

IRC Section 83(b)

Election to Include Restricted Property in Income in Year of Transfer

Overview

Generally, under IRC §83(a), when property is received in connection with the performance of services, taxable income must be recognized by the person performing such services at the earlier of the time that the property received is:

"transferable" by the person with beneficial interest in the property; or
not subject to "a substantial risk of forfeiture"

The determination of whether either of these events has occurred is a question of facts and circumstances; §83(c) and related regulations and rulings should provide the guidance necessary to assist the taxpayer with this determination. The amount of taxable income to be recognized is the difference between the fair market value of the transferred property and the amount paid, if any, as determined on the earlier of the two dates described above.

The §83(b) election provides a taxpayer who performed the services with the option to accelerate the recognition of income by including in income during the year of transfer the difference between the fair market value of the property (determined without regard to any lapse restriction) on the date of transfer and the amount paid for such property, if any. If the election is made, income is recognized even though the property is subject to limitations on transfer and a substantial risk of forfeiture. If the election is made and the property is later forfeited or becomes worthless, no deduction shall be allowed in excess of the actual amount paid for such property. The fact that the taxpayer paid full value for the property does not preclude the use of this election.

When to File

The election is made by the person who performed the services and is perfected by 1) attaching a statement to the taxpayer's income tax return for the taxable year in which the election is made and 2) submitting a copy of the statement to the Internal Revenue Service Center where the taxpayer's return will be filed.

The election must be made no later than 30 days after the beneficial interest in the property was transferred and may be filed prior to the date of transfer.

Where to File

The first copy is mailed to the Internal Revenue Service Center where the taxpayer's income tax return will be filed. It is recommended that the election be mailed return-receipt requested accompanied by a transmittal letter in which the taxpayer requests that the IRS date stamp and return such letter to document their receipt of the §83(b) election. The second copy of the election statement is attached to the taxpayer's timely filed income tax return, which is mailed to the designated Internal Revenue Service Center. Additional copies of the election must be provided to the person for whom the services were performed and the transferee of the property, if such person is different from the person who performed the services.

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1. Code Section: 83(b)
2. Topic: Gross Income
3. Return Type: 1040, 1065, 1120

Authorities

IRC § 83(b); Reg. §1.83-2