

In a Welcome Change, IRS Relaxes Section 83(b) Election Requirements

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The Internal Revenue Service (IRS) issued final regulations that eliminate the need for an individual to file a copy of a Code Section 83(b)^[1] election with his or her income tax return for the year in which the property subject to the election is transferred.

Generally, Code Section 83(a) requires a service provider to include in his or her gross income an amount equal to the fair market value of property transferred in connection with the performance of services (less any amount paid for the property); this amount is included in income, under Code Section 83(a), in the first tax year in which the taxpayer's rights in the property are transferable or are not subject to a substantial risk of forfeiture. Code Section 83(b) allows a taxpayer to elect to instead include the amount in income in the year the property is transferred or granted – this is a valuable benefit if the property is expected to appreciate significantly.

Under the prior regulations, an election under Code Section 83(b) had to be filed with the IRS^[2] no later than 30 days after the date on which the property was transferred and a copy of the election had to be included with the taxpayer's income tax return for the year in which the property subject to the election was transferred. The new final regulations eliminate the second step, *i.e.*, the requirement that the election be included with the taxpayer's return. The second step created complications for taxpayers wishing to e-file their returns and, in response, the IRS relaxed its procedures.

It is important to note that the new final regulations do not change the requirement that a Code Section 83(b) election must be filed with the IRS no later than 30 days after the date on which the property was transferred. That crucial step is still necessary and the 30 day period cannot be extended.

The preamble to the new regulations reminds taxpayers of their general recordkeeping responsibilities, which include the need to keep records reflecting the basis of property and its original cost, and to support the taxpayer's tax treatment of the property transferred. A taxpayer should keep a copy of his or her Code Section 83(b) election as well as documentation supporting valuation of the property transferred until the statute of limitations expires for any tax return with respect to which the corresponding income inclusion or basis of the property is relevant.

The IRS first proposed the changes adopted in the new regulations in a notice of proposed rulemaking on July 17, 2015. Unsurprisingly, the proposed regulations were well received in the tax community and, accordingly, the final regulations adopt the 2015 proposed regulations without modifying them.

The final regulations apply to property transferred on or after January 1, 2016, but taxpayers may rely on the identical guidance within the proposed regulations for transfers on or after January 1, 2015.

For questions or additional information, please contact Kevin Koscil (koscilk@whiteandwilliams.com; 215.864.6827) or another member of the Tax and Estates Group.

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[1] All references to the Code are to the Internal Revenue Code of 1986, as amended.

[2] The election must be filed at the IRS office with which the taxpayer files his or her income tax return. A copy of the election must also be provided to the person or entity for whom the taxpayer performed the services with respect to which the property was transferred. These requirements remain following the new regulations.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

