



What's News in Tax

Analysis that matters from Washington National Tax

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Section 83(b) Elections, from Near and Far

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Elections made under section 83(b) of the Code (an “83(b) Election”)¹ can be a valuable tool, empowering individuals to choose whether future appreciation on certain incentive awards will generate capital gain or be taxable as compensation. This decision is not without risk, and an 83(b) Election is only available in limited scenarios. For those who would like to make an 83(b) Election, it is important to know how and when to do so, as the opportunity to file a valid election is limited and the rules are not always straight forward, particularly for those who reside outside of the United States.

This article addresses the following questions:

- *Who is eligible to make an 83(b) Election?*
- *When is an 83(b) Election available?*
- *Why make an 83(b) Election? (What are the tax implications of making—and not making—an 83(b) Election?)*
- *When must an 83(b) Election be filed?*
- *What information is an 83(b) Election required to include?*
- *How and where are 83(b) Elections filed?*
- *Are there any additional considerations for a non-resident alien to file an 83(b) Election?*
- *Are there opportunities to amend or revoke an 83(b) Election?*

¹ Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or the applicable regulations promulgated pursuant to the Code (the “regulations”).

Tax Treatment—Implications of an 83(b) Election

General Tax Rule—Section 83

When an employee or other service provider receives property in the course of their service relationship—such as shares of company stock from their employer—the value of the property generally is taxable to the service provider. For purposes of section 83, a service provider can be an employee, independent contractor (e.g., a member of a board of directors), partner, and also an entity that provides services. For this article, we will refer to service providers as employees for readability.

While frequently thought of in the context of equity (stock and partnership interests), section 83 covers any property transferred in connection with the performance of services, such as equipment, a vehicle, or even a house.

Under section 83, property transferred in connection with the performance of services generally is taxable as compensation at the time of transfer or, if later, once the property becomes substantially vested. Property becomes substantially vested when it becomes transferrable or is no longer subject to a substantial risk of forfeiture (often referred to as becoming vested). The amount of compensation subject to tax is the then-current fair market value (“FMV”) of the property, less any amount paid by the employee. For this article, property that is not substantially vested for purposes of section 83 is referred to as nonvested.

With limited exceptions, temporary transfer restrictions (for example, to comply with a company’s trading restrictions policies) generally will not affect the timing of the tax event and are disregarded for purposes of determining the FMV of the shares.

As an example, if an employee receives nonvested stock from the employer, the stock generally will be taxable as compensation at the time it vests based on the FMV of the stock at vesting (absent an 83(b) Election). In addition, if the employee receives dividends with respect to the nonvested stock, those dividends will be treated as compensation (dividend equivalents) because for this purpose the employee is not treated as the “owner” of the stock (again, absent an 83(b) Election).

Section 83(b) Elections

In lieu of waiting until vesting to be taxed, when nonvested property is transferred, the employee may elect to be taxed instead at the time of transfer based on the FMV of the property at that time by filing an 83(b) Election with the Internal Revenue Service (“IRS”) within 30 days of the date of transfer. If an 83(b) Election is filed, then no further taxation occurs at the time of vesting, and the employee’s basis in the property remains the amount paid (if any) for the property plus the compensation (if any) included at the time of the 83(b) Election.

An 83(b) Election is often used to permit anticipated appreciation after grant to be taxed at capital gains rates rather than as ordinary income and to allow for dividend treatment for any dividends declared and paid during the vesting period. However, there is risk involved as 83(b) Elections are irrevocable, even if the property is subsequently forfeited or declines in value. If an employee makes an 83(b) Election and later forfeits the property (for example, they resign before they are fully vested), the employee will not be entitled to a deduction related to any compensation that was previously included in income due to the 83(b) Election (the only deduction available would be with respect to the amount paid, if any, by the employee for the property). And if the property declines in value during the vesting period, this will not change the amount of compensation required to be included in income due to the 83(b) Election, nor result in any entitlement to a deduction.

Section 83 does not cover a promise to transfer property in the future, such as the grant of a restricted stock unit (“RSU”) award, or the opportunity to receive property in the future on exercise of a stock option. As such, an 83(b) Election generally is not available with respect to RSU grants or the grant of stock options that are not readily tradeable.

In deciding whether to make a section 83(b) election, individuals often consider factors such as (1) the FMV of the shares at transfer (and resulting size of their tax obligation) as well as the expected appreciation in value between grant and vest; (2) the likelihood they will vest in the shares (for example, that they will not terminate employment prior to completion of any required service period); and (3) whether and to what extent they are required to pay anything to receive the nonvested property.

Any amount the employee has to pay for the property reduces the amount subject to taxation. If an employee is required to pay the full FMV at transfer for nonvested property, the transfer is still subject to section 83 so that subsequent appreciation through vesting would be treated as compensation. However, a timely 83(b) Election (signifying no compensation income) would result in no amount being taxed as compensation at grant or in the future.

Special Note for Compensatory Profits Interests. With nonvested compensatory profits interests, recipients typically file a “protective” 83(b) Election. The election is protective because the recipient intends to be eligible for the safe harbor tax treatment provided in Revenue Procedure 93-27² and Revenue Procedure 2001-43,³ in which case the 83(b) Election would be irrelevant. However, because the recipient may dispose of the interest within two years of receipt and retroactively no longer be eligible for safe harbor treatment, recipients typically file a “protective” 83(b) Election to ensure that if that happens, the timing for any compensation income recognition would be the date of grant of the profits interest.

Employers may require employees to make an 83(b) Election as a condition to receiving the property, may prohibit them from doing so, or may leave the decision to each employee. Although filing an 83(b) Election is the employee’s obligation, this does affect the timing and amount of the employer’s compensation deduction as well as the employer’s obligation to report and withhold on the compensation and make corresponding deposits. Therefore, the employer may also choose to “collect” the employee’s 83(b) Election and mail it to the IRS on the employee’s behalf to ensure that it is done timely.

83(b) Election Requirements & Logistics

Timing for Making an 83(b) Election

An 83(b) Election **must** be filed within 30 days after the date the property is transferred. The 30-day period is based on calendar days, including weekends and holidays. However, if the last day of the 30-day period is a Saturday, Sunday, or legal holiday, the election must be filed not later than the next day that is not a Saturday, Sunday, or legal holiday. **There is no reasonable cause or other similar exception to the 30-day filing requirement—so there is no ability to make a “late” 83(b) Election regardless of the reason.**

Regulations provide that tax returns, statements, or other documents required to be filed within a prescribed period that are sent to the IRS via US mail and postmarked on or before the due date will be considered timely

² 1993-2 C.B. 343.

³ 2001-34 I.R.B. 191.

submitted, even if it is received or processed after the due date. This rule only applies if the statement is in a properly addressed envelope, timely deposited in the US mail with sufficient postage prepaid, and—if the postmark is made by the US Postal Service (“USPS”)—the postmark is dated on or before the applicable due date. The taxpayer still bears the burden to prove that the statement was timely mailed, so proof of mailing and return receipt requested is recommended to demonstrate timely filing.

The risk that the statement will not be postmarked on the day it is deposited in the mail may be eliminated by using US registered or certified mail, as the date of registration or postmark on the sender’s receipt, respectively, will be treated as the postmark date.

As noted, there is no ability to make an 83(b) Election more than 30 days after the date of transfer, regardless of the reason for the delay. In addition, opportunities for amendment or revocation of an 83(b) Election are limited. This can be particularly important for individuals who are not US taxpayers at the time they receive property but may become US taxpayers in the future. Non-US individuals should still consider whether an 83(b) Election is desirable no later than the time the property is transferred and, if so, make a timely election as they will not have the opportunity to do so with respect to that property at a later date.

Individuals living or working outside the United States may still benefit from filing an 83(b) Election at the time they receive property, as it could affect the tax treatment of their awards if they perform services in the United States in the future that count towards the vesting requirement. At that later point, an 83(b) Election would no longer be available.

Timely filing an 83(b) Election is the responsibility of the employee. However, especially if an employer is encouraging (or requiring) individuals to make an 83(b) Election, employers or their advisors will often assist employees in accurately and timely completing the filing (for example, by providing a template election for completion and signature, gathering the signed forms and timely submitting to the IRS via certified mail).

Content of an 83(b) Election

An employee filing an 83(b) Election must file a written statement indicating that an election is being made under section 83 and the statement must contain identifying information about the taxpayer and details about the transferred property, such as the date of transfer, the FMV at transfer, any restrictions, and the amount (if any) paid for the property.

In Fall of 2024, the IRS first posted a new Form 15620, *Section 83(b) Election*, through which a taxpayer may make an 83(b) Election. There was previously no published form, but the specific contents of the written statement are outlined in the regulations and the IRS provided a template 83(b) Election in [Revenue Procedure 2012-29](#),⁴ which many taxpayers used as a model to create their own written statement. A copy of the template is included at the end of this article. While many taxpayers and practitioners have welcomed the standardized format, a later version of Form 15620 and instructions released in April 2025 state that use of the form is optional and taxpayers may continue to make an 83(b) Election by timely filing a written statement that satisfies the requirements of the regulations.

Form 15620 provides for reporting the specific details about the taxpayer and the property in question required in the applicable regulations, including:

- Taxpayer’s identifying information (i.e., Name, Taxpayer Identification Number (“TIN”), Address)
- Description of the property
- Date of transfer

⁴ Available at <https://www.irs.gov/pub/irs-drop/rp-12-29.pdf>. Final regulations adopted in 2016 remove the requirement for taxpayers to attach a copy of their 83(b) Elections to their annual federal income tax return.

- Taxable year of the election
- Description of the restrictions placed on the property
- FMV of the property at the time of transfer
- Amount paid for the property, if any, and
- Service recipient's identifying information (i.e., Name, TIN, Address).

Special Note for Nonresident Aliens. A nonresident alien intending to make an 83(b) Election (e.g., based on the expectation that they may provide services in the United States at a later date during the vesting period), may not have a social security number ("SSN") or individual TIN ("ITIN") to include on the statement at the time they need to file the 83(b) Election. For those who are eligible to apply for an ITIN, they can timely file their election including "applied for" on the appropriate line and submit an updated election form with their ITIN when received. This approach is helpful to enable the IRS to associate the timely election with the specific employee in the event they become a US taxpayer. However, if the nonresident does not have plans to come to the United States and will not be otherwise earning US-sourced income during the year they first receive the property, they may not have a sufficient basis to apply for and receive an ITIN. In that scenario, individuals typically will write "nonresident" on the SSN / ITIN line to explain why no number has been included.

The information items in Form 15620 generally are consistent with the regulations and the sample statement from the 2012 Revenue Procedure, however the disclosure of the service recipient's identifying information in Box 9 of Form 15620 is not required by the regulations and was not included in the 2012 template. This addition may require additional efforts by the taxpayer to request the information from the service recipient and could present additional complication such as when the taxpayer is providing services to more than one related entity. However, the April 2025 form as well as the accompanying instructions confirm that providing this information in Box 9 is optional and is not required to make a valid section 83(b) election, so taxpayers can use the new form and exclude this additional detail.

If the 83(b) Election is being filed on a "protective" basis with respect to the transfer of compensatory profits interests, it may be helpful to identify the transferred property as profits interests intended to satisfy the requirements of Revenue Procedures 93-27 and 2001-43 as this will provide the IRS an explanation for reporting the property as having a \$0 FMV at transfer.

Electronic Signatures

While no formal guidance has been issued approving the use of electronic signatures on an 83(b) Election (in lieu of an actual written or "wet" signature), the IRS updated Internal Revenue Manual (IRM) 10.10.1 *IRS Electronic Signature (e-Signature) Program* on October 17, 2023. The updated IRM provides guidance for IRS employees and includes a list of forms for which there is a deviation from the handwritten signature requirement and includes 83(b) Elections in that list. The IRM recognizes that electronic and digital signatures may appear in many forms and no specific technology is required. Further, the IRM does not specify an end date for this more flexible policy. The IRS had previously permitted electronic signatures as part of certain COVID relief, including an extension through October 31, 2023. This policy appears to have been incorporated into the IRM, but employers and employees may want to doublecheck there has been no change in IRS policy before taking advantage of electronic signatures.

Filing an 83(b) Election; Copies

An 83(b) Election must be made by mailing the election to the IRS—there is currently no ability to electronically submit the election. The employee must also provide a copy of the 83(b) Election to the person for whom the services are performed (typically, the employer). In addition, if the employee is not the one who received the

property (for example, the property was transferred directly to a family member of the employee), the employee should also submit a copy of the 83(b) Election statement to the recipient of the property as this will assist with documenting the recipient's basis in the property for future transactions. It generally is recommended that an additional copy is retained for the taxpayer's personal records. The 83(b) Election is associated later with the employee's income tax return when it is filed, and so effectively becomes a part of that return for the applicable year so it should be maintained similarly to their other tax records. In particular, this can be used along with proof of mailing as evidence to demonstrate to the IRS that the election was made in the event the IRS has any processing issues or later questions whether the election was filed.

Although there is currently no ability to electronically submit an 83(b) Election, IRS officials have indicated that release of Form 15620 (described above) is an initial part of the process to permit electronic filing in the future.

Employees should file their 83(b) Elections at the address where they file their Form 1040, or if they file electronically where they would mail a physical Form 1040 that did not include a payment check (in other words, the address for a Form 1040 requesting a refund). That address depends on where the employee lives and typically can be found on the very last page of the instructions to the Form 1040.⁵ As discussed above, advisors typically recommend that employees file via USPS certified mail, return receipt requested, and keep the stamped receipt for their records. In addition to proof of timely filing, if the election is sent by registered or certified mail and the envelope was properly addressed, it is considered prima facie evidence that the election was actually delivered to the IRS (which can be difficult to prove, otherwise).

Getting a USPS postmark or filing through US registered or certified mail is not always an easy task, for example if individuals are filing their elections from outside of the United States. The IRS has explicitly approved certain private delivery services that will be treated as equivalent to US mail for purposes of the mailbox rule described above and provided instructions for using those services, including a street address for mailing (rather than the P.O. Box where the item could be sent via USPS, given that most private delivery services will not accept a P.O. Box address). These instructions are also available in the Form 1040 instructions as well as on the IRS website at www.irs.gov/PDS.

Some employees include an additional copy of the election in their filing with a self-addressed stamped envelope and request in a cover letter that the IRS stamp the copy as received and return to the employee in the provided envelope. While this will not interfere with the validity of the election, employers and employees should be aware that not every IRS Service Center will participate in this process, and those that do have not always done so consistently, so a failure to receive a stamped copy in return should not be viewed as indicating necessarily that the filing did not arrive.

As noted above, the employer or its advisors often will compile and send the signed elections to the IRS on behalf of the individuals to assure timely filing and effective recordkeeping.

Revocation of an 83(b) Election

As noted above, opportunities for amendment or revocation of an 83(b) Election are limited. Once filed, an 83(b) Election may only be revoked with the consent of the Commissioner, generally requested through a private letter ruling ("PLR"). Consent for revocation will only be granted if the transferee was under a mistake of fact as to the underlying transaction, and the request generally must be made within 60 days of the date on which the mistake first became known to the employee who filed the election. Most importantly, mistakes regarding the value of the property, a decline in the value of the property, or a misunderstanding as to the tax consequences of the election, are not considered a mistake of fact that would permit revocation. In addition, failure to perform an act contemplated at the time of transfer (such as the closing of a transaction) does not constitute a mistake of fact.

⁵ The current instructions to the Form 1040 can be found on the IRS website at www.irs.gov by typing "Form 1040" into the search box.

Revenue Procedure 2006-31⁶ sets forth the procedure for revoking an 83(b) Election, including what information the request must contain. The IRS has recognized that once filed, an 83(b) Election may be revoked if the revocation occurs prior to the applicable deadline for making the election (the 30 days). See, for example, PLR 202127038 (March 18, 2021).⁷ Note that if the underlying property transfer itself may be rescinded because the rescission occurs in the same tax year as the original transfer, this may have the effect of revoking the 83(b) Election which applied to the now rescinded transfer. See PLR 9104039 (October 31, 1990).

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⁶ 2006-2 C.B. 32.

⁷ Private letter rulings are taxpayer-specific rulings furnished by the IRS Office of Chief Counsel in response to requests made by taxpayers and can only be relied upon by the taxpayer to whom issued. Pursuant to section 6110(k)(3), written determinations such as private letter rulings are not intended to be relied upon by third parties and may not be cited as precedent. These written determinations may, however, offer an indication of the IRS's position on the issues addressed.

APPENDIX A – Sample 83(b) Election Provided in Revenue Procedure 2012-29

Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: _____

TAXPAYER'S SOCIAL SECURITY NUMBER: _____

ADDRESS: _____

TAXABLE YEAR: Calendar Year 20__

2. The property which is the subject of this election is _____ shares of common stock of _____.

3. The property was transferred to the undersigned on **[DATE]**.

4. The property is subject to the following restrictions: **[Describe applicable restrictions here.]**

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83- 3(h) of the Income Tax Regulations) is: \$_____ per share x _____ shares = \$_____.

6. For the property transferred, the undersigned paid \$_____ per share x _____ shares = \$_____.

7. The amount to include in gross income is \$_____. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. [Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred.]⁸ The undersigned is the person performing the services in connection with which the property was transferred.

Dated: _____

Taxpayer

⁸ [KPMG NOTE](#): Final regulations adopted in 2016 remove the requirement for taxpayers to attach a copy of their 83(b) Elections to their annual federal income tax return.