

IRS Creates Standardized Form for Section 83(b) Elections

Tax Talks on November 18, 2024

Earlier this month, the Internal Revenue Service (“IRS”) released [Form 15620](#), which is an approved IRS form for making Internal Revenue Code (“Code”) Section 83(b) elections. By way of background, Code Section 83(b) provides taxpayers with the ability to include the fair market value of nonvested property over the amount (if any) paid for the property at the time of transfer in their gross income at the time of transfer, rather than when the property becomes vested. In general, the effect of the irrevocable election is that taxpayers can pre-pay the tax liability associated with the property while it has a lower valuation (assuming the property’s value increases in the following years). Code Section 83(b) elections are often made in connection with the grant of restricted shares for early-stage companies as well as in respect of profits interests (also called “carry” in the asset management industry). Profits interests that meet the requirements of certain IRS Revenue Procedures have favorable tax treatment even without a Code Section 83(b) election. Nevertheless, Code Section 83(b) elections are frequently made on profits interests so as to preserve the favorable tax treatment in the event that the profit interest does not comply with the applicable IRS Revenue Procedures.

With the release of Form 15620, taxpayers are no longer responsible for drafting an election form if they want to make a Code Section 83(b) election, as was historically the case. However, taxpayers may continue to file their own election form and not use Form 15620 if they choose to do so. Consistent with existing Code Section 83(b) filing procedures, Form 15620 currently may only be filed via mail, but the IRS is expected to support electronic filing eventually.

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