

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. 16-45,¹ 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 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.

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

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).