



## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Who Must File

• Regulated investment companies (RICs) file Form 2438 if the fund is electing to designate undistributed capital gains 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(g) and to any RIC that does not have more than one portfolio of assets.

• Real estate investment trusts (REITs) also file the form to make the undistributed capital gains designation under section 857(b)(3)(D).

### Purpose of Form

Form 2438 is used by RICs or REITs to figure income tax on undistributed capital gains designated under section 852(b)(3)(D) or section 857(b)(3)(D).

See the instructions for Schedule D (Form 1120) for a definition of capital assets and information on figuring and reporting capital gains and losses.

### When and Where To File

- File Form 2438 by the 30th day after the end of the fund's or the REIT's tax year.
- File the form with the same Internal Revenue Service Center where Form 1120-RIC or Form 1120-REIT will be filed. Attach a copy of Form 2438 to the fund's Form 1120-RIC or the REIT's Form 1120-REIT.

### Who Must Sign

Form 2438 must be signed and dated by one of the following individuals:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer, or
- 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 or REIT.

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

**Paid preparer.** 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).
- Furnish a copy of Form 2438 to the taxpayer.

### Penalty for Late Filing of Return

A fund or REIT that does not file its tax return by the due date, including extensions, may

be penalized 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 or REIT can show that the failure to file on time was due to reasonable cause. Funds or REITs that file late must attach a statement explaining the reasonable cause.

### Penalty for Late Payment of Tax

A fund or REIT that does not pay the tax when due may be penalized 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. The penalty will not be imposed if the fund or REIT can show that the failure to pay on time was due to reasonable cause.

### Depository Method of Tax Payment

Some funds or REITs are required to electronically deposit all depository taxes, including corporation income tax payments.

**Electronic deposit requirement.** The fund or REIT must make electronic deposits of all depository tax liabilities that occur after 1998 if:

- It was required to electronically deposit taxes in prior years,
- It deposited more than \$50,000 in social security, Medicare, railroad retirement, and withheld income taxes in 1997, or
- It **did not** deposit social security, Medicare, railroad retirement, or withheld income taxes in 1997, but it deposited more than \$50,000 in other taxes under section 6302 (such as the corporate income tax) in 1997.

For details, see Regulations section 31.6302-1(h).

The Electronic Federal Tax Payment System (EFTPS) must be used to make electronic deposits. If the fund or REIT is required to make electronic deposits and fails to do so, it may be subject to a 10% penalty.

**Note:** A penalty will not be imposed for tax liabilities that occur prior to January 1, 1999, if the fund or REIT was first required to use EFTPS on or after July 1, 1997.

Funds or REITs that are not required to make electronic deposits may voluntarily participate in EFTPS. To enroll in EFTPS, call 1-800-945-8400 or 1-800-555-4477. For general information about EFTPS, call 1-800-829-1040.

**Deposits with Form 8109.** If the fund or REIT does not use EFTPS, deposit income tax payments with Form 8109. See the instructions for Form 1120-RIC or 1120-REIT for information on making deposits with Form 8109.

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.

**Caution:** If the fund or REIT owes tax when it files Form 2438, do not include the payment with the tax return. Instead, mail or deliver the payment with Form 8109 to a qualified depository or FRB, or use the EFTPS, if applicable.

## Specific Instructions

**Period covered.** File the 1998 return for calendar year 1998 and fiscal years that begin in 1998 and end in 1999. 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 or REIT has a P.O. box, show the box number instead of the street address.

### Lines 1 and 5

**Column (d).** Enter either gross sales price or net sales price. If net sales price is entered, do not increase the cost or other basis in column (e) by any expenses reflected in the net sales price.

**Column (e).** If gross sales price is reported in column (d), increase the cost or other basis by any expense of sale such as broker's fees, commissions, or option premiums before entering an amount in column (e).

### Line 4

Enter any net short-term capital gain from line 4 on line 1 of Schedule D (Form 1120) as "Net short-term capital gain from line 4, Form 2438." For information on a short-term capital loss, see the Schedule D (Form 1120) instructions.

### Line 12

Enter the amount from line 12 on line 6 of Schedule D (Form 1120). Report this amount as "Undistributed capital gains not designated (from Form 2438)."

### Line 13

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

**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.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping</b> . . . . .	7 hr., 39 min.
<b>Learning about the law or the form</b> . . . . .	35 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	45 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, see **When and Where To File** above.

