

Reporting for a sale of a partnership interest

JANUARY 21, 2025 | BY: THE LEADERSHIP TEAM



What is Form 8308?

Partnerships are required to file Form 8308 to report a sale or exchange of a partnership interest where any money or property received in the sale or exchange is attributable to Section 751(a) property, commonly referred to as “hot assets.” Section 751(a) property is defined as unrealized receivables or substantially appreciated inventory items. Any gain or loss related to these items will be recharacterized as ordinary income or loss. The remainder of the gain or loss will be treated as a capital gain or loss.

Expanded Form 8308 Reporting Requirements

In October 2023, the IRS released a revised version of Form 8308 which expanded Parts I and II while also adding Parts III and IV.

- Parts I and II are used to report both the transferor and transferee names, addresses, and taxpayer identification numbers immediately before and after the transfer.
- Part III is used to report the date and type of partnership transfer.
- Part IV is used to report the partner's share of gain or loss that is recharacterized by Sections 751(a), 1(h)(5) and (6).

When is Form 8308 Due?

Form 8308 is due at the time of filing the partnership tax returns, including extended returns, and is filed as an attachment to the partnership's Form 1065. There are additional new requirements to provide Form 8308 to both the transferor and the transferee of a partnership interest by the later of the following:

- January 31st of the tax year following the calendar year during which the transfer occurred, or
- 30 days after the partnership has been notified of the transfer.

Under IRC Section 6722, failure to provide Form 8308 to the transferor and transferee will result in a penalty for each statement. Additionally a penalty will be imposed for failure to file a correct Form 8308.

Penalty Relief

There has been concern amongst taxpayers that many partnerships would not have the required information to complete Part IV by the January 31st due date. In January of 2024, the IRS provided penalty relief in Notice 2024-19 for filing a Form 8308 for tax year 2023. The IRS has acknowledged the continued challenge to timely file this information and again provided relief detailed in Notice 2025-2 for tax year 2024. The IRS will not impose a penalty for failing to provide a completed Form 8308 by the due date if the following conditions are met:

- The partnership provides a copy of Form 8308 with Parts I, II and III completed by the later of January 31, 2025 or 30 days after the partnership has been notified of the transfer, and
- A copy of Form 8308 with all parts completed is provided by the later of the due date of the partnership's tax return, including extensions, or 30 days after the partnership is notified of the transfer.

What are the Next Steps?

If your partnership has any partners who are involved in any sale of interest, please be proactive in providing us with the necessary information to assist with these filings. For additional information on how these changes to Form 8308 may impact you, please reach out to us to discuss next steps to comply with the new reporting requirements.

RELATED SERVICES

Business & Nonprofit Tax
Business Consulting & Advisory
State & Local Tax

RELATED INDUSTRIES

Construction
Medical & Dental
Owner Managed Businesses
Professional Services
Real Estate