

FINAL IRS REGULATIONS ELIMINATE REQUIREMENT TO FILE 83(B) ELECTION WITH TAX RETURN

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Under Section 83(a) of the Internal Revenue Code (the “Code”), if property is transferred in connection with the performance of services, the excess of the fair market value of the property over the amount (if any) paid for the property is includible in income by the service provider in the taxable year in which the service provider’s rights to the property are transferable or not subject to a substantial risk of forfeiture. Notwithstanding the general rule on timing of income inclusion under Code Section 83(a), Code Section 83(b) permits a service provider to make an 83(b) election to include in income the excess of the fair market value of the property over the amount, if any, paid for the property at the time the property is transferred to the service provider, even though the property is not transferable and is subject to a substantial risk of forfeiture.

The Treasury Regulations under Code Section 83 required a taxpayer making an 83(b) election to include a copy of the 83(b) election when filing the taxpayer’s income tax return for the taxable year in which the property was transferred to the taxpayer. In certain circumstances, taxpayers were unable to electronically file their income tax returns because of the requirement that they include a copy of the 83(b) election with their return.

After learning that certain taxpayers were unable to electronically file their income tax returns due to the requirement that the taxpayer include a copy of any 83(b) election made by the taxpayer, the Treasury Department issued proposed regulations under Code Section 83 in 2015 that eliminated the requirement for taxpayers to include a copy of an 83(b) election with their income tax return. The Treasury Department recently issued final regulations under Code Section 83 that adopted the proposed regulations without change.

Even though taxpayers are no longer required to include a copy of an 83(b) election with their income tax return, taxpayers must still file a copy of an 83(b) election with the internal revenue office with which the taxpayer files his or her return within 30 days of making the 83(b) election.

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The final regulations apply to property transferred after January 1, 2016. For transfers of property on or after January 1, 2015 and before January 1, 2016, taxpayers may rely on the 2015 proposed regulations.

