

IRS Releases Sample Language for Code Section 83(b) Election

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Restricted stock received for services is includable in the income of an employee or independent contractor under **section 83(a) of the Internal Revenue Code (“Code”)**. An election can be made under Code section 83(b) to limit tax on such income. The Internal Revenue Service (IRS) recently released sample language that may be used to make this Code section 83(b) election.

The employee or independent contractor pays income tax at the ordinary income rate on the fair market value of the stock (not reduced in value by the restrictions on the stock unless such restrictions will never lapse) over any amount paid for such stock by the employee or independent contractor. Restrictions often lapse with the passage of time. An employee or independent contractor who does not want to postpone inclusion of the property in income until the restrictions lapse may elect to be taxed in the year of transfer under Code section 83(b). The concern is appreciation in value (and therefore additional income tax) between the year of transfer and the year of lapse.

The sample language that employees and independent contractors may use to make the **Code section 83(b) election for transfer to them of restricted stock can be found in Rev. Proc. 2012-29**. While use of the form is optional, the IRS in the cited revenue procedure clearly states that use of the sample language will satisfy the requirements of Code section 83(b). The employee or independent contractor must file the election with the IRS within 30 days after the date of the transfer of the stock. The IRS office where the election is filed is the same office where the taxpayer files his or her individual income tax return.

IRS Circular 230 Notice

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