

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part 1, §§ 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,<sup>1</sup> 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.

<sup>1</sup> 2016 Conn. Legis. Serv. P.A. No. 16-45 (H.B. No. 5180) (West).

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

-----

STATE OF CONNECTICUT Substitute House Bill No. 5180

Public Act No. 16-45

AN ACT CONCERNING CONCRETE FOUNDATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2016) Prior to the issuance of a certificate of occupancy for a new residential or commercial building for which a concrete foundation was installed on or after October 1, 2016, the applicant shall provide the building official with written documentation of the name of

the individual or entity that supplied the concrete and the name of the individual or entity that installed the concrete. Copies of such documentation shall be maintained in the records of the office of the building official for not less than fifty years.

Sec. 2. (NEW) (Effective from passage and applicable to assessment years commencing on or after October 1, 2016) (a) Any owner of a residential building who has obtained a written evaluation from a professional engineer licensed pursuant to chapter 391 of the general statutes indicating that the foundation of such residential building was made with defective concrete may provide a copy of such evaluation to the assessor and request a reassessment of the residential building by the assessor. Not later than ninety days after receipt of a copy of such evaluation, or prior to the commencement of the assessment year next following, whichever is earlier, the assessor, member of the assessor's staff or person designated by the assessor shall inspect the residential building and adjust its assessment to reflect its current value. Such reassessment may be appealed pursuant to section 12-111 of the general statutes. Any reassessment under this section shall apply for five assessment years, notwithstanding the provisions of section 12-62 of the general statutes.

(b) An owner of a residential building that has obtained a reassessment pursuant to this section shall notify the assessor if the concrete foundation is repaired



or replaced during the five assessment years for which the reassessment is effective. Such notification shall be made in writing within thirty days of the repair or replacement of the concrete foundation. Not later than ninety days after receipt of such notification, or prior to the commencement of the assessment year next following, whichever is earlier, the assessor, member of the assessor's staff or person designated by the assessor shall inspect the residential building and adjust its assessment to reflect its current value.

Sec. 3. (Effective July 1, 2016) Not later than January 1, 2017, the Commissioner of Consumer Protection, after consulting with the Attorney General, shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to planning and zoning, on the potential cause or causes of failing concrete foundations. Not later than January 1, 2017, the Commissioner of Consumer Protection shall post such report on the Department of Consumer Protection's Internet web site.

Sec. 4. (NEW) (Effective from passage) Any documentation provided to or obtained by an executive branch agency, including documentation provided or obtained prior to the effective date of this section, relating to claims of faulty or failing concrete foundations in residential buildings by the owners of such residential buildings, and documents prepared by an executive branch agency

relating to such documentation, shall be maintained as confidential by such agency for not less than seven years after the date of receipt of the documentation or seven years after the effective date of this section, whichever is later.

Sec. 5. Subsection (b) of section 1-210 of the 2016 supplement to the general statutes is amended by adding subdivision (28) as follows (Effective from passage):

(NEW) (28) Any documentation provided to or obtained by an executive branch agency, including documentation provided or obtained prior to the effective date of this section, relating to claims of faulty or failing concrete foundations in residential buildings by the owners of such residential buildings, and documents prepared by an executive branch agency relating to such documentation, for seven years after the date of receipt of the documentation or seven years after the effective date of this section, whichever is later.

Approved May 25, 2016

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part 1, §§ 165; 1.165-7(a)(2); 1.165-7(b).)

Rev. Proc. 2018-14

## SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2017-60, 2017-50 I.R.B. 559, to extend the time for individuals to pay to repair damage to their personal residences resulting from deteriorating concrete foundations caused by the presence of the mineral pyrrhotite.

## SECTION 2. BACKGROUND

.01 Revenue Procedure 2017-60 provides a safe harbor method that allows a taxpayer who pays to repair damage to that taxpayer's personal residence resulting from a deteriorating concrete foundation that contains the mineral pyrrhotite to treat the amount paid as a casualty loss in the year of payment.

.02 The safe harbor 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. 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.

03. To claim a casualty loss under the safe harbor in Rev. Proc. 2017-60, a taxpayer generally must have paid to repair damage caused by a deteriorating concrete foundation before January 1, 2018.

04. In view of the unique hardships caused by the extensive repairs necessary to remedy the deteriorating concrete foundations and the comments received expressing concern that taxpayers need additional time to make the repairs, the Department of the Treasury and the Internal Revenue Service have determined that it is appropriate to modify the safe harbor in Rev. Proc. 2017-60 to extend the time for individual taxpayers to pay to repair the damage to their personal residences.

### SECTION 3. MODIFICATION TO REV. PROC. 2017-60

Section 4.01 of Rev. Proc. 2017-60, is modified and as modified, this section reads in its entirety as follows:

.01 If a taxpayer pays to repair damage to that taxpayer's personal residence caused by a deteriorating concrete foundation during the taxpayer's 2016 taxable year or earlier, the taxpayer may treat the amount paid as a casualty loss on a timely Amended U.S. Individual Income Tax Return (Form 1040X) for the taxable year of payment. If a taxpayer pays to repair the damage during the taxpayer's 2017 taxable year or prior to a timely filed (including extensions) original U.S. Individual Income Tax Return (Form 1040, 1040A or 1040EZ) for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on the taxpayer's original 2017 income tax return (or a timely filed Form 1040X for the 2017 taxable year). If a taxpayer pays to

repair the damage after filing an original 2017 income tax return and prior to the last day for filing a timely Form 1040X for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on a timely filed Form 1040X for the 2017 taxable year.

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 before January 1, 2018, in pouring the foundation. The safe harbor 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.

#### SECTION 4. EFFECTIVE DATE

This modification in this revenue procedure will be treated as in effect as of the effective date of Rev. Proc. 2017-60, which is for federal income tax returns (including amended federal income tax returns) filed after November 21, 2017.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2017-60 is modified.

## 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 call).