

Additional Time to Furnish Form 8308 to Transferor and Transferee

Cross References

- Notice 2025-2

Partnerships are required to file Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*, as an attachment to its 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 an IRC section 751(a) exchange took place. Form 8308 is due at the time for filing the partnership return, including extensions.

An IRC section 751(a) exchange is when money, or the fair market value of any property, is received by a transferor partner in exchange for all or a part of his or her interest in the partnership attributable to:

- 1) Unrealized receivables of the partnership, or
- 2) Inventory items of the partnership.

Thus, the portion of gain realized that is attributable to such items is treated as ordinary income rather than capital gain income.

A partnership must also furnish a copy of the completed Form 8308 to the transferor and transferee by the later of:

- 1) January 31 of the year following the calendar year in which the IRC section 751(a) exchange occurred, or
- 2) 30 days after the partnership has received notice of the exchange.

If Form 8308 is not used as the required statement, the partnership must furnish a statement to the transferor and transferee that includes all the information that is required to be shown on the Form 8308.

On January 11, 2024, the IRS released Notice 2024-19, which provided relief from penalties for partnerships with IRC section 751(a) exchanges occurring during calendar year 2023.

Notice 2025-2 now extends penalty relief for IRC section 751(a) exchanges occurring during calendar year 2024. The IRS will not impose penalties solely for failure to furnish Form 8308 by the due date for a partnership that meets the following requirements:

- 1) The partnership must timely and correctly furnish to the transferor and transferee a copy of Parts 1, II, and III of Form 8308, or a statement that includes the same information, by the later of:
 - a) January 31, 2025, or
 - b) 30 days after the partnership is notified of the IRC section 751(a) exchange.

- 2) The partnership must furnish to the transferor and transferee a copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under Regulation section 1.6050K-1(c), by the later of:
- a) The due date of the partnership's Form 1065 (including extensions), or
 - b) 30 days after the partnership is notified of the IRC section 751(a) exchange.

The relief provided by Notice 2025-2 applies only with respect to a partnerships' furnishing of a Form 8308 to the transferor and transferee in an IRC section 751(a) exchange made during calendar year 2024. This notice does not provide relief with respect to a transferor partner's failure to furnish the notification to the partnership of the IRC section 751(a) exchange. In addition, this notice does not provide relief with respect to filing Form 8308 as an attachment to the partnership's Form 1065.

Author's Comment

The penalty relief centers around the information required to be reported in Part IV of the Form 8308 because in many cases, partnerships will not have all of the information required by Part IV by January 31 of the year following the year in which the IRC section 751(a) exchange occurred.