



Section 83(b) Elections: Limited COVID-19 Relief, but Keep Your Records

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Overview. A limited extension, until July 15, 2020, is available for Internal Revenue Code (“Code”) Section 83(b) elections otherwise due on or after April 1, 2020, and before July 15, 2020. It will be especially important for taxpayers making such an election to keep records of the filing and evidence of timely mailing.

Section 83(b) Basics. Section 83 of the Code applies to transfers of property in connection with the performance of services. Typical Code Section 83 transfers include the grant of restricted stock, the issuance of unvested partnership interests and the purchase of an employer equity interest subject to “penalty” repurchase rights on termination of employment. In general, these types of transfers result in taxable compensation income to the service provider at the time that forfeiture (or penalty repurchase) conditions lapse, often referred to as “vesting.” Compensation is measured by the fair market value of the property at vesting, less any price paid for the property. Code Section 83(b) allows a service provider instead to elect to include compensation in income as of the date the property is received (through grant or purchase), based on the fair market value of property at grant or purchase less any price paid.

Election Considerations. A Code Section 83(b) election is sometimes used when it is anticipated that the property will increase in value between acquisition and vesting; when the grant/purchase date value is low; or when the service provider pays full purchase-date value for the property. COVID-19 economic conditions, and any resulting effect on grant/purchaser date value and potential future value, may also be relevant to a Code Section 83(b) election decision.

Section 83(b) Filing Deadline – Normal Course. Code Section 83(b) requires an election thereunder to be made no later than 30 days after the date the property is transferred. This generally means within 30 days of the date of grant or 30 days of the closing of a purchase, whichever is applicable. This 30-day period is a hard deadline absent special relief, such as that discussed below.

Section 83(b) Filing Deadline – COVID-19. Code Section 83(b) elections otherwise due during the period described below have been given an extended deadline for filing. The extension is available by virtue of (i) President Trump’s March 13, 2020, proclamation that the COVID-19 outbreak in the United States constitutes a national emergency; (ii) Notice 2020-23, 2020-18 IRB 732 (April 27, 2020) (the “Notice”); and (iii) Revenue Procedure 2018-58, 2018-50 IRB 990 (December 10, 2018), referenced in the Notice. As a “Specified Time-Sensitive Action” under the Notice, a Code Section 83(b) election otherwise due on or after April 1, 2020, and before July 15, 2020, has **afiling deadline** of July 15, 2020. This extension therefore applies to property transferred to the taxpayer no earlier than March 2, 2020, and no later than June 14, 2020. Property transfers before or after this period are not eligible for an

extension of the normal course filing deadline.

Retaining the Election and Evidence of Mailing. A Code Section 83 (b) election is generally a one- to two-page filing that must contain specified information. It is mailed to the IRS Service Center where the taxpayer normally files his or her federal income tax return. Although taxpayers have not been required to include a copy of the filing as a federal income tax return attachment for several years, record retention is required. A copy of the election must be kept until the period of limitations expires for any return with respect to which the income inclusion or basis of the property is relevant. Records that support cost basis and date of transfer should also be maintained. Given the time restrictions on filing (whether under the normal course deadline or the COVID-19 extension), it is very important to retain evidence of timely mailing, such as a certified U.S. mail receipt or a shipping record from a recognized package and letter delivery service.

For any questions relating to Code Section 83(b) elections, including required content, proper filing location, or the COVID-19 related filing deadline extension, please contact the authors of this Alert.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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- Nona K. Massengill – 804.420.6569 – nmassengill@williamsmullen.com
- Clinton C. Oas – 804.420.6345 – coas@williamsmullen.com

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