

April 15, 2020

IRS Delays Filings for 83(b) Elections

Last month, the IRS announced that taxpayers generally have until July 15, 2020, to file and pay federal income taxes originally due on April 15. Recognizing that additional relief is warranted, the Department of Treasury and IRS announced on Thursday (via Notice 2020-23) that additional tax deadlines are being extended for individuals and businesses.

The expanded notice delays, among other things, the deadline for filing § 83(b) elections that would otherwise have been due between April 1 and July 14, 2020. These filings are now due by July 15, 2020.

As a refresher, § 83(b) grants any person (think employees, advisors, consultants, or directors) who performs services in exchange for property (e.g., restricted stock) the option to include the value of the entire stock, vested and unvested, in the recipient's gross income in the initial year of receipt. Essentially, recipients have the option to include the stock in compensation either at the grant date (i.e., the presumptive lower value date) or as the stock vests.

Frequently, especially in the case of newer startups or high-growth companies, the value of the stock is lower at the grant date than when it fully vests. Assuming the ordinary tax rates do not change, making the § 83(b) election may provide substantial tax savings to the recipient.

An election made under § 83(b) must be made in accordance with the regulations thereunder and filed with the IRS no later than 30 days after the date that the property is transferred or the date of the restriction (again, generally, the grant date). It is critically important that individuals file the § 83(b) election within that timeline as the deadline cannot be amended or waived after the fact. The steps for filing an 83(b) are set forth below:

1. Complete an § 83(b) election form;
2. Send the form and payment to your IRS Service Center, which can be located here;

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3. Share a copy of the election form with your employer;
4. Comply with any applicable state laws for personal state income tax filing requirements; and
5. Retain a copy for your taxpayer personal records.

For those who made grants as this COVID-19 outbreak era was developing – or for those still making grants to incentivize motivation during these unprecedented times – this additional time to make § 83(b) elections is very welcome. Individuals should still move quickly to take advantage of this extension.

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