

Connecticut Congressional Delegation Members Receive Clarification From IRS On Captive Insurance Company, Tax Form 1099s For Homeowners With Crumbling Foundations

November 25, 2019 | Press Release

WASHINGTON, DC – Representatives Joe Courtney (CT-02) and John Larson (CT-01), and Senators Richard Blumenthal (D-CT) and Chris Murphy (D-CT), released a letter they received from the IRS (<https://courtney.house.gov/sites/courtney.house.gov/files/11.20.2019%20IRS%20Response.pdf>) confirming that the Connecticut Foundation Solutions Indemnity Company, Inc. (CFSIC) is not required to issue federal tax form 1099s to homeowners who have received assistance from CFSIC to repair their crumbling foundations.

“We are grateful for the response from the IRS providing clarity that CFSIC is not required under federal law and regulations to issue 1099 tax forms to those receiving this critical assistance to repair their homes,” **the delegation said.** “We urge all homeowners, however, to consult closely with their financial and tax professionals to fully understand how this assistance could impact their taxes.”

On August 28, 2019, CFSIC, the captive insurer created through state law to coordinate assistance claims from homeowners and distribute mostly state funds to qualified homeowners, wrote to each of the four Congressional delegation members seeking IRS clarification on whether it must issue Form 1099s to homeowners who received such assistance. The Congressional Delegation jointly requested an IRS response to CFSIC’s question in September, and followed up with a formal letter on November 4, 2019 when a response had not been forthcoming. [Click here to read that letter](https://courtney.house.gov/sites/courtney.house.gov/files/11.20.2019%20IRS%20Response_o.pdf) (https://courtney.house.gov/sites/courtney.house.gov/files/11.20.2019%20IRS%20Response_o.pdf).

The letter from the IRS confirms that, because CFSIC does not collect information that would allow them to determine a homeowner’s basis in their property, CFSIC is not required to provide homeowners with a 1099 form. Specifically, the IRS details that “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.” Basis in property is a calculation that typically means the cost of the asset to the buyer, and may include settlement fees, closing costs, the cash paid for the property, and the mortgage on the property.

In addition, the letter states that “reimbursement for a casualty loss that a taxpayer does not deduct is generally not income to the taxpayer if the reimbursement does not exceed the taxpayer’s basis in the

property.” The letter also includes IRS interpretation of specific and limited scenarios in which those who have received reimbursement from CFSIC *could* be required to report these funds on their federal tax return:

1. A situation in which a homeowner has previously claimed the federal casualty loss tax deduction, and later receives reimbursement for those previously claimed losses;
2. A situation in which a homeowner “receive[s] reimbursement that exceeds their basis in the property”; in that case, the letter states that homeowners must “include the excess amount in income.”

The delegation will continue to work with IRS officials to secure further clarification on this new information for impacted homeowners.

The delegation added that homeowners with questions about this information and understanding own tax situation should consult with a certified tax preparer.

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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.

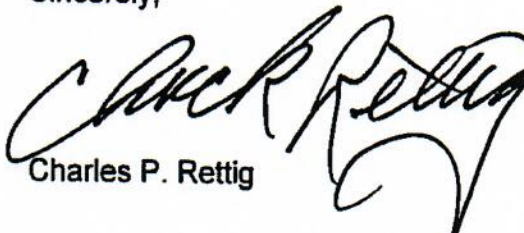
IRS guidance provides a safe harbor that allows certain homeowners to treat amounts paid to repair damage to their personal residence caused by a concrete foundation, that has deteriorated due to the mineral pyrrhotite as a casualty loss under section 165 so long as the taxpayer was not fully reimbursed 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