

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201109013**
Release Date: 3/4/2011
Index Number: 83.02-04

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-140690-10

Date: November 8, 2010

Legend

x =
Restricted Stock =
Employer =

Dear :

This letter is in response to your request, dated September 29, 2010, in which you asked for consent to revoke an election you made under § 83(b) of the Internal Revenue Code (Code). The facts, as represented, are as follows.

On September 1, 2010, you were granted an award of x shares of Restricted Stock by Employer. On or about September 20, 2010, you filed an election under § 83(b) of the Code with the Internal Revenue Service Center where you file your individual tax return. The § 83(b) election referenced all x shares of the Restricted Stock received from Employer on September 1, 2010. On September 29, 2010, you sent a letter to this office requesting consent to revoke your § 83(b) election.

Section 83 of the Code sets forth the rules for transfers of property in connection with the performance of services. Section 83(a) provides that the excess of the fair market value of the property transferred, at the time the property becomes substantially vested, over the amount (if any) paid for the property, shall be included as compensation in the service provider's gross income for the taxable year in which the property becomes substantially vested. Property is substantially vested when it is either transferable or no longer subject to a substantial risk of forfeiture.

Section 83(b) of the Code and § 1.83-2(a) of the Income Tax Regulations permit the service provider to elect to include in gross income the excess (if any) of the fair market value of the property at the time of transfer over the amount (if any) paid for the property, as compensation for services. Under § 83(b)(2) of the Code, an election

made under § 83(b) must be made in accordance with the regulations thereunder and must be filed with the Internal Revenue Service no later than 30 days after the date that the property is transferred to the service provider.

Section 83 of the Code and § 1.83-2(f) of the Income Tax Regulations provide that an election under § 83(b) may not be revoked without the consent of the Commissioner of the Internal Revenue Service. Section 1.83-2(f) provides that consent to revoke an election under § 83(b) will be granted only in a case where the transferee is under a mistake of fact as to the underlying transaction and must be requested within 60 days of the date on which the mistake first became known to the person who made the election. The Service has recognized the principle that an election made under the Code or regulations may be revoked on or before the due date for making the election. Section 2.08 of Rev. Proc. 2006-31, 2006-1 I.R.B. 32, provides that a request for consent to revoke a § 83(b) election will generally be granted if the request is filed on or before the due date for making that § 83(b) election.

In the instant case, you filed your request to revoke your September 20, 2010, § 83(b) election within the 30 day time period allowed under § 83(b) for making the election. Based solely on the representations provided, and the information and documents submitted, consent to revoke your § 83(b) election is granted.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning other tax consequences of section 83 and its applicability to the transaction described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter should be attached to your income tax return for .

Sincerely,

THOMAS D. SCHOLZ
Assistant Branch Chief
Executive Compensation Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)