Internal Revenue Service, Treasury

§ 1.852–9 Special procedural requirements applicable to designation under section 852(b)(3)(D).

(a) Regulated investment company—(1) Notice to shareholders. (i) A designation of undistributed capital gains under section 852(b)(3)(D) and paragraph (b)(2)(i) of §1.852–2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of record of the company at the close of the company’s taxable year. The notice on Form 2439 shall show the name, address, and employer identification number of the regulated investment company; the taxable year of the company for which the designation is made; the name, address, and identifying number of the shareholder; the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains; and the tax paid with respect thereto by the company which is deemed to have been paid by the shareholder.

(ii) In the case of a designation of undistributed capital gains with respect to a taxable year of the regulated investment company ending after December 31, 1969, and beginning before January 1, 1975, Form 2439 shall also show the shareholder’s proportionate share of such gains which is gain described in section 1201(d)(1), his proportionate share of such gains which is gain described in section 1201(d)(2), and the amount (determined pursuant to subdivision (iv) of this subparagraph) by which the shareholder’s adjusted basis in his shares shall be increased.

(iii) In determining under subdivision (ii) of this subparagraph the portion of the undistributed capital gains which, in the hands of the shareholder, is gain described in section 1201(d)(1) or (2), the company shall consider that capital gain dividends for a taxable year are made first from its long-term capital gains for such year which are not described in section 1201(d)(1) or (2), to the extent thereof, and then from its long-term capital gains for such year which are described in section 1201(d)(1) or (2). A shareholder’s proportionate share of undistributed capital gains for a taxable year which is gain described in section 1201(d)(1) is the amount which bears the same ratio to the amount included in his income as designated undistributed capital gains for such year as (a) the aggregate amount of the company’s gains for such year which are described in section 1201(d)(1) and designated as undistributed capital gains bears to (b) the aggregate amount of the company’s gains for such year which are designated as undistributed capital gains. A shareholder’s proportionate share of gains which are described in section 1201(d)(2) shall be determined in a similar manner. Every regulated investment company shall keep a record of the proportion of undistributed capital gains (to which this subdivision applies) which is gain described in section 1201(d)(1) or (2).

(iv) In the case of a designation of undistributed capital gains for any taxable year ending after December 31, 1969, and beginning before January 1, 1975, Form 2439 shall also show with respect to the undistributed capital gains of each shareholder the amount by which such shareholder’s adjusted basis in his shares shall be increased under section 852(b)(3)(D)(i). The amount by which each shareholders’ adjusted basis in his shares shall be increased is the amount includible in his gross income with respect to such shares under section 852(b)(3)(D)(i) less the tax which the shareholder is deemed to have paid with respect to such shares. The tax which each shareholder is deemed to
have paid with respect to such shares is
the amount which bears the same ratio
to the amount of the tax imposed by
section 852(b)(3)(A) for such year with
respect to the aggregate amount of the
designated undistributed capital gains
as the amount of such gains includible
in the shareholder’s gross income bears
to the aggregate amount of such gains
so designated.

(v) Form 2439 shall be prepared in
triplePLICATE, and copies B and C of the
form shall be mailed to the shareholder
on or before the 45th day (30th day for
a taxable year ending before February
26, 1964) following the close of the com-
pany’s taxable year. Copy A of each
Form 2439 must be associated with the
duplicate copy of the undistributed
capital gains tax return of the com-
pany (Form 2438), as provided in sub-
paragraph (2)(i) of this paragraph.

(2) Return of undistributed capital
gains tax—(i) Form 2438. Every regu-
lated investment company which des-
ignates undistributed capital gains for
any taxable year beginning after De-
cember 31, 1956, in accordance with sub-
paragraph (1) of this paragraph, shall
file for such taxable year an undistrib-
uted capital gains tax return on Form
2438 including on such return the total
of its undistributed capital gains so
designated and the tax with respect
thereto. The return on Form 2438 shall
be prepared in duplicate and shall set
forth fully and clearly the information
required to be included therein. The
original of Form 2438 shall be filed on
or before the 30th day after the close of
the company’s taxable year with the
internal revenue officer designated in
instructions applicable to Form 2438.
The duplicate copy of form 2438 for the
taxable year shall be attached to and
filed with the income tax return of the
company on Form 1120 for such taxable
year.

(ii) Copies A of Form 2439. For each
taxable year which ends on or before
December 31, 1965, there shall be sub-
mitted with the company’s return on
Form 2438 all copies A of Form 2439 fur-
nished by the company to its share-
holders in accordance with subpara-
graph (1) of this paragraph. For each
taxable year which ends after Decem-
ber 31, 1965, there shall be submitted
with the duplicate copy of the com-
pany’s return on Form 2438, which is
attached to and filed with the income
tax return of the company on Form
1120 for the taxable year, all copies A of
Form 2439 furnished by the company to
its shareholders in accordance with
subparagraph (1) of this paragraph. The
copies A of Form 2439 shall be accom-
panied by lists (preferably in the form
of adding machine tapes) of the
amounts of undistributed capital gains
and of the tax paid with respect there-
to shown on such forms. The totals of
the listed amounts of undistributed
capital gains and of tax paid with re-
spect thereto must agree with the cor-
responding entries on Form 2438.

(3) Payment of tax. The tax required
to be returned on Form 2438 shall be
paid by the regulated investment com-
pany on or before the 30th day after the
close of the company’s taxable year to
the internal revenue officer with whom
the return on Form 2438 is filed.

(b) Shareholder of record not actual
owner—(1) Notice to actual owner. In any
case in which a notice on Form 2439 is
mailed pursuant to paragraph (a)(1) of
this section by a regulated investment
company to a shareholder of record
who is a nominee of the actual owner
or owners of the shares of stock to
which the notice relates, the nominee
shall furnish to each such actual owner
notice of the owner’s proportionate
share of the amounts of undistributed
capital gains and tax with respect
thereto, as shown on the Form 2439 re-
ceived by the nominee from the regu-
lated investment company. The nomi-
ee’s notice to the actual owner shall
be prepared in triplicate on Form 2439
and shall contain the information pre-
scribed in paragraph (a)(1) of this sec-
tion, except that the name and address
of the nominee, identified as such,
shall be entered on the form in addi-
tion to, and in the space provided for,
the name and address of the regulated
investment company, and the amounts
of undistributed capital gains and tax
with respect thereto entered on the
form shall be the actual owner’s pro-
portionate share of the corresponding
items shown on the nominee’s notice
from the regulated investment com-
pany. Copies B and C of the Form 2439
prepared by the nominee shall be
mailed to the actual owner—
(i) For taxable years of regulated investment companies ending after February 25, 1964, on or before the 75th day (55th day in the case of a nominee who is acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (d) of §1.851–7 for taxable years of regulated investment companies ending after December 8, 1970, and 135th day if the nominee is a resident of a foreign country) following the close of the regulated investment company’s taxable year, or

(ii) For taxable years of regulated investment companies ending before February 26, 1964, on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company’s taxable year.

(2) Transmittal of Form 2439. The nominee shall enter the word “Nominee” in the upper right hand corner of copy B of the notice on Form 2439 received by him from the regulated investment company, and on or before the appropriate day specified in subdivision (i) or (ii) of subparagraph (1) of this paragraph shall transmit such copy B, together with all copies A of Form 2439 prepared by him pursuant to subparagraph (1) of this paragraph, to the internal revenue officer with whom his income tax return is required to be filed.

(3) Custodian of certain unit investment trusts. The requirements of this paragraph shall not apply to a nominee who is acting as a custodian of the unit investment trust described in section 851(f)(1) and paragraph (d) of §1.851–7 provided that the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by such nominee as custodian and on or before the 45th day following the close of the company’s taxable year, files with the Internal Revenue Service office where the company’s income tax return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee’s requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period; provided however, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

(c) Shareholders.—(1) Return and Recordkeeping Requirements.—(i) Return requirements for taxable years beginning before January 1, 2002. For taxable years beginning before January 1, 2002, the copy B of Form 2439 furnished to a shareholder by the regulated investment company or by a nominee, as provided in §1.852–9(a) or (b) shall be attached to the income tax return of the shareholder for the taxable year in which the amount of undistributed capital gains is includible in gross income as provided in §1.852–4(b)(2).

(ii) Recordkeeping requirements for taxable years beginning after December 31, 2001. For taxable years beginning after December 31, 2001, the shareholder shall retain a copy of Form 2439 for as long as its contents may become material in the administration of any internal revenue law.

(2) Credit or refund.—(i) In general. The amount of the tax paid by the regulated investment company with respect to the undistributed capital gains required under section 852(b)(3)(D) and paragraph (b)(2) of §1.852–4 to be included by a shareholder in his computation of long-term capital gains for any taxable year is deemed paid by such shareholder under section 852(b)(3)(D)(ii) and such payment constitutes, for purposes of section 6513(a) (relating to time tax considered paid), an advance payment in like amount of the tax imposed under chapter 1 of the
§ 1.852–10 Distributions in redemption of interests in unit investment trusts.

(a) In general. In computing that part of the excess of its net long-term capital gain over net short-term capital loss on which it must pay a capital gains tax, a regulated investment company is allowed under section 852(b)(3)(A)(ii) a deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only. Section 561(b) provides that in determining the deduction for dividends paid, the rules provided in section 562 are applicable. Section 562(c) (relating to preferential dividends) provides that the amount of any distribution shall not be considered as a dividend unless such distribution is pro-rata, with no preference to any share of stock as compared with other shares of the same class except to the extent that the former is entitled to such preference.

(b) Redemption distributions made by unit investment trust—(1) In general. Where a unit investment trust (as defined in paragraph (c) of this section) liquidates part of its portfolio represented by shares in a management company in order to make a distribution to a holder of an interest in the trust in redemption of part or all of such interest, and by so doing, the trust realizes net long-term capital gain, that portion of the distribution by the trust which is equal to the amount of the net long-term capital gain realized by the trust on the liquidation of the shares in the management company will not be considered a preferential dividend under section 562(c). For example, where the entire amount of net long-term capital gain so realized by the trust on such a liquidation is distributed to the redeeming interest holder, the trust will be allowed the entire amount of net long-term capital gain so realized in determining