

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.

Purpose of Form

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

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

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

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

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 Regulations section 1.721(c)-6(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 Regulations section 1.721(c)-6(b)(5)(iii) may constitute an acceleration event under Regulations section 1.721(c)-4(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 Regulations section 1.721(c)-3 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 Regulations section 1.721(c)-1(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 Regulations section 1.721(c)-6(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 Regulations section 1.721(c)-6(b)(5)(i). A U.S. transferor must also agree to extend the period of limitations under Regulations section 1.721(c)-6(b)(5)(ii). A U.S. transferor must agree to extend the period of limitations under Regulations section 1.721(c)-6(b)(5)(i) through the date that is 96 months after the close of the tax year that includes the date of the contribution. A U.S. transferor must also agree to extend the period of limitations under Regulations section 1.721(c)-6(b)(5)(ii) for the subsequent two years through the date that is 72 months after the close of such tax 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 Regulations section 1.721(c)-6(b)(5)(iii). With respect to the gain recognized, a U.S. transferor must agree to extend the period of limitations under Regulations section 1.721(c)-6(b)(5)(iii) through the date that is 60 months after the close of the tax year that includes that date 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 Regulations section 1.721(c)-3(d), identify all upper- and lower-tier partnerships.

Signature

In general. The rules for signatures are provided in Regulations section 1.721(c)-6(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 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., 32 min.
Learning about the law or the form	1 hr., 33 min.
Preparing the form	2 hr., 37 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'd be happy to hear from you. See the instructions for the tax return with which this form is filed.