

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

OMB No. 1545-1395

▶ **Attach to Form 926 and file with your income tax return.**

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, and ZIP code

The taxpayer(s) listed above and the Internal Revenue Service Center Director, 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 \_\_\_\_\_, 19\_\_\_\_ may be assessed at any time on or before \_\_\_\_\_, 19\_\_\_\_ (expiration date—see instructions).
- 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 consequential changes to other items based on that adjustment.
- 5 Complete the following information:
  - 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.

▶ _____ 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

## 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.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

- Recordkeeping** . . . . . 2 hr., 23 min.
- Learning about the law or the form** . . . . . 2 hr., 16 min.
- Preparing the form** . . . . . 3 hr., 19 min.
- Copying, assembling, and sending the form to the IRS** . . . . . 16 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.

## General Instructions

**Purpose of Form.**—Form 8838 (or a similar statement providing the same information) must be used for gain recognition agreements under section 367(a) and section 367(e). This consent (or a similar statement providing the same information) must also be used for gain recognition agreements entered into pursuant to an election in section 1492 to apply the principles of section 367 to a transfer described in section 1491. For more information about transfers of stock and securities to a foreign corporation, gain recognition agreements, and extensions of the statute of limitations, see Notice 87-85, 1987-2 C.B. 395, Notice 94-46, 1994-1 C.B. 356, and Temporary Regulations section 1.367(a)-3T(g).

### Who Must File.—Consenting Taxpayer

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), section 367(e)(1), section 367(e)(2), or section 1492(2)(B) with respect to the transferred property.

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, partnership, trust, or estate. See Temporary Regulations section 1.367(a)-1T(c)(3).
- Any estate or trust (other than a foreign estate or trust within the meaning of section 7701(a)(31)).

- In the case of an exchange described in section 361(a) or section 361(b) that is subject to section 367(a)(5), the five or fewer domestic corporate shareholders who control the United States transferor.

The distributing corporation must file Form 8838 (or a similar statement) for:

- A section 355 distribution of stock or securities to which section 367(e)(1) applies, or
- A section 332 liquidation to which section 367(e)(2) applies.

**When and Where To File.**—Attach Form 8838 to **Form 926**, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership. Form 926 and Form 8838 must be filed as attachments to the U.S. person’s income tax return for the tax year the transfer is made.

## Specific Instructions

**Identifying number.**—The identifying number of an individual is the individual’s 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 of the street address.

**Line 1.**—The correct expiration date to be entered on line 1 is specified by the regulations under section 367(a) and section 367(e).

**Signature.**—This consent must be signed by a trustee, executor, or equivalent fiduciary in the case of a trust or estate, by a responsible officer in the case of a corporation, by a debtor or trustee in a bankruptcy case under title 11, United States Code, or by an individual in the case of an individual transferor.

**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 and Temporary Regulations section 1.1502-77T for rules about a common parent signing as an agent for subsidiaries and alternative agents for affiliated groups.

**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. You must include a copy of the power of attorney with Form 8838.

**Fiduciaries.**—If you are acting as a fiduciary (such as an executor, administrator, trustee, etc.) and you sign this consent, you must attach a copy of **Form 56**, Notice Concerning Fiduciary Relationship.