



COMMISSIONER

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

November 20, 2019

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

Dear Representative Courtney:

Thank you for your letter dated November 4, 2019, and your previous correspondence asking for clarification about reimbursements to homeowners by the Connecticut Foundation Solutions Indemnity Company, Inc. (CFSIC) for expenses associated with house foundations crumbling due to the mineral pyrrhotite. Specifically, you asked whether CFSIC, a state-chartered insurer, must report reimbursements to homeowners on Forms 1099. You expressed the need for homeowners, who sought or may seek financial reimbursement from CFSIC, to have clarity about the Form 1099 issue.

Section 6041 of the Internal Revenue Code requires all persons engaged in a trade or business and making payment in the course of that trade or business to another person of fixed or determinable gains, profits, and income of \$600 or more in a tax year to make an information return. Generally, the information return used under Section 6041 is a Form 1099, and the person required to file the form (the payor) must furnish a copy to the recipient of a payment. Section 1.6041-1(c) of the Income Tax Regulations provides that income is "fixed" when it is to be paid in amounts definitely predetermined. Income is "determinable" when there is a basis of calculation by which the amount to be paid may be ascertained.

As used in Section 6041, the term "gains, profits, and income" means gross income and not the gross amount paid. Section 6041 does not generally require a payor to file or furnish a Form 1099 for payments that are not includible in the recipient's income. Further, a payor is not required to file or furnish a Form 1099 if the payor does not have a basis to determine the amount of a payment that the recipient should include in gross income.

IRS guidance provides a safe harbor that allows certain homeowners to treat amounts paid to repair damage to their personal residence caused by a concrete foundation, that has deteriorated due to the mineral pyrrhotite as a casualty loss under section 165 so long as the taxpayer was not fully reimbursed by insurance or otherwise before filing a return for the year the loss was sustained. See Revenue Procedure 2017-60, 2017-50 I.R.B. 559; Revenue Procedure 2017-14, 2018-9 I.R.B. 378. If a homeowner deducted a loss and in a subsequent taxable year receives reimbursement for the loss, the homeowner does not recompute the tax for the taxable year in which the deduction was

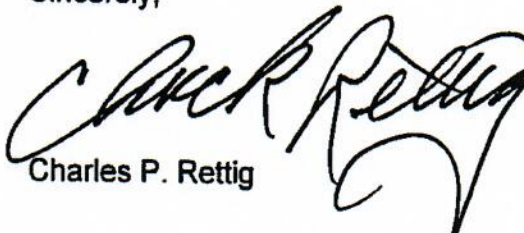


taken. Instead, the homeowner must include the amount of the reimbursement in gross income for the taxable year in which the reimbursement is received, subject to the provisions of Section 111, relating to recovery of amounts previously deducted. See Treasury Regulation Section 1.165-1(d)(2)(iii); Section 4.02 of Rev. Proc. 2017-60; IRS Publication 547, Casualties, Disasters, and Thefts. Reimbursement for a casualty loss that a taxpayer does not deduct is generally not income to the taxpayer if the reimbursement amount does not exceed the taxpayer's basis in the property.

Therefore, homeowners who are reimbursed by CFSIC for previously deducted repair costs must include the reimbursed amount in income in the year of receipt. In addition, homeowners who receive reimbursement that exceeds their basis in the property must include the excess amount in income. Under Section 1.6041-1(c), however, if CFSIC does not possess the information about previous deductions and basis necessary to determine whether or how much of the reimbursement will be includible as income by a homeowner, then the reimbursement to that homeowner will not constitute fixed and determinable income for the purpose of information reporting. In those cases, CFSIC will not be required to file an information return under section 6041.

Again, thank you for writing. I am sending a similar letter to your colleagues. If you have 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