed capital gain. The 18% rate is applicable to the extent the gain would otherwise be taxed to the shareholder at 20% if the holding period of the asset begins after December 31, 2000, and the asset is held for more than five years.

Any readily tradable stock (that is a capital asset) not sold before January 2, 2001, for which the election is made is deemed to have been sold on January 2, 2001, at its closing market price on that date and reacquired on that date for the same amount. For this purpose, readily tradable stock includes shares issued by an open-end mutual fund. Any other capital asset held on January 1, 2001, for which the election is made is deemed to have been sold and reacquired on January 1, 2001, for its fair market value on that date. Any gain on a deemed sale must be recognized without regard to any provision of the Internal Revenue Code. A loss from a deemed sale is not allowed in any tax year, but the asset will be eligible for the 18% rate on future gain. The basis in the reacquired asset is its closing market price or fair market value, whichever applies, on the date of the deemed sale, whether the deemed sale results in a gain or an unallowed loss.

If the RIC or REIT makes the election with respect to an interest in another pass-through entity and that pass-through entity makes the election with respect to assets it holds, that pass-through entity's election will be considered to immediately precede the RIC's or REIT's election for deemed sales that occur on the same day. Pass-through entities include mutual funds (or other regulated investment companies), real estate investment trusts, S corporations, partnerships, estates, trusts, and common trust funds.

To make the election, report the deemed sale(s) on Form 2438 for the tax year that includes the date of the deemed sale.

If the deemed sale results in a loss, enter zero instead of the amount of the loss. Make the election on a share-by-share or asset-by-asset basis. Attach a statement to Form 2438 stating that the RIC or REIT is making an election under section 311 of the Taxpayer Relief Act of 1997 and listing the asset(s) for which the election is being made. File Form 2438 no later than its due date (including extensions). However, if Form 2438 was filed on time without making the election for one or more eligible assets, the election can still be made for those assets on an amended Form 2438 filed within 6 months of the original Form 2438 due date (excluding extensions). Write "Election Under Section 311 of the Taxpayer Relief Act of 1997" at the top of the amended Form 2438. Once made, an election for any asset is irrevocable.

Note: *The RIC or REIT may not make this election for any asset that the RIC or REIT disposed of (in a transaction in which gain or loss is recognized in whole or in part) before the close of the 1-year period beginning on the date that the asset would have been treated as sold under this election.*

Specific Instructions

Period covered. File the 2001 return for calendar year 2001 and fiscal years that begin in 2001 and end in 2002. 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 fund or REIT has a P.O. box, show the box number instead of the street address.

Lines 1 and 5

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).

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.

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.

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 form35 min.

Preparing and sending the form to the IRS . . .45 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 Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the tax form to this office. Instead, see **Where To File** on page 2.

