

General Instructions

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

A Change To Note

New temporary regulations under sections 1060 and 338 clarified the rules for allocating assets acquired after February 13, 1997. Under the new rules, all section 197 intangibles (other than goodwill and going concern value) are included in Class IV. Goodwill and going concern value are assigned to a new class, Class V. See "Class IV" and "Class V" 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.

The following definitions apply to applicable acquisitions after February 13, 1997. For transitional rules that apply to acquisitions before February 14, 1997, see **Transitional Rules** on page 4.

"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, IV, or V 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 all amortizable section 197 intangibles, except for goodwill and going concern value. Amortizable section 197 intangibles include:

- 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,
- Interests under indebtedness,
- Professional sports franchises,
- Certain transaction costs.

See section 197(e) for further information.

"Class V assets" are section 197 intangibles in the nature of goodwill and going concern value.

Allocation of Consideration

An allocation of the purchase price must be made to determine the buyer's basis in each acquired asset and the seller's gain or loss on the transfer of each asset. Use the residual method for the allocation of the sales price among the amortizable section 197 intangibles and other assets transferred. See Regulations section 1.1060-1T(d). The amount allocated to an asset, other than a Class V asset, cannot exceed its fair market value on the purchase date. The amount you can allocate to an asset also is subject to any applicable limits under the Internal Revenue Code or general principles of tax law. For example, see section 1056 for the basis limitation for player contracts transferred in connection with the sale of a franchise.

Consideration should be allocated as follows: (a) reduce the consideration by the amount of Class I assets transferred, (b) allocate the remaining consideration to Class II assets in proportion to their fair market values on the purchase date, (c) allocate to Class III assets in proportion to their fair market values on the purchase date, (d) allocate to Class IV assets in proportion to their fair market values on the purchase date, and (e) allocate to Class V assets.

Reallocation After an Increase or Decrease in Consideration

If an increase or decrease in consideration that must be taken into account to redetermine the seller's amount realized on the sale, or the buyer's cost basis in the assets, occurs after the purchase date, the seller and/or buyer must allocate the increase or decrease among the assets. If the increase or decrease occurs in the same tax year as

the purchase date, consider the increase or decrease to have occurred on the purchase date. If the increase or decrease occurs after the tax year of the purchase date, consider it in the tax year in which it occurs.

For an increase or decrease related to a patent, copyright, etc., see **Specific Allocation** below.

Allocation of Increase

Allocate an increase in consideration as described under **Allocation of Consideration**. If an asset has been disposed of, depreciated, amortized, or depleted by the buyer before the increase occurs, any amount allocated to such asset by the buyer must be properly taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized, or depleted.

Allocation of Decrease

Allocate a decrease in consideration as follows: **(a)** reduce the amount previously allocated to Class V assets, **(b)** reduce the amount previously allocated to Class IV assets in proportion to their fair market values on the purchase date, **(c)** reduce the amount previously allocated to Class III assets in proportion to their fair market values on the purchase date, and **(d)** reduce the amount previously allocated to Class II assets in proportion to their fair market values on the purchase date.

You cannot decrease the amount allocated to an asset below zero. If an asset has a basis of zero at the time the decrease is taken into account because it has been disposed of, depreciated, amortized, or depleted by the buyer, the decrease in consideration allocable to such asset must be properly taken into account under principles of tax law applicable when the cost of an asset (previously reflected in basis) is reduced after the asset has been disposed of, depreciated, amortized, or depleted. An asset is considered to have been disposed of to the extent the decrease allocated to it would reduce its basis below zero.

Transitional Rules

For acquisitions before February 14, 1997, that do not include section 197 intangibles, you must use the prior rules (the rules in effect before the issuance of new temporary regulations on January 9, 1997). See **Allocation of consideration under prior rules** below.

For acquisitions before February 14, 1997, that include section 197 intangibles, you may consistently:

- Apply the rules and definitions contained in these instructions and in Temporary regulations section 1.1060-1T;
- Apply the prior rules and definitions described below under **Allocation of consideration under prior rules**; or
- Apply the prior rules and definitions, but treat amortizable section 197 intangibles as Class IV assets.

Allocation of consideration under prior rules. Under the prior rules, purchase price is allocated to the following four classes:

“Class I assets,” which include cash and demand deposits.

“Class II assets,” which include highly liquid assets (e.g., readily marketable securities and certificates of deposit).

“Class III assets,” which include all transferred assets that are not in Classes I, II, and IV. This includes tangible and intangible assets, whether or not depreciable, depletable, or amortizable (e.g. furniture, equipment, buildings, accounts receivable, and covenants not to compete).

“Class IV assets,” which include assets in the nature of goodwill and going concern value.

Patents, Copyrights, and Similar Property

You must make a specific allocation (defined below) if an increase or decrease in consideration is the result of a contingency that directly relates to income produced by a particular intangible asset, such as a patent, a secret process, or a copyright, and the increase or decrease is related only to such asset and not to other assets. If the specific allocation rule does not apply, make an allocation of any increase or decrease as you would for any other assets as described under **Allocation of Increase and Allocation of Decrease**.

Specific Allocation

Limited to the fair market value of the asset, any increase or decrease in consideration is allocated first specifically to the patent, copyright, or similar property to which the increase or decrease relates, and then to the other assets in the order described under **Allocation of Increase and Allocation of Decrease**. For purposes of applying the fair market value limit to the patent, copyright, or similar property, the fair market value of such asset is redetermined when the increase or decrease is taken into account by considering only the reasons for the increase or decrease. The fair market values of the other assets are not redetermined.

Specific Instructions

For an original statement, complete Parts I and II. For a Supplemental Statement, complete Parts I and III.

Enter your name and taxpayer identification number (TIN) at the top of the form. Then check the box for buyer or seller.

Part I

Line 1. Enter the name, address, and TIN of the other party to the transaction (buyer or seller). You are required to enter the TIN of the other party. If the other party is an individual or sole proprietor, enter the social security number. If the other party is a corporation, partnership, or other entity, enter the employer identification number.

Line 2. Enter the date on which the sale of the assets occurred.

Line 3. Enter the total consideration transferred for the assets.

Part II

Line 4. For a particular class of assets, enter the total fair market value of all the assets in the class and the total allocation of the sales price. For Classes IV and V, enter the total fair market value of Class IV and Class V combined, and the total portion of the sales price allocated to Class IV and Class V combined.

Line 6. This line must be completed by the buyer and the seller. To determine the maximum consideration to be paid, assume that any contingencies specified in the agreement are met and that the consideration paid is the highest amount possible. If you cannot determine the maximum consideration, state how the consideration will be computed and the payment period.

Part III

Complete Part III and file a new Form 8594 for each year that an increase or decrease in consideration occurs. Give the reason(s) for the increase or decrease in allocation. Also, enter the tax year(s) and form number with which the original and any supplemental statements were filed. For example, enter “1997 Form 1040.”

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.

You are not 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 contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

- Recordkeeping** 8 hr., 51 min.
- Learning about the law or the form** 1 hr., 35 min.
- Preparing and sending the form to the IRS** 1 hr., 49 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.

