

Client Alert

IRS Issues Final Regulations Simplifying the Tax Return Filing Process for Individuals Making Section 83(b) Elections

August 2, 2016 – The Internal Revenue Service recently issued final regulations, adopting verbatim its 2015 proposed regulations, which remove a significant obstacle for taxpayers who wish to file their annual tax returns electronically, but who have also made a “section 83(b) election” during the year. Under the final regulations, taxpayers no longer have to file the section 83(b) election twice: the second filing – with their annual tax returns – has been eliminated. The “first filing” of the section 83(b) election still has to be filed with the IRS within 30 days after the property subject to section 83 is awarded. By eliminating the “filing with return” requirement, taxpayers will now generally be able to file their annual tax return with most commercially available electronic tax return preparation programs.

Section 83 generally requires a taxpayer to report property received for services that is subject to vesting (e.g., carried interests/profits interests, restricted stock and other incentive equity) as income in the year the property vests. The section 83(b) election allows a taxpayer to include that property in income in the year it is received, instead of in the year of vesting (when the value may be higher). The amount included in income is the spread between the fair market value of the property on the date received over the amount paid by the taxpayer, which in many cases is zero.

Even with the adoption of the final regulations, we recommend that taxpayers maintain sufficient records related to the transferred property, including the original amount paid for the property and the amount included in income.

The final regulations are effective as of January 1, 2016. However, taxpayers may rely on the proposed regulations for transfers of unvested property between January 1, 2015 and January 1, 2016.

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