

IRS Provides Guidance for Making an 83(b) Election

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On July 25, 2016, in T.D. 9779, the IRS published final regulations concerning the procedures for making an election under section 83(b) of the Code. The new final regulation, Treas. Reg. §1.83-2, eliminates the requirement for the taxpayer to file a copy of the election with his or her annual income tax return.

Under section 83(b)(2), the election must be made in the manner prescribed by the IRS, and must be made not later than 30 days after the date of transfer. Under the prior regulations, the 83(b) election was made by filing one copy of a written statement with the IRS office where the taxpayer files his or her return, and in addition, one copy of the statement was required to be submitted with the income tax return for the year of transfer. With the shift toward electronic filing of tax returns in recent years, this created problems for taxpayers who otherwise desired to e-file their annual return. Taxpayers could not e-file because they were required to submit a copy of the 83(b) election with the return. By eliminating the requirement that the taxpayer submit a copy of his or her 83(b) election with their tax return, the IRS has streamlined those filing requirements.

The final regulation applies to property transfers occurring on or after January 1, 2016 (Treas. Reg. §1.83-2(g)). So long as the employee makes the election within 30 days after the date of transfer and properly mails the election to his or her relevant IRS office, their 2017 1040 return will not need to include a copy of the election.

In its decision, the Service reminds taxpayers of their general record keeping responsibilities under Code Section 6001. Taxpayers who file an 83(b) election must be diligent in keeping copies of the election statement, ensuring that they retain a copy of their 83(b) election for years. It is strongly recommended that the taxpayer retain the election until they sell or divest the stock or other property that was the subject of the election.

If you have questions about how making an 83(b) election could benefit you or your employees in certain circumstances, please feel free to contact Brian J. Kahle or another member of the Tucker Arensberg P.C. Business and Corporate or Labor and Employment practice groups.