

Client Alert

IRS PROPOSES TO SIMPLIFY TAX RETURN FILING PROCESS FOR INDIVIDUALS MAKING SECTION 83(B) ELECTIONS

July 21, 2015 - The Internal Revenue Service issued proposed regulations on July 17, 2015, aimed at removing 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 proposed regulations, taxpayers would no longer have to file the section 83(b) election *twice*: the second filing — with their annual tax returns — would be eliminated. Eliminating the “filing with return” requirement will permit taxpayers 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 (e.g., carried interests/profits interests, restricted stock, and other granted or purchased equity) as income in the year it vests. The section 83(b) election allows a taxpayer to, instead, include the property in income in the year it is received (rather than the year of vesting). 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. Under both the existing and proposed regulations, the section 83(b) election must be filed with the IRS within 30 days after the unvested property is received.

The current requirement that a copy of the section 83(b) election also be filed with the annual tax return often prevents taxpayers from e-filing their tax returns, as commercial e-filing software does not consistently provide a way to transmit the election with an e-filed return. Because e-filing is so beneficial to the IRS, the proposed regulations would eliminate this second filing requirement.

Even without this second filing requirement, we recommend that taxpayers maintain sufficient records to show any documentation related to the transferred property, including the original amount paid and the amount included in income.

If finalized, the proposed regulations would become effective as of January 1, 2016. However, taxpayers may rely on the proposed regulations for transfers of unvested property on or after January 1, 2015.

If you have any questions, please contact your primary attorney at Morrison Cohen LLP or any of our Executive Compensation/Employee Benefits attorneys:

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