



TaxNewsFlash

United States



No. 2023-268
August 3, 2023

Proposed regulations: Monetized installment sale transactions identified as listed transactions

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-109348-22) identifying monetized installment sale transactions and substantially similar transactions as listed transactions, a type of reportable transaction.

Taxpayers use Form 8886, *Reportable Transaction Disclosure Statement*, to disclose information for each reportable transaction in which they participate. Material advisors must file Form 8918, *Material Advisor Disclosure Statement*, to disclose information about reportable transactions. Penalties apply to taxpayers and material advisors who fail to properly disclose their participation in reportable transactions.

The [proposed regulations](#) [PDF 249 KB] provide that a transaction is a monetized installment sale transaction if, in connection with the transaction, and regardless of the order of the steps, or the presence of additional steps or parties:

- A taxpayer (seller), or a person acting on the seller's behalf, identifies a potential buyer for appreciated property (gain property), who is willing to purchase the gain property for cash or other property (buyer cash)
- The seller enters into an agreement to sell the gain property to a person other than the buyer (intermediary), in exchange for an installment obligation
- The seller purportedly transfers the gain property to the intermediary, although the intermediary either never takes title to the gain property or takes title only briefly before transferring it to the buyer
- The intermediary purportedly transfers the gain property to the buyer in a sale of the gain property in exchange for the buyer cash
- The seller obtains a loan, the terms of which are such that the amount of the intermediary's purported interest payments on the installment obligation correspond to the amount of the seller's purported interest payments on the loan during the period (with only interest due over identical periods, with balloon payments of all or a substantial portion of principal due at or near the end of the instruments' terms, on each installment obligation and loan)
- The sales proceeds from the buyer received by the intermediary (reduced by certain fees, including an amount set aside to fund purported interest payments on the purported installment obligation) are provided to the purported lender to fund the purported loan to the seller (or transferred to an escrow or investment account of which the purported lender is a beneficiary), and the lender agrees to repay these amounts to the intermediary over the course of the term of the installment obligation

- On the seller's federal income tax return for the taxable year of the purported installment sale, the seller treats the purported installment sale as an installment sale under section 453

The preamble to the proposed regulations states that the Treasury Department and IRS are aware that promoters are marketing transactions that purport to convert a cash sale of appreciated property into an installment sale to an intermediary (who may be the promoter) followed by a sale from the intermediary to the buyer. The promotional materials for these transactions assert that engaging in the transaction will allow the seller to defer the gain on the sale of the property under section 453 until the taxpayer receives the balloon principal payment in the year the installment obligation matures, even though the seller receives cash from the purported lender in an amount that approximates the amount paid by the buyer to the intermediary. The IRS intends to use multiple arguments to challenge the reported treatment of these transactions as installment sales to which section 453 purportedly applies, including:

- The intermediary is not a bona fide purchaser of the gain property that is the subject of the purported installment sale.
- The seller is appropriately treated as having already received the full payment at the time of the sale to the buyer because (1) the purported installment obligation received by the seller is treated as the receipt of a payment by the seller under Treas. Reg. §15a.453-1(b)(3) since it is indirectly secured by the sales proceeds, or (2) the proceeds of the purported loan are appropriately treated as a payment to the seller because the purported loan is not a bona fide loan for federal income tax purposes, or (3) the pledging rule of section 453A(d) deems the seller to receive full payment on the purported installment obligation in the year the seller receives the loan proceeds.
- The transaction may be disregarded or recharacterized under the economic substance rules codified under section 7701(o) or the substance over form doctrine. The step transaction doctrine and conduit theory may also apply to recharacterize monetized installment sale transactions.

The proposed regulations are proposed to apply as of the date the proposed regulations are finalized.

Comments on the proposed regulations, as well as requests to speak and outlines for topics to be discussed at the public hearing, are due by October 3, 2023. A public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing, scheduled for October 12, 2023, at 10 a.m. ET in Washington, DC. If no outlines are received by that date, the public hearing will be cancelled.

Read a related IRS release—[IR-2023-139](#) (August 3, 2023)

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