

Goodwin Alerts

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U.S. Internal Revenue Service Issues Temporary Filing Extension for Section 83(b) Elections

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In response to the COVID-19 pandemic, the U.S. Internal Revenue Service (“IRS”) issued Notice 2020-23, 2020-18 IRB 732 (April 27, 2020) (the “Notice”) providing a temporary extension, until July 15, 2020, for Internal Revenue Code (“Code”) Section 83(b) elections (an “83(b) election”) that are otherwise due on or after April 1, 2020, and before July 15, 2020. Despite this temporary filing deadline extension, we continue to recommend that taxpayers making an 83(b) election do so in a timely manner if they can do so safely. In addition, during these unparalleled times, it is particularly important for taxpayers making such an election to keep records of the filing as well as evidence of timely mailing.

GENERAL TAX TREATMENT UNDER SECTION 83 OF THE CODE

Generally, the value of property transferred to a service provider in connection with the performance of services (e.g., restricted stock, unvested “profits interests” in a partnership or LLC, or unvested stock received upon the early exercise of a stock option) is not taxable as compensation income to the service provider until the restrictions on the property lapse, (which generally means vesting), or the property becomes transferable by the service provider. If the fair market value of the property received in connection with the performance of services appreciates significantly between the date the property is transferred by the company and the date the property becomes either vested or transferable by the service provider, the increased value results in ordinary income for the service provider, subject to income and employment taxes in most cases.

However, if an 83(b) election is properly and timely made, the service provider pays ordinary income and employment tax on the excess of the property's fair market value on the date the property is transferred, over the amount (if any) the service provider paid for the property. If and when the property later vests or becomes transferable, no additional income or employment tax will be due. When such property is later sold, the service provider pays either long-term or short-term capital gains tax on the increased value of the property following the original date of transfer by the company, depending on the length of time the service provider held the property. Currently, the maximum federal ordinary income tax rate is 37%, and the maximum federal long term capital gains tax rate is 20% (i.e., for property held in excess of one year).

SECTION 83(B) FILING DEADLINE – NORMAL COURSE

Section 83(b) requires an election to be made by the service provider to the IRS no later than 30 days after the date the property is first transferred to the service provider. This generally means within 30 days from the date the company approved of the grant or 30 days from the closing of a purchase, whichever is applicable. Absent special relief, such as discussed below, this 30-day period is a hard deadline with no exemptions, extensions or grace periods.

SECTION 83(B) FILING DEADLINE – COVID-19

83(b) elections otherwise due on or after April 1, 2020, and before July 15, 2020 have been given an extended filing deadline until July 15, 2020. This extension 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 time frame are not eligible for an extension of the filing deadline. The extension is good news for taxpayers who may have missed an earlier deadline due to the COVID-19 pandemic, or for those who are concerned about making timely

elections during the current pandemic. Nonetheless, despite this deadline extension, best practice still dictates that those who decide to make an 83(b) election and can do so safely should send their 83(b) election to the IRS as soon as possible following the transfer of property. Taxpayers who take advantage of the delayed filing deadline should send their 83(b) elections to the IRS no later than July 15, 2020.

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