

## **Caution: *DRAFT—NOT FOR FILING***

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If you have any comments on this draft, you can submit them to us on our IRS.gov page titled [Comment on Forms and Publications](#), where you may make comments anonymously if you wish. You can also email us at [taxforms@irs.gov](mailto:taxforms@irs.gov). Please include the form or publication number in the subject. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each suggestion. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

## Undistributed Capital Gains Tax Return

OMB No. 1545-0144

▶ **Attach a copy of this form to Form 1120-RIC or to Form 1120-REIT.**  
 ▶ **Information about Form 2438 is at [www.irs.gov/form2438](http://www.irs.gov/form2438).**

For calendar year 20\_\_\_\_ or tax year beginning \_\_\_\_\_, 20\_\_\_\_, ending \_\_\_\_\_, 20\_\_\_\_

**Please  
Type  
or  
Print**

Name of fund or REIT	Employer identification number
Number, street, and room or suite no. (If a P.O. box, see instructions.)	
City or town, state, and ZIP code	

**Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less**

(a) Description of property (Example, 100 shares of Z Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) ((d) less (e))
1					
2	Short-term capital gain from installment sales from Form 6252, line 26 or 37 . . . . .				<b>2</b>
3	Unused capital loss carryover (attach computation) . . . . .				<b>3</b> ( )
4	Net short-term capital gain or (loss). Combine lines 1 through 3. (See instructions.) . . . . .				<b>4</b>

**Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year**

5					
6	Gain from Form 4797, column (g), line 7 or 9 . . . . .				<b>6</b>
7	Long-term capital gain from installment sales from Form 6252, line 26 or 37 . . . . .				<b>7</b>
8	Net long-term capital gain. Combine lines 5 through 7 . . . . .				<b>8</b>

**Part III Summary of Parts I and II**

9a	Net capital gain. Enter excess of net long-term capital gain (line 8) over net short-term capital loss (line 4) . . . . .		<b>9a</b>
b	Capital gain dividends . . . . .		<b>9b</b>
10	Undistributed capital gains. Subtract line 9b from line 9a . . . . .		<b>10</b>
11	Amount of undistributed capital gains on line 10 designated under section 852(b)(3)(D) or 857(b)(3)(D) . . . . .		<b>11</b>
12	Amount of undistributed capital gains not designated under section 852(b)(3)(D) or 857(b)(3)(D). Subtract line 11 from line 10. (See instructions.) . . . . .	<b>12</b>	
13	<b>Capital gains tax.</b> Multiply line 11 by 35% (.35) . . . . .		<b>13</b>

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer	Date	Title
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**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no.			

DRAFT AS OF  
August 23, 2012

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DO NOT FILE

## General Instructions

Section references are to the Internal Revenue Code.

### Future Developments

For the latest information about developments related to Form 2438 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form2438](http://www.irs.gov/form2438).

### What's New

A RIC or REIT will now have to enter the net short-term capital gain from line 4 and the undistributed capital gains not designated under section 852(b)(3)(D) or 857(b)(3)(D) from line 12 on Form 8949, Sales and Other Dispositions of Capital Assets. See the instructions for lines 4 and 12.

### Who Must File

Regulated investment companies (RICs) and real estate investment trusts (REITs) file Form 2438 if the RIC (defined below) or REIT is electing to designate undistributed capital gains under section 852(b)(3)(D) or 857(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.

### 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 To File

File Form 2438 by the 30th day after the end of the RIC's or the REIT's tax year.

### Where To File

File the original form with the:  
Internal Revenue Service Center  
201 W. Rivercenter Blvd.  
Covington, KY 41011

In addition, attach a copy of Form 2438 to Form 1120-RIC or Form 1120-REIT.

### Who Must Sign

Form 2438 must be signed and dated by:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer or
- Any other corporate officer (such as tax officer) authorized to sign.

If a return is filed on behalf of a RIC or REIT by a receiver, trustee or assignee, the fiduciary must sign the return, instead of the corporate officer. Returns and forms signed by a receiver or trustee in bankruptcy on behalf of a RIC or REIT must be accompanied by a copy of the order or instructions of the court authorizing signing of the return or form.

For a return that 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 Use Only area should remain blank. Anyone who prepares Form 2438 but does not charge the RIC 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 Use Only area.

**Paid preparer.** The paid preparer must complete the Paid Preparer Use Only area (including signing the form in the space provided for the preparer's signature) and give a copy of Form 2438 to the taxpayer.

### Penalty for Late Filing of Return

A RIC 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 \$135. The penalty will not be imposed if the RIC or REIT can show that the failure to file on time was due to reasonable cause.

### Penalty for Late Payment of Tax

A RIC or REIT that does not pay the tax when due generally 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 RIC or REIT can show that the failure to pay on time was due to reasonable cause.

### Reasonable cause determinations.

If the RIC or REIT receives a notice about penalties after it files its return, send the IRS an explanation and we will determine if the RIC or REIT meets the reasonable cause criteria. **Do not** attach an explanation when the RIC's or REIT's return is filed.

### Electronic Deposit Requirement

RICs and REITs must use electronic funds transfers to make all federal tax deposits (such as deposits of employment tax, excise tax, and corporate income tax). Generally, electronic fund transfers are made using the Electronic Federal Tax Payment System (EFTPS). However, if you do not want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day tax wire payment (discussed below) on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

For more information about EFTPS, or to enroll in EFTPS, visit the EFTPS website at [www.eftps.gov](http://www.eftps.gov) or call 1-800-555-4477. You can also get Pub. 966, Electronic Federal Tax Payment System: A Guide to Getting Started.

**Note.** Forms 8109 and 8109-B, Federal Tax Deposit Coupon, can no longer be used to make federal tax deposits.

**Depositing on time.** For deposits made by EFTPS to be on time, the RIC or REIT must initiate the deposit by 8 p.m. Eastern time on the day before the date the deposit is due. If the RIC or REIT uses a third party to make the deposits on its behalf, they may have different cutoff times.

**Same-day wire payment option.** If the RIC or REIT fails to initiate a deposit transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, it can still make the deposit on time by using the Federal Tax Application (FTA). Before using the same-day wire payment option, the RIC or REIT will need to make arrangements with its financial institution ahead of time. Please check with the financial institution regarding availability, deadlines, and costs. To learn more about making a same-day wire payment and to download the Same-Day Payment Worksheet, visit [www.eftps.gov](http://www.eftps.gov).

## Specific Instructions

**Period covered.** 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 RIC or REIT has a P.O. box, show the box number instead of the street address.

### Lines 1 and 5

**Column (b) – Date acquired.** A RIC's or REIT's acquisition date for an asset it held on January 1, 2001, for which it made an election to recognize any gain (under section 311 of the Taxpayer Relief Act of 1997) is the date of the deemed sale and reacquisition.

**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).

A RIC's or REIT's basis in an asset it held on January 1, 2001, for which the RIC or REIT made an election to recognize any gain (under section 311 of the Taxpayer Relief Act of 1997) is the asset's closing market price or fair market value, whichever applies, on the date of the deemed sale and reacquisition, whether the deemed sale resulted in a gain or unallowed loss.

### Line 4

Enter any net short-term capital gain from line 4 in Part I of Form 8949. Also identify the gain as "Net short-term capital gain from line 4, Form 2438" in column (a) of Form 8949. See Form 8949, Schedule D (Form 1120), and the related instructions for details.

### Line 12

Enter the amount from line 12 in Part II of Form 8949. Also identify the gain as "Undistributed capital gains not designated (from Form 2438)" in column (a) of Form 8949. See Form 8949, Schedule D (Form 1120), and the related instructions for details.

### 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:

**Recordkeeping** . . . 8 hr., 36 min.

**Learning about the law or the form** . . . . 30 min.

**Preparing and sending the form to the IRS** . . . 39 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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send the tax form to this office. Instead, see *Where To File*.