



IRS Releases New Section 83(b) Election Form

Client Advisories

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The Internal Revenue Service has released an official standardized form for taxpayers to make an election under Section 83(b) of the Internal Revenue Code.

The new Form 15620 is intended to ease taxpayer election filing requirements and replaces the existing model letter set out in Rev. Proc. 2012-29.

Background. Section 83 addresses the tax treatment of property received in connection with the performance of services. Under Section 83, whenever property is transferred to a taxpayer in connection with the performance of services, the taxpayer must include in income the excess of the fair market value (FMV) of the property received over the amount paid for it. If the property transferred is subject to restrictions (e.g., a vesting schedule), however, it is not included in income until the property becomes transferable or is no longer subject to a substantial risk of forfeiture (e.g., the restrictions lapse).

Section 83(b) gives recipients of restricted property the ability to avoid delaying taxation and accelerate the taxable event to the year of the transfer. Specifically, the provision allows taxpayers to elect to have the FMV of restricted property included in income in the year of transfer, rather than wait for the restrictions to lapse. If an IRC Section 83(b) election is made, the property is taxed at ordinary income tax rates in the year of receipt, while future increases in value will be taxed at a capital rate.

One might make that election if the value of the property is low at the time of receipt and is expected to be much higher at the time the restrictions lapse.

Section 83(b) Elections. Historically, taxpayers have made Section 83(b) elections by mailing a model or self-drafted letter to the IRS. However, the IRS recently released Form 15620, which follows precisely the requirements for a Section 83(b) election as set forth in the tax regulations, in order to provide a standardized method for elections in the hopes of easing election filing requirements and streamlining the process.

At the moment, the form can only be filed via mail, but the IRS is expected to support electronic filing in the future.

What has not changed is the timing of the election – a taxpayer may make a Section 83(b) election only within 30 days after a transfer of property in connection with the performance of services. Failure to file within that period makes the election invalid.

Considerations. When making a Section 83(b) election, taxpayers should take several factors into consideration, including:

- 83(b) elections may not be revoked without the consent of the IRS, and consent is given only in limited circumstances.
- As mentioned above, once an 83(b) election is made, subsequent gain or loss on the sale or forfeiture of the property, if any, would be treated as capital gain or loss, and not as ordinary income or loss.
- Consideration should be given to the value of the property in the year of receipt versus the expected value in the future (e., expected amount of appreciation). If the FMV of the property is expected to increase, it would be advantageous to consider paying taxes at ordinary rates while the FMV of the property is lower. For this reason, many taxpayers make “protective” 83(b) elections when property has little or no value. However, if the property decreases in value, the taxpayer will end up paying tax on income that he or she would not otherwise have been required to report.
- The likelihood of the vesting conditions being met should also be considered. For example, if an employee of a company believes that he or she will likely not remain employed with his or her current employer over the applicable vesting period, an 83(b) election would be ill-advised because he or she would be paying tax on income that he or she would never receive.
- The possibility of future tax legislation that might change the ordinary income or capital gain tax rates and the difference between those rates.
- The taxpayer should consider whether he or she has sufficient and available funds to pay the income tax in the year of grant as the restricted property received is not a liquid asset and won't provide a source of cash for immediate use.

To view the Form 15620 (Section 83(b) Election), click [here](#).

If you would like more information or have questions, please contact B. Jason Zoranski at 856-616-2604 or jzoranski@archerlaw.com.



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