

Repairs for Deteriorating Concrete Foundations

Cross References

- Rev. Proc. 2017-60

Residents in the northeastern part of the U.S. 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 began investigating numerous complaints by homeowners concerning deteriorating concrete foundations.

Investigators found that the damage was caused by the presence of pyrrhotite in the concrete mixture used to pour the foundations. As a result, affected Connecticut homeowners may request a reassessment of the assessed value of their homes for property tax purposes.

The IRS received inquiries about whether a loss resulting from a deteriorating concrete foundation qualifies as a deductible casualty loss. A casualty loss is generally deductible under IRC section 165 if the damage, destruction, or loss of property is the result of an identifiable event that is sudden, unexpected, and unusual. Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. The deductible loss is generally the unreimbursed 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. To simplify the computation, existing regulations permit taxpayers to use the cost to repair the damaged property as evidence for the amount of the decrease in the value of the property.

In view of the unique circumstances surrounding the damage caused by deteriorating concrete foundations containing the mineral pyrrhotite, the IRS has provided a safe harbor method for purposes of the casualty loss deduction. The IRS will not challenge a taxpayer's casualty loss deduction if the loss is determined and reported under the safe harbor found in this revenue procedure.

Rev. Proc. 2017-60. The safe harbor 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. The amount paid to repair the damage may be treated as a casualty loss in the year paid. 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 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 is also 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.

General casualty loss computation rules apply, such as the adjusted basis limitation, the rules for pending claims for reimbursement (insurance, litigation, etc.), the \$100 limitation per casualty, and the 10% of AGI limitation. If the taxpayer does not have a pending claim for reimbursement and does not intend to pursue reimbursement, the amount paid to repair the damage may be used to calculate the loss, subject to the above limitations.

If a taxpayer has a pending claim for reimbursement, or intends to pursue reimbursement, the taxpayer may claim a loss for 75% of the unreimbursed amounts paid during the year to repair the damage. The taxpayer will then have income or an additional deduction in subsequent years depending on the actual amount of reimbursement that is eventually received.

A taxpayer who has been fully reimbursed before filing a tax return for the year the loss was sustained may not claim a loss.

A taxpayer claiming a casualty loss under this revenue procedure must report the amount of the loss on Form 4684, *Casualties and Thefts*, and enter "Revenue Procedure 2017-60" on the top of Form 4684.