

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 8 hr., 5 min.

Learning about the law or the form 1 hr., 17 min.

Preparing and sending the form to the IRS. . . . 1 hr., 29 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. You can write to the IRS at the address listed in the instructions for the tax return with which this form is filed.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

A Change To Note

The Revenue Reconciliation Act of 1993 changed the definition of Class IV assets from goodwill and going concern value to amortizable section 197 intangibles. See "Class IV assets" under **Definitions** below.

Purpose of Form

Both the seller and buyer of a group of assets that makes up a trade or business must use Form 8594 to report such a sale if goodwill or going concern value attaches, or could attach, to such assets and if the buyer's basis in the assets is determined only by the amount paid for the assets ("applicable asset acquisition," defined below). Form 8594 must also be filed if the buyer or seller is amending an original or a previously filed supplemental Form 8594 because of an increase or decrease in the buyer's cost of the assets or the amount realized by the seller.

Who Must File

Subject to the exceptions noted below, both the buyer and the seller of the assets must prepare and attach Form 8594 to their Federal income tax returns (Forms 1040, 1041, 1065, 1120, 1120S, etc.).

Exceptions. You are not required to file Form 8594 if any of the following apply:

1. The acquisition is not an applicable asset acquisition (defined below).

2. A group of assets that makes up a trade or business is exchanged for like-kind property in a transaction to which section 1031 applies. However, if section 1031 does not apply to all the assets transferred, Form 8594 is required for the part of the group of assets to which section 1031 does not apply. For information about such a transaction, see Regulations section 1.1060-1T(b)(4).

3. A partnership interest is transferred. See Regulations section 1.755-2T for special reporting requirements.

When To File

Generally, attach Form 8594 to your Federal income tax return for the year in which the sale date occurred. If the amount allocated to any asset is increased or decreased after Form 8594 is filed, the seller and/or buyer (whoever is affected) must complete Part I and the supplemental statement in Part III of a new Form 8594 and attach the form to the Federal tax return for the year in which the increase or decrease is taken into account.

Penalty

If you fail to file a correct Form 8594 by the due date of your return and you cannot show reasonable cause, you may be subject to a penalty. See sections 6721 through 6724.

Definitions

"Applicable asset acquisition" means a transfer of a group of assets that makes up a trade or business in which the buyer's basis in such assets is determined wholly by the amount paid for the assets. An applicable asset acquisition includes both a direct and indirect transfer of a group of assets, such as a sale of a business.

A group of assets makes up a "trade or business" if goodwill or going concern value could under any circumstances attach to such assets. A group of assets could qualify as a trade or business whether or not they qualify as an active trade or business under section 355 (relating to controlled corporations). Factors to consider in making this determination include (a) any excess of the total paid for the assets over the aggregate book value of the assets (other than goodwill or going concern value) as shown in the buyer's financial accounting books and records, or (b) a license, a lease agreement, a covenant not to compete, a management contract, an employment contract, or other similar agreements between buyer and seller (or managers, directors, owners, or employees of the seller).

The buyer's "consideration" is the cost of the assets. The seller's "consideration" is the amount realized.

"Fair market value" is the gross fair market value unreduced by mortgages, liens, pledges, or other liabilities. However, for determining the seller's gain or loss, generally, the fair market value of any property is not less than any nonrecourse debt to which the property is subject.

"Class I assets" are cash, demand deposits, and similar accounts in banks, savings and loan associations and other depository institutions, and other similar items that may be designated in the Internal Revenue Bulletin.

"Class II assets" are certificates of deposit, U.S. Government securities, readily marketable stock or securities, foreign currency, and other items that may be designated in the Internal Revenue Bulletin.

"Class III assets" are all tangible and intangible assets that are not Class I, II, or IV assets. Amortizable section 197 intangibles are Class IV assets. Examples of Class III assets are furniture and fixtures, land, buildings, equipment, and accounts receivable.

"Class IV assets" are amortizable section 197 intangibles, which generally include:

- Goodwill,
- Going concern value,
- Workforce in place,
- Business books and records, operating systems, or any other information base,
- Any patent, copyright, formula, process, design, pattern, know-how, format, or similar item,
- Any customer-based intangible,
- Any supplier-based intangible,
- Any license, permit, or other right granted by a governmental unit,
- Any covenant not to compete entered into in connection with the acquisition of an interest in a trade or a business, and
- Any franchise (other than a sports franchise), trademark, or trade name.

However, the term "section 197 intangible" **does not** include any of the following:

- An interest in a corporation, partnership, trust, or estate,
- Interests under certain financial contracts,
- Interests in land,
- Certain computer software,
- Certain separately acquired interests in films, sound recordings, video tapes, books, or other similar property,
- Certain separately acquired rights to receive tangible property or services,
- Certain separately acquired interests in patents or copyrights,
- Interests under leases of tangible property,