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Instructions for Form 8308

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

Future Developments

For the latest information about developments related to Form 8308 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8308](https://www.irs.gov/Form8308).

Reminders

For transfers that occurred on or after January 1, 2023, Form 8308, Parts I and II, were expanded; and Parts III and IV were added. Parts I and II request information regarding the record holder, as well as the beneficial owner of the transferor and transferee of the partnership interest. Part I contains a checkbox to report if the transferor is foreign. Part III was added to request information regarding the type of partnership interest transferred. Part IV was added to report, when there's a section 751(a) exchange, the partnership's and the transferring partner's share of section 751(a) hot assets (unrealized receivables and inventory items) gain (loss), collectibles gain under section 1(h)(5) gain, and unrecaptured section 1250 gain under section 1(h)(6).

General Instructions

Purpose of Form

Form 8308 is filed by a partnership to report the sale or exchange by a partner of all or part of a partnership interest where any money or other property received in exchange for the interest is attributable to unrealized receivables or inventory items (that is, where there has been a section 751(a) exchange).

Who Must File

A partnership must file a separate Form 8308 for each section 751(a) exchange of an interest in such partnership. See Regulations section 1.6050K-1.

Note. Form 8308 doesn't have to be filed if, under section 6045, Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, is required to be filed with respect to the sale or exchange.

A partnership must file Form 8308 once the partnership has notice of the section 751(a) exchange. The partnership has such notice when either of the following occurs.

- The partnership receives written notification of the exchange from the transferor that includes the names and addresses of both parties to the exchange, the identifying numbers of the transferor and (if known) of the transferee, and the date of the exchange.
- The partnership has knowledge that there has been a transfer of a partnership interest and, at the time of the

transfer, the partnership had any unrealized receivables or inventory items.

No returns or statements are required under section 6050K if the transfer wasn't a section 751(a) exchange. For example, a transfer which in its entirety constitutes a gift for federal income tax purposes isn't a section 751(a) exchange.

A partnership may rely on a written statement from the transferor that the transfer wasn't a section 751(a) exchange unless the partnership has knowledge to the contrary. If a partnership is in doubt whether partnership property constitutes unrealized receivables or inventory items or whether a transfer constitutes a section 751(a) exchange, the partnership may file Form 8308 to avoid the risk of incurring a penalty for failure to file.

When To File

Generally, file Form 8308 as an attachment to Form 1065, U.S. Return of Partnership Income, for the tax year of the partnership that includes the last day of the calendar year in which the section 751(a) exchange took place. Form 8308 is due at the time for filing the partnership return, including extensions.

Situations That Require Filing Form 8308

Untimely or incorrect reporting of section 751(a) exchange by a partner to a BBA partnership. If a BBA partnership is notified of a section 751(a) exchange after it has filed its partnership return (and the time for filing a superseding return has expired) and the amount of section 751(a) gain wasn't reported on the transferor partner's Schedule K-1 (Form 1065), or if the section 751(a) exchange was incorrectly reported, then the partnership must file an administrative adjustment request (AAR) and include Form 8308 as an attachment. See the instructions for Forms 8082 and 1065-X for more information on filing an AAR. For additional information, go to [IRS.gov/BBAAAR](https://www.irs.gov/BBAAAR). If the partnership is still permitted to file a superseding return, it may do so rather than file an AAR, before the due date of the return, including extensions.

Note. A superseding return is a subsequent return filed within the same filing period as the original return (including extensions). In contrast, an amended return is a subsequent return filed after the extended due date of the original return.

Untimely or incorrect reporting of section 751(a) exchange by partner to a non-BBA partnership. If a non-BBA partnership is notified of a section 751(a) exchange after it has filed its partnership return (and the time for filing a superseding return has expired) and the amount of section 751(a) gain wasn't reported on the transferor partner's Schedule K-1 or if the section 751(a) exchange was incorrectly reported, then the partnership

must file Form 8308 with an amended Form 1065 within 30 days of notification, with the service center where Form 1065 was filed, and provide amended Schedules K-1 to the affected partner(s). If the partnership is within the time frame to file a superseding return, it may do so rather than file an amended return.

Non-filing of Form 8308 by the partnership. If a BBA or non-BBA partnership didn't file Form 8308 with its Form 1065 but reported the correct section 751(a) gain (loss) on its return and on its Schedule(s) K-1 issued to the relevant partner(s), then the partnership must file Form 8308 separately and within 30 days of notification with the service center where Form 1065 was filed. No AAR is needed for BBA partnerships because there is no change to the originally reported section 751(a) gain (loss) amount.

Incorrect reporting of section 751(a) exchange on Form 8308 by partnership but correct reporting of section 751(a) exchange on Schedule K-1. If a BBA or non-BBA partnership provided an incorrect Form 8308 to the transferor and transferee by January 31 of the year following the calendar year in which the section 751(a) exchange occurred or, if later, 30 days after the partnership has notice of the exchange, but the partnership corrected the reporting of the section 751(a) exchange on the Schedule K-1 and provided a correct Form 8308 with its Form 1065 filing, then the partnership should provide a corrected Form 8308 to the partners by the filing date of the Form 1065. No AAR or amended return is needed because there is no change to the Form 1065 filing.

Incorrect reporting of section 751(a) exchange on Schedule K-1 or K-3.

BBA partnership. If the partnership incorrectly reported the section 751(a) exchange on Schedule K-1 and the period for filing a superseding return has expired, the partnership must file an AAR to make the correction. A correct Form 8308 that also correctly reports the gain should be attached to the AAR. If the period for filing a superseding return has not yet expired, the partnership may file a superseding return rather than an AAR.

Non-BBA partnership. If the partnership incorrectly reported the section 751(a) exchange on Schedule K-1 or K-3 and the period for filing a superseding return has expired, the partnership must file an amended return to make the correction. A correct Form 8308 that also correctly reports the gain should be attached to the amended return. If the period for filing a superseding return has not yet expired, the partnership may file a superseding return rather than an amended return.

Copies of Form 8308 To Be Furnished to Transferor and Transferee

All partnerships required to file Form 8308 must furnish a copy of the form to each transferor and transferee by January 31 of the year following the calendar year in which the section 751(a) exchange occurred or, if later, 30 days after the partnership has notice of the exchange.

If a Form 8308 containing incorrect information is furnished to the partner before Form 1065 with

Schedule K-1 is filed, the partnership should notify the partner that the Form 8308 was incorrect and notify the partner of the corrections by the due date of the return including extensions. If the partner received a Form 8308 that isn't consistent with the information that the partnership reports on Schedule K-1 (Form 1065), then the partner should use the information on Schedule K-1 and request a revised Form 8308 from the partnership if the partnership didn't provide it.

Note. The transferor of the interest is required to notify the partnership of the exchange of the partnership interest unless, under section 6045, Form 1099-B is required to be filed.

Penalties

Penalty for failure to file correct Form 8308. A penalty may be imposed for failing to file each Form 8308 when due, including extensions. The penalty may also be imposed for failing to include all required information on Form 8308 or for furnishing incorrect information. The penalty is calculated based on when the partnership files a correct Form 8308.

The penalty won't apply to any failure that the partnership can show was due to reasonable cause and not willful neglect. For more details, see sections 6721 and 6724.

Penalty for failure to furnish correct Forms 8308 to transferor and transferee. A penalty may be imposed for each failure to furnish when due a copy of Form 8308 to either party to the exchange. The amount of the penalty may also be imposed for each failure to give the transferor or transferee all required information on each Form 8308 or for furnishing incorrect information. If the partnership intentionally disregards the requirement to report correct information, each penalty is increased. The penalty will not apply to any failure that the partnership can show was due to reasonable cause and not willful neglect. See sections 6722 and 6724 for more details.

Instructions for Transferors

This form alerts transferors that they're required to treat a portion of the gain realized from a section 751(a) exchange as ordinary income. Under these circumstances, the form also alerts transferors of any collectibles gain under section 1(h)(5) and unrecaptured section 1250 gain under section 1(h)(6). For more details, see Pub. 541, Partnerships.

Information reported in Part IV must also have been reported to you in box 20 of Schedule K-1 (Form 1065), using codes AB, AC, and/or AD. See the Partner's Instructions for Schedule K-1 (Form 1065). In addition, for foreign transferors, this information must also have been reported to you on Schedule K-3, Part XIII. See the Partner's Instructions for Schedule K-3 (Form 1065). Even if this information is required to be reported on multiple forms, it must only be reported on the partner's tax return once. If a transferor receives information on a Schedule K-1 or K-3 that is inconsistent with or has information missing from what is reported on Form 8308, the transferor should rely on the information on Schedule K-1 or K-3.

If a transferor receives Form 8308 after the Schedule K-1 or K-3 is received and Form 8308 is inconsistent with Schedule K-1 or K-3, the transferor must contact the partnership and determine whether a superseding return, an amended partnership return (for a non-BBA partnership) or an AAR (for a BBA partnership) has been filed with the IRS by the partnership relating to the information reported on Form 8308. If a superseding return, an amended Form 1065, or an AAR has been filed, the transferor should secure a revised Schedule K-1 and Schedule K-3 (if applicable) or Form 8986, Partner's Share of Adjustment(s) to Partnership-Related Item(s).

Note. A BBA partnership will only issue Forms 8986 in instances where some or all of the adjustments reported by the AAR don't result in an imputed underpayment (IU) or some or all of the adjustments do result in an IU but the partnership makes an election to push out the adjustments in lieu of paying the IU at the partnership level.

If no amended Schedule K-1, Schedule K-3, or Form 8986 is secured from the partnership and the transferor is certain that the Form 8308 is correct and that transferor should have received a corrected Schedule K-1, Schedule K-3, or Form 8986, then the following apply.

- BBA partnership: the partner should affirmatively file Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), because the partner is filing inconsistently with the Schedule K-1 or K-3 received and is relying on Form 8308.
- Non-BBA partnership: Form 8082 isn't required if filing inconsistently with a Schedule K-1 or K-3 received and relying on Form 8308.

Separate Statement Required by Transferor

The transferor is required by Regulations section 1.751-1(a)(3) to attach a statement to the transferor's income tax return for the tax year of the sale or exchange with the following information.

- The date of the sale or exchange.
- The amount of any gain or loss attributable to the section 751(a) property.
- The amount of any gain or loss attributable to capital gain or loss on the sale of the partnership interest.

Specific Instructions

Instructions for Partnership

Partnership address. Include the suite, room, or other unit number after the street address. If the post office doesn't deliver mail to the street address and the partnership has a P.O. box, show the box number instead.

Parts I and II

For Parts I and II, provide the relevant information for the beneficial owner or record holder of the partnership interest immediately before the transfer (transferor) and immediately after the transfer (transferee). If the transferor or transferee record holder owns the interest on behalf of another person as a nominee, an agent, or a custodian, complete the information for the beneficial owner. If the

identity of the transferor or transferee beneficial owner is unknown, check the box and complete the information for the record holder. See Regulations section 1.6050K-1(a)(4)(iii). If the transferor or transferee is a disregarded entity for federal income tax purposes, list the first regarded owner of the partnership interest as the beneficial owner. If the transferor or transferee beneficial owner is also the record holder, don't check the box to provide the record holder information.

Check the box in Part I if the transferor beneficial owner of the partnership interest is a foreign person. If the identity of the transferor beneficial owner isn't known, check this box if the record holder is foreign.

Section 751(a) Exchange

A section 751(a) exchange occurs when money or any property is exchanged for all or part of a partnership interest that is attributable to unrealized receivables or inventory items. Generally, any sale or exchange of a partnership interest (or any portion) at a time when the partnership has any unrealized receivables or inventory items is a section 751(a) exchange.

Unrealized Receivables

Unrealized receivables, to the extent not previously includible in income under the partnership's accounting method, are any rights to payment for the following.

- Goods delivered or to be delivered, to the extent that the payment would be treated as received for property other than a capital asset.
- Services rendered or to be rendered.

Unrealized receivables also include the amount of gain that would be ordinary income if any of the following types of partnership property were sold on the date of the section 751(a) exchange.

- Mining property (section 617(f)(2)).
- Stock in an interest charge domestic international sales corporation (section 992(a)).
- Farm recapture property or farmland (section 1252(a)).
- Franchises, trademarks, or trade names (section 1253(a)).
- Oil, gas, or geothermal property (section 1254).
- Stock of a controlled foreign corporation (section 1248).
- Section 1245 property.
- Section 1245 recovery property.
- Section 1250 property.
- Market discount bonds (section 1278).
- Short-term governmental obligations (section 1283).
- Other short-term obligations (section 1283(c)).

Inventory Items

Inventory items aren't just stock in trade of the partnership. They also include the following.

- Any properties that would be included in inventory if on hand at the end of the tax year or that are held primarily for sale to customers in the normal course of business.
- Any asset that isn't a capital asset or isn't treated as a capital asset.

- Any other property held by the partnership that would be considered inventory if held by the transferor partner.
- Any trade receivables of accrual method partnerships.

Tiered Partnerships

In determining whether partnership property is an unrealized receivable or an inventory item, the partnership is treated as owning its proportionate share of the property of any other partnership in which it is a partner. See section 751(f).

Part III—Type of Partnership Interest Transferred

Check the box on Part III, line 2, that identifies the type of interest the partner transferred in the partnership. For purposes of Part III, line 2, the following apply.

- For boxes A and C, capital and profits interests are determined in accordance with Regulations section 1.706-1(b)(4).
- For box B, a preferred partnership interest is a partnership interest having a preference in payment of distributions or on liquidation over other partners.
- For box D, “other” means a partnership interest that isn’t capital, profits, or preferred.

Part IV—Partner’s Share of Gain (Loss) Required by Sections 751(a) and 1(h)(5) and (6)

The three categories reported in Part IV are:

- Section 751(a) hot assets (unrealized receivables and inventory items gain (loss)),
- Collectibles gain under section 1(h)(5), and
- Unrecaptured section 1250 gain under section 1(h)(6).

Column (a). Report the entity-level computed gain (loss) for each of the categories that are taxed at rates higher than the long-term capital gain tax rates. In determining the section 751(a) hot assets as required by Regulations section 1.751-1(a)(2), the partnership is to compute the amount of gain or loss as if the partnership had sold all of its property in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately prior to the partner’s transfer of the interest in the partnership. For calculations of gains from collectibles assets, see Regulations section 1.1(h)-1(b)(2). For calculations of unrecaptured section 1250 gain upon the sale or exchange of a partnership interest, see Regulations section 1.1(h)-1(b)(3).

Columns (b1) and (b2). Identify the percentage interest or the number of units in the partnership transferred. Enter either the percentage interest in the partnership or the number of units in the partnership that the partner transferred in column (b1) or (b2), respectively. If a partnership is completing this part for a partner that is treated as transferring an interest in the partnership because it received a distribution but whose ownership interest in the partnership remains unchanged, enter zero in column (b1) or (b2) depending on whether the ownership interests in the partnership are based on a percentage or units, respectively.

Column (c). Report the partner’s allocable share of the amounts in column (a) related to the portion of the interest that was sold. The amounts in column (c) should be reported in box 20 of the partner’s Schedule K-1 (Form 1065), with the alpha code listed.

If the transferor is foreign, the partnership may also be required to complete Schedule K-3 (Form 1065), Part XIII. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065). Even if the partnership must report this information on multiple forms, the partner must report it only once on its return.

A partner must generally report the results of the transfer of a partnership interest on their related return. This may include reporting the deemed sale section 751(a) gain or loss on Form 4797, Sales of Business Property, and capital gain or loss on Form 8949, Sales and Other Dispositions of Capital Assets. Generally, see Schedule D (Form 1040), Capital Gains and Losses, and its instructions for reporting by individuals of any deemed sale collectibles gain or unrecaptured section 1250 gain. However, see Schedule P (Form 1040-NR), Foreign Partner’s Interests in Certain Partnerships Transferred During Tax Year, for reporting by nonresident aliens, foreign trusts, and foreign estates; and Schedule P (Form 1120-F), List of Foreign Partner’s Interests in Partnerships, for reporting by foreign corporations. If this is an installment sale, see Form 6252.

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The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.

Comments and suggestions. If you have suggestions for making Form 8308 simpler, we would be happy to hear from you. You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or, you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Don’t** send Form 8308 to this address. Instead, see [When To File](#), earlier.