

Alert

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IRS creates standardized Section 83(b) election Form 15620

On November 7, 2024, the Internal Revenue Service (IRS) released Form 15620, *Section 83(b) Election*, which provides taxpayers a standardized form that they may choose to use when filing Section 83(b) Elections with the IRS. Prior to its release, taxpayers who wished to elect to treat unvested property received in connection with the performance of services as taxable upon receipt were required to create their own self-drafted election letters. Accordingly, there was no certainty that these self-drafted election letters included all the necessary information for a valid Section 83(b) Election based on the guidance provided in Treasury Regulation Section 1.83-2 or Revenue Procedure 2012-29.

Generally, a Section 83(b) Election permits a taxpayer who receives unvested property to include in his or her gross income the fair market value of the unvested property received at the time of transfer over the amount (if any) paid for the property, rather than when the property becomes vested. Thus, a Section 83(b) Election enables a taxpayer to accelerate potential income recognition when the value of the unvested property is less than he or she would otherwise recognize when the property becomes vested in the future. When the property is subsequently sold, the additional gain is generally taxed as applicable long term capital gains rates assuming the property is a capital asset held for more than one year. Section 83(b) Elections are often made in connection with the grant of unvested equity that has low value by recently formed companies and with the grant of profits interests to service providers in entities taxed as partnerships where the recipient has not paid anything for the profits interest. Since profits interest are generally granted with a participation threshold that establishes a current liquidation value of zero, the grant of the profits interest generally does not result in taxable income in the year received.

Going forward, taxpayers are not required to use Form 15620 when filing Section 83(b) Elections and they may choose to continue to file self-drafted elections. Further, the release of Form 15620 does not alter any of the requirements for filing Section 83(b) Elections under Treasury Regulation Section 1.83-2, and taxpayers must continue to file Section 83(b) Elections by mail with the IRS office in which the taxpayer files his or her tax return within no later than 30 days following the date the property was transferred to the taxpayer. While Form 15620 currently must be filed by mail, it is expected that electronic filing of the form will be available in the future.



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