

General Instructions

(Section references are to the Internal Revenue Code.)

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.

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 form 35 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 more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0144), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see **When and Where To File**, below.

Purpose of Form

Form 2438 is used by regulated investment companies (RICs) to figure income tax on undistributed capital gains designated under section 852(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(h) and to any RIC that does not have more than one portfolio of assets.

Undistributed capital gains designated under section 852(b)(3)(D) are taxed at a 34% rate and are treated as constructively distributed to shareholders at year end. See the instructions for **Schedule D (Form 1120)**, Capital Gains and Losses, for a definition of capital assets and other details on figuring and reporting capital gain transactions.

When and Where To File

File the original of this form by the 30th day after the end of the fund's tax year with the Internal Revenue Service Center where the fund will file its **Form 1120-RIC**, U.S. Income Tax Return for Regulated Investment Companies.

Attach a copy of Form 2438 to the fund's Form 1120-RIC. Also attach to Form 1120-RIC, Copy A of **Form 2439**, Notice to Shareholder of Undistributed Long-Term

Capital Gains, for each shareholder for whom the fund paid tax on the undistributed capital gains designated on line 11 of Form 2438. Copies B and C of Form 2439 must be provided to the shareholder by the 60th day after the end of the fund's tax year.

Rounding Off to Whole Dollars

The fund may show amounts on the return as whole dollars. To do so, drop any amount less than 50 cents and increase any amount from 50 cents through 99 cents to the next higher dollar.

Late Filing of Return

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

Late Payment of Tax

A fund that does not pay the tax when due 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. This penalty may also apply to any additional tax not paid within 10 days of the date of the notice and demand for payment. The penalty will not be imposed if the fund can show that the failure to pay on time was due to reasonable cause.

Depository Method of Tax Payment

Deposit the fund income tax payments with **Form 8109**, Federal Tax Deposit Coupon. Do not send deposits directly to an IRS office. Mail or deliver the completed Form 8109 with the payment to a qualified depository for Federal taxes or to the Federal Reserve bank (FRB) servicing the fund's geographic area. Make checks or money orders payable to that depository or FRB.

To help ensure proper crediting, write the fund's employer identification number, the tax period to which the deposit applies and "Form 1120," on the fund's check or money order. Be sure to darken the "1120" box on the coupon. These records of deposits will be sent to the IRS.

A penalty may be imposed if the deposits are mailed or delivered to an IRS office rather than to an authorized depository or FRB.

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

Who Must Sign

Form 2438 must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or by 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.

Note: If this return is being filed for a series fund (discussed in section 851(h)), 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 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.

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).
- Give a copy of Form 2438 to the taxpayer.

Specific Instructions

Period covered.—File the 1992 return for calendar year 1992 and fiscal years that begin in 1992 and end in 1993. 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 has a P.O. box, show the box number instead of the street address.

Line 4

Enter any net short-term capital gain shown on 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 on line 12 on line 6 of Schedule D (Form 1120). Report this amount as "Undistributed net capital gain not designated under section 852(b)(3)(D) from Form 2438."

Line 13

Deposit the tax due by the 30th day after the end of the fund's tax year.