

TaxNewsFlash

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Notice 2025-72: Intent to issue proposed regulations on repeal under OBBBA of one-month deferral election under section 898(c)(2)

The IRS today released [Notice 2025-72](#), announcing that the Treasury Department and IRS intend to issue proposed regulations under section 70352 of Pub. L. No. 119-21 (known as the “One Big Beautiful Bill Act” (OBBBA)). The statutory provisions (1) repeal the one-month deferral election under section 898(c)(2) for a specified foreign corporation’s (SFC’s) first tax year beginning after November 30, 2025, (2) provide a special transition rule under which SFCs with one-month deferral elections in place have, for their first tax year beginning after November 30, 2025, a one-month short tax year as the mechanism to conform to the majority U.S. shareholder year, and (3) grant authority for Treasury to issue guidance for allocating foreign taxes accrued between the short tax year required under the transition rule and the following tax year.

Notice 2025-72 states that the forthcoming proposed section 898 regulations would apply to tax years of SFCs beginning after November 30, 2025, but taxpayers may rely on the rules described in the notice for foreign taxes paid or accrued in tax years of SFCs beginning after November 30, 2025, and ending before the forthcoming proposed section 898 regulations are published in the Federal Register, provided the taxpayer applies the rules in their entirety and in a consistent manner for the first required year and the succeeding taxable year of an SFC.

Under the notice, foreign income taxes imposed in the 2025 short tax year (the “first required year”) would generally be allocated to the first required year by applying the principles of Treas. Reg. § 1.1502-76 based on the income under foreign law in first required year as compared with the full foreign tax year. Any remaining foreign taxes imposed in the first required year would be allocated and treated as paid for U.S. tax purposes in the succeeding tax year (that is, the first tax year beginning after December 31, 2025). Notably, the allocation rules only apply to foreign income taxes (and not withholding taxes) that are imposed in the first required year (and not to taxes imposed in 2026 that may relate under foreign law to income earned in the first required year).

Notice 2025-72 also announces rules that Treasury and IRS intend to issue as proposed regulations under section 987 to accommodate short tax years. In particular, the forthcoming proposed section 987 regulations would modify the election to recognize pretransition section 987 gain or loss ratably over the transition period pursuant to Treas. Reg. § 1.987-10(e)(5)(ii)(A).

- Pursuant to the final section 987 regulations issued in December of 2024 (T.D. 10016), an owner of a section 987 qualified business unit (QBU) computes “pretransition gain or loss” to calculate its unrecognized section 987 gain or loss relating to tax years before the final regulations apply in order to transition to the foreign exchange exposure pool (FEEP) method prescribed by such regulations. Section 987 pretransition loss is generally treated as suspended loss, and pretransition gain is generally treated as unrecognized gain that is recognized upon future remittances from the relevant QBU. However, an election under Treas. Reg. § 1.987-10(e)(5)(ii) allows taxpayers to instead recognize one tenth of its pretransition gain or loss in each tax year for ten years, beginning with the first tax year to which the FEEP method applies (the “amortization election”).
- Because the amortization election provides for one tenth of the pretransition gain or loss to be recognized in each tax year, the rule would have generally resulted in one tenth of the amount being recognized in the short tax year resulting from the repeal of section 898(c)(2).
- Instead, section 4 of Notice 2025-72 provides that Treasury and the IRS intend to issue proposed regulations pursuant to which a taxpayer that makes the amortization election would generally recognize pretransition gain or loss ratably over 120 months beginning with the first day of the first tax year in which the 2024 final regulations apply. The notice also provides that if an owner of a section 987 QBU previously recognized a portion of its pretransition gain or loss under the amortization election in a year to which the one-month deferral rules in the notice do not apply and such year was a short tax year, the proposed regulations would deem such tax year to contain 12 months.

The notice states that the forthcoming proposed section 987 regulations would apply to tax years beginning after December 31, 2024, and ending on or after November 25, 2025, but taxpayers may rely on the rules described in the notice before the forthcoming proposed section 987 regulations are published in the Federal Register for a tax year to which the section 987 regulations apply, provided the taxpayer applies the rules in their entirety and in a consistent manner with respect to each section 987 qualified business unit (QBU), original deferral QBU, and outbound loss QBU for that tax year and each subsequent tax year.

The notice requests comments by January 24, 2026, on the rules to be issued in the forthcoming proposed section 898 regulations and forthcoming proposed section 987 regulations, and specifically requests comments on:

- Whether the allocation rule provided in section 3.05 of the notice should apply to any foreign taxes other than specified foreign income taxes, such as an affected corporation’s distributive share of foreign income taxes paid or accrued by a partnership that is required to change its tax year because of the change in tax year of the affected corporation.
- Whether there are other rules that, similar to the amortization of pretransition gain or loss described in section 2.04 of the notice, apply over multiple years and may warrant guidance to address their application in light of short tax years resulting from the repeal of section 898(c)(2).

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