

Caution: *DRAFT—NOT FOR FILING*

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information as a courtesy. **Do not file draft forms.** Also, do not rely on draft instructions and publications for filing. We generally do not release drafts of forms until we believe we have incorporated all changes. However, in some cases unexpected issues arise, or legislation is passed, necessitating a change to a draft form we have posted on IRS.gov. Also, forms generally are subject to OMB approval before they are officially released. Drafts of instructions and publications are usually subject to at least some changes before being officially released.

All early releases of draft forms, instructions, and publications are available at www.irs.gov/draftforms. All information about forms, instructions, and publications is accessible from www.irs.gov/formspubs.

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. 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.

Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement

OMB No. 1545-1395

▶ Attach to your income tax return.

▶ Information about Form 8838 and its instructions is at www.irs.gov/form8838.

Attachment Sequence No. **145**

Name(s) of consenting taxpayer(s)

Identifying number (see instructions)

Social security number of spouse (only if a joint income tax return was filed)

Number, street, and room or suite no. (If a P.O. box, see instructions.)

City or town, state, and ZIP code

The taxpayer(s) listed above and the Commissioner of Internal Revenue, pursuant to the regulations under section 367, agree to the following:

- 1 The amount of any federal income tax due relating to the transfer described in item 5, below, on any income tax return made by or for the above taxpayer(s) for the tax year ended _____, _____, _____, may be assessed at any time on or before _____, _____, _____, (expiration date—see instructions).
month day year
- 2 This consent establishes an extended period for assessing tax. The expiration of the extended period may be suspended or otherwise affected by the operation of law in the same manner as the original period. For example, if a notice of deficiency in tax covered by this consent is issued, the period for assessing tax will not end prior to the end of the suspension period provided for by section 6503(a), plus any time that remains in the assessment period, as extended, at the time the suspension takes effect. Under no circumstances will this consent reduce the period of time otherwise provided by law for making an assessment.
- 3 The consenting taxpayer(s) may file a claim for credit or refund for the tax assessed by reason of this consent within 6 months after the period ends for assessing tax established by this consent.
- 4 The amount of any deficiency assessment covered by this consent will be limited to the amount of any federal income tax due relating to the recognition of gain on the transfer described in item 5, including any penalties, additions to tax, and interest attributable thereto and consequential changes to other items based on that adjustment.
- 5 Complete the following information (see instructions):
 - a Date of transfer _____
 - b Description of the property transferred _____

 - c Name of transferee and identifying number, if any _____

Under penalties of perjury, I declare that I have examined this consent, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete. A signed consent, properly completed in accordance with this form and its instructions, is deemed to have been executed by the Commissioner of Internal Revenue.

Signature of consenting taxpayer (see instructions)

Date

Signature of spouse (complete only if a joint return is filed)

Date

Taxpayer's representative sign here

Date

Corporate officer(s) sign here

Date

General Instructions

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

Future Developments

For the latest information about developments related to Form 8838 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8838.

Purpose of Form

Form 8838 must be used for gain recognition agreements under sections 367(a) and 367(e)(2).

For more information about transfers of stock and securities to a foreign corporation described in section 367(a), see Regulations sections 1.367(a)-3 and 1.367(a)-8. For information about a liquidation of a domestic subsidiary into a foreign parent under section 332, see Regulations section 1.367(e)-2.

Consent to extend the time to assess tax. Although you are not required to extend the period of limitations under the terms and conditions provided in this form, failure to do so in a timely manner will invalidate the gain recognition agreement and the transfer of property will be treated as a taxable exchange as required by Regulations sections 1.367(a)-8(c) and 1.367(a)-8(j).

Who Must File

A United States transferor must file Form 8838 (or a similar statement) if it enters into a gain recognition agreement pursuant to section 367(a) with respect to the transferred property.

For purposes of section 367(a), the term "United States transferor" includes:

- A citizen or resident of the United States.
- A domestic corporation.
- A U.S. citizen, resident, or domestic corporation that is directly or indirectly a partner in a domestic or foreign partnership that transfers property to a foreign corporation. See Temporary Regulations section 1.367(a)-1T(c)(3).
- Any estate or trust (other than a foreign estate or trust under section 7701(a)(31)).

In the case of an exchange described in section 361(a) or 361(b) that is subject to section 367(a)(5), see Regulations sections 1.367(a)-8(f)(2)(i) and 1.367(a)-3(e).

The domestic corporation and distributee foreign corporation must file Form 8838 (or a similar statement) if a gain recognition agreement under section 367(e)(2) is entered into.

How To File

Attach Form 8838 to the U.S. transferor's income tax return for the tax year the transfer is made.

Specific Instructions

Identifying Number

The identifying number of an individual is the social security number. For all other taxpayers, it is the employer identification number.

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 transferor has a P.O. box, show the box number instead.

Line 1

The correct expiration date to be entered on line 1 depends on the type of transaction.

Transfers under section 367(a). A U.S. transferor must agree to extend the statute on transfers described in section 367(a) for at least 8 tax years following the tax year of the transfer.

Liquidations under section 367(e)(2). Domestic liquidating corporations and foreign distributee corporations must agree to extend the statute for liquidations described in section 367(e)(2) for at least 3 years after the date on which all items of property distributed to the foreign distributee are no longer used in a trade or business within the United States. However, the period of extension may not exceed 13 years from the filing of the original U.S. income tax return for the tax year of the last distribution of any item of property included in the liquidation.

Line 5

If Form 8838 is filed by a successor U.S. transferor because of a transaction described in Regulations section 1.367(a)-8(k), the information required in lines a, b, and c refers to the initial transfer.

Signature

Joint returns. If this consent is made for any year for which a joint income tax return is filed, both husband and wife must sign Form 8838 unless one, acting under a power of attorney, signs as an agent for the other.

Corporation. If the taxpayer is a corporation, a responsible officer of the corporation must sign the return and show his or her title. Affiliated groups filing a consolidated income tax return should see Regulations section 1.1502-77 for rules about a common parent signing as an agent for subsidiaries and alternative agents for affiliated groups. Also see Regulations section 1.367(a)-(8)(d)(3).

Attorney or Agent. If you are an attorney or agent of the taxpayer(s), you may sign this consent if that action is specifically authorized by a power of attorney. Form 2848, Power of Attorney and Declaration of Representative, provides the authority on line 5, Acts authorized. Attach a copy of Form 2848 with Form 8838.

Fiduciaries. If you are acting as a trustee and you sign this consent, you must attach a copy of Form 56, Notice Concerning Fiduciary Relationship, and the trust instrument. If you are acting as an executor, administrator, or other fiduciary of an estate, you must attach a copy of Form 56, and the certified copy of letters of testamentary or court certificate certifying as to the present status of the estate, including the name of the present fiduciary and capacity.

Bankruptcy case under Title 11, United States Code. The trustee must sign the consent in a case under Title 11 if the trustee has possession of, or holds title to, all or substantially all of the property or business of a corporation.

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 content may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	4 hr., 18 min.
Learning about the law or the form	1 hr., 53 min.
Preparing the form	2 hr., 2 min.
Copying, assembling, and sending the form to the IRS	0 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. See the instructions for the tax return with which this form is filed.