



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

April 8, 2019

The Honorable Joe Courtney
U.S. House of Representatives
Washington, DC 20515

Dear Representative Courtney:

Thank you for your letter dated February 28, 2019, asking for clarification about the determination of deductible casualty losses associated with crumbling homeowner foundations.

Specifically, you requested information on whether a list of various homeowner expenses that will not be reimbursed by the "captive" insurance company created by the Connecticut legislature will be treated as part of the casualty loss under the safe harbor in Revenue Procedure 2017-60. Whether or not an expense is part of a casualty loss depends on a taxpayer's facts, but this letter provides general information about losses sustained by an individual with a crumbling foundation.

Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. However, Revenue Procedure 2017-60 provides a safe harbor that treats certain damage to a taxpayer's residence resulting from deteriorating concrete foundations containing the mineral pyrrhotite as a casualty loss. It also provides a formula for determining the amount of the loss.

Under this safe harbor, the casualty loss would be limited to the cost of repairing the structural damage to the residence caused by the crumbling foundation if that amount is not precluded by the other limitations in Section 165 of the Internal Revenue Code (IRC). Repair or replacement of property that is not part of the residential structure, such as outdoor swimming pools, water features, outbuildings, gardens, landscaping, and driveways, is not included in the safe harbor unless the damage caused to that property is directly caused by, and necessary for, the residence's foundation repair. For example, if a shed in the taxpayer's yard had a crumbling foundation, the replacement cost of the shed would not be treated as part of the casualty loss under the safe harbor. This is because the damage to the shed was not caused by the crumbling foundation of the residence or by the repair of the residence's crumbling foundation. In contrast, if the taxpayer's driveway abuts the residence's foundation, and a portion of the driveway must be removed to access the foundation so that it can be repaired, then the cost of repairing that particular portion of the driveway would be treated as part of the casualty loss.

For expenses incurred to repair or replace parts of the residential structure itself, such as drywall, framing, decks, porches, gutters, and personal items, each taxpayer would have to determine whether the repaired or replaced item was actually damaged by the crumbling foundation or needed to be damaged or destroyed to repair the foundation. For example, if the crumbling foundation caused an interior wall above the foundation to collapse, then the cost of repairing that wall would be includable in the casualty loss amount. Similarly, if the front porch of the residence needed to be removed to access the foundation needing repair, then the replacement cost of the front porch with a porch of equal value would be treated as part of the casualty loss. Finally, taxpayers cannot deduct personal, living, and family expenses, such as lodging, meals, mileage, transportation, moving, relocation, incidentals, lost wages, and personal liability, under IRC Section 262(a). So, those expenses are never included in the calculation of a casualty loss.

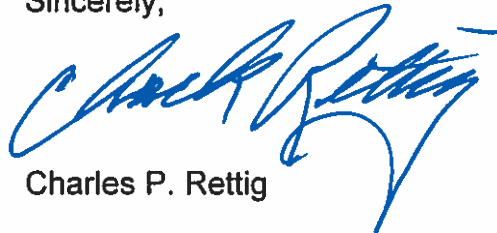
In addition, the deduction of casualty losses is subject to the following important limitations:

- The total casualty loss amount is limited by the taxpayer's basis in the property in question.
- Only the amount of the casualty loss that exceeds 10 percent of the taxpayer's adjusted gross income is deductible.
- If the taxpayer is reimbursed for amounts they previously deducted as a casualty loss, they must include the reimbursed amount in income in the year of receipt.

See Treasury Regulation Section 1.165-1(d)(2)(iii) and Section 4.02 of Revenue Procedure 2017-60. For additional general information on the deduction of casualty losses, please find enclosed IRS Publication 547, Casualties, Disasters, and Thefts.

I hope this information is helpful. If you have any additional questions, please feel free to contact me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at 202-317-6985.

Sincerely,



Charles P. Rettig

Enclosure

cc: The Honorable John B. Larson
Michael Maglaras, Connecticut Foundations
Solutions Indemnity Company