

**Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c))**

OMB No. 1545-1668

Attachment  
 Sequence No. 146

▶ Attach to your income tax return.  
 ▶ Go to [www.irs.gov/Form8865](http://www.irs.gov/Form8865) for the latest information.

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.

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City or town, state or province, country, and ZIP or foreign postal code

The taxpayer(s) listed above and the Commissioner of the IRS, according to the regulations under section 721(c), agree to the following.

**1a** For gain deferral contributions, the amount of any federal income tax due on the gain realized, but not recognized, upon the contribution described on line 5, below, on any income tax return made by or for the above taxpayer(s) for the tax year ended \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ month day year may be assessed at any time on or before \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (see instructions); and month day year

The amount of any federal income tax due as a result of the allocation of book and tax items with respect to the section 721(c) property described on line 5, below, on any income tax return made by or for the above taxpayer(s) for the tax year ended \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ month day year may be assessed at any time on or before \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (see instructions). month day year

**b** For contributions not subject to the gain deferral method, the amount of any federal income tax due on the gain recognized upon the contribution described on line 5, below, on any income tax return made by or for the above taxpayer(s) for the tax year ended \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ month day year may be assessed at any time on or before \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (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 won't 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 on the gain realized, whether or not recognized, on the contribution described on line 5 (and as applicable, the federal income tax due as a result of the allocation of book and tax items with respect to the section 721(c) property) including any penalties, additions to tax, and interest attributable to it and consequential changes to other items based on that adjustment.

**5** Complete the following information (see instructions).

- a** Date of contribution \_\_\_\_\_
- b** Description of the section 721(c) property \_\_\_\_\_
- c** Name of section 721(c) partnership (as defined in Temporary Regulations section 1.721(c)-1T(b)(14)) 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's 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 the IRS.

▶ 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-P and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/Form8865](http://www.irs.gov/Form8865).

### Purpose of Form

To apply the gain deferral method (as described in Temporary Regulations section 1.721(c)-3T), Form 8838-P must be used for:

- A gain deferral contribution (defined in Temporary Regulations section 1.721(c)-1T(b)(7)), and
- A contribution, that isn't a gain deferral contribution, of section 721(c) property (defined in Temporary Regulations section 1.721(c)-1T(b)(15)) to a section 721(c) partnership (defined in Temporary Regulations section 1.721(c)-1T(b)(14)) within five partnership tax years following the partnership tax year that includes a gain deferral contribution.

See Temporary Regulations section 1.721(c)-6T(b)(5)(i) through (iii).

For definitions and other information about contributions of property to a section 721(c) partnership, see Temporary Regulations sections 1.721(c)-1T through 1.721(c)-7T.

**Consent to extend the time to assess tax.** Although you aren't required to extend the period of limitations on assessment of tax under the terms and conditions provided in this form, for a gain deferral contribution, failure to do so as required under Temporary Regulations section 1.721(c)-6T(b)(5) will result in gain recognition. For a contribution, that isn't a gain deferral contribution, of section 721(c) property to a section 721(c) partnership, failure to file this form as required under Temporary Regulations section 1.721(c)-6T(b)(5)(iii) may constitute an acceleration event under Temporary Regulations section 1.721(c)-4T(b)(2)(i) for a gain deferral contribution that occurred within five partnership tax years prior to the contribution.

### Who Must File

A U.S. transferor must file Form 8838-P in order to apply the gain deferral method as described in Temporary Regulations section 1.721(c)-3T upon a contribution of section 721(c) property to a section 721(c) partnership.

For purposes of section 721(c), the term "U.S. transferor" includes:

- A citizen or resident of the United States.
- A domestic corporation.
- Any estate or trust (other than a foreign estate or trust under section 7701(a)(31)).

See also Temporary Regulations section 1.721(c)-1T(b)(18)(i).

### How To File

Attach Form 8838-P to a U.S. transferor's income tax return for:

- A gain deferral contribution for the tax year in which the gain deferral contribution is made and annually as required under Temporary Regulations section 1.721(c)-6T(b)(5), and
- A contribution, that isn't a gain deferral contribution, of section 721(c) property to a section 721(c) partnership for the tax year in which the contribution is made.

## Specific Instructions

### Identifying Number

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

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

### Line 1a

To apply the gain deferral method upon a gain deferral contribution, a U.S. transferor must agree to extend the period of limitations as described in Temporary Regulations section 1.721(c)-6T(b)(5)(i). A U.S. transferor must also agree to extend the period of limitations under Temporary Regulations section 1.721(c)-6T(b)(5)(ii). A U.S. transferor must agree to extend the period of limitations under Temporary Regulations section 1.721(c)-6T(b)(5)(i) through the close of the eighth full tax year following the tax year of the contribution, and must agree to extend the period of limitations under Temporary Regulations section 1.721(c)-6T(b)(5)(ii) through the close of the sixth full tax year following the tax year of the contribution. A U.S. transferor must also agree to extend the period of limitations under Temporary Regulations section 1.721(c)-6T(b)(5)(ii) for the subsequent two years through the close of the sixth full tax year following each such year.

### Line 1b

**Contributions upon which gain is recognized.** A contribution of section 721(c) property to a section 721(c) partnership, upon which gain is recognized, made within five partnership tax years following the partnership tax year that includes a gain deferral contribution, is subject to Temporary Regulations section 1.721(c)-6T(b)(5)(iii). With respect to the gain recognized, a U.S. transferor must agree to extend the period of limitations under Temporary Regulations section 1.721(c)-6T(b)(5)(iii) through the close of the fifth full tax year following the tax year of the contribution.

### Line 5

If there is more than one section 721(c) property, provide the information requested on line 5 for each property. For each section 721(c) property, indicate whether the gain deferral method is being applied.

### Line 5c

If the gain deferral contribution is subject to the tiered partnership rules under Temporary Regulations section 1.721(c)-3T(d), identify all upper- and lower-tier partnerships.

### Signature

**In general.** The rules for signatures are provided in Temporary Regulations section 1.721(c)-6T(e).

**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-P 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.

**Attorney or Agent.** If you're 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 5a, Acts authorized. Attach a copy of Form 2848 to Form 8838-P.

**Fiduciaries.** If you're 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're required to give us the information. We need it to ensure that you're complying with these laws and to allow us to figure and collect the right amount of tax.

You aren't 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 XXXX-XXXX 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.

<b>Recordkeeping</b> . . . . .	4 hr., 32 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 33 min.
<b>Preparing the form</b> . . . . .	2 hr., 37 min.
<b>Copying, assembling, and sending the form to the IRS</b> . . . . .	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we'd be happy to hear from you. See the instructions for the tax return with which this form is filed.