



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

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FROM: Assistant Chief Counsel (Employee Benefits)  
Office of the Division Counsel/Associate Chief Counsel (Tax  
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CC:TEGE:EB

SUBJECT: Section 83(b) Elections

This Service Center Advice is in response to a letter to the National Taxpayer Advocate dated July 6, 2000. In accordance with I.R.C. §6110(k)(3), this Service Center Advice should not be cited as precedent.

LEGEND

Employer =

Year 1 =

Year 2 =

Service Center A =

Service Center B =

Service Center C =

Service Center D =

FREV-122326-00

Service Center E =

Service Center F =

Service Center G =

### ISSUE

Whether the 83(b) elections filed by the Employer on behalf of the Employees meet the requirement of section 1.83-2(e) of the Income Tax Regulations that the statement be signed by the person making the election.

### CONCLUSION

The 83(b) elections filed by the Employer on behalf of the Employees meet the requirement of section 1.83-2(e) of the regulations that the statement be signed by the person making the election.

### FACTS

Employer granted restricted property ("Property") to certain of its employees ("the Employees") in connection with the performance of services. The grants in question occurred in Year 1 and Year 2. Prior to acquiring the Property each employee signed a "Consent to make Section 83(b) Election by Power of Attorney" ("Consent"). The Consent provided, in part, that the employee wished to make an 83(b) election to include the excess (if any) of the fair market value of the Property over the amount paid for such Property in the Employee's gross income for the year of receipt. The Consent further provided that, pursuant to the regulations under section 83(b), the Employee was required to file a written consent with the Internal Revenue Service and that the Employee agreed to grant certain representatives of the Employer a power of attorney for purposes of making the 83(b) election. Each Employee filled out and signed a Form 2848, Power of Attorney and Declaration of Representative, authorizing representatives of Employer to file the section 83(b) election on their behalf. Each power of attorney was specifically limited to the making of an election under section 83(b).

For administrative reasons, Employer filed all the section 83(b) elections on behalf of the Employees, Employer has since discontinued this practice.

Pursuant to the Form 2848, Employer signed the 83(b) election on behalf of each Employee. Employer submitted the section 83(b) elections and the Forms 2848 to the appropriate Service Center (Service Centers A through F). These elections were made in Year 1 and Year 2. It has been represented that these documents were filed with the respective Service Centers within 30 days of the transfer of the Property as required by section 1.83-2(b) of the regulations.

FREV-122326-00

The Forms 2848 filed by Employer were substantially identical. For Year 1, Service Center A returned all the Forms 2848 and all the 83(b) elections to Employer because of a determination that the Form 2848 was not acceptable. For Year 2, Service Centers A, B, C, F, and G returned some of the Forms 2848 but not the 83(b) elections. Employer and the Employees question whether all the 83(b) elections as originally filed, including those section 83(b) elections that were not returned, are valid.

### LAW AND ANALYSIS

Section 83 of the Code provides rules for the taxation of property transferred to an individual in connection with the performance of services. Under section 83(a) of the Code, if property is transferred to any person in connection with the performance of services, the excess of the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for such property, is included in the gross income of the service provider in the first taxable year in which the rights of the person having the beneficial interest in such property are transferrable or not subject to a substantial risk of forfeiture.

Section 83(b)(1) provides that any person who performs services in connection with which property is transferred may elect to include in his or her gross income, for the taxable year in which property is transferred, the excess of the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over the amount (if any) paid for such property. If such an election is made, section 83(a) shall not apply to the transfer of such property.

Section 83(b)(2) provides that a section 83(b) election shall be made in such manner as the Secretary prescribes and shall be made not later than 30 days after the date of transfer. Section 1.83-2(c) of the regulations provides that an election under section 83(b) is made by filing a copy of a written statement with the Internal Revenue Service not later than 30 days after the transfer. In addition, a copy of the statement is submitted with the service provider's income tax return for the taxable year in which such property was transferred.

Section 1.83-2(e) of the regulations sets forth the contents of the statement. Specifically, the statement must include: 1) the name, address and taxpayer identification number of the taxpayer; 2) a description of each property with respect to which an election is being made; 3) the date or dates on which the property is transferred and the taxable year for which such election was made; 4) the nature of the restriction or restrictions to which the property is subject; 5) the fair market value of the property at the time of transfer (determined without regard to any lapse

FREV-122326-00

restriction) of each property with respect to which the election is being made; 6) the amount (if any) paid for such property; and 7) a statement that copies have been furnished to other persons as required by the regulations. The statement must be signed by the person making the election and must indicate that it is being made under section 83(b) of the Code.

The statement containing the above required information was signed on behalf of the Employee by the person designated on Form 2848. Because the Employees did not sign the statement, the Employees did not meet the literal requirements of section 1.83-2(e). However, submitted along with the statement was a Form 2848, signed by the employee, authorizing the Employer to make the section 83(b) election. Based on the facts of this case and the totality of the documents filed in connection with the section 83(b) election, we believe the requirements of section 1.83-2(e) were met. Consequently, the section 83(b) elections filed by Employer on behalf of the Employees listed below should be accepted as meeting the requirement of section 1.83-2(e) that the statement be signed by the Employee. Because in this case the section 83(b) elections satisfy the requirement that the statement be signed by the Employee, we do not address whether or not the Forms 2848 were acceptable.

We note that it has been represented that the section 83(b) elections in question were timely filed with the Service Centers and that they contained all the information required by section 1.83-2(e). These are questions of fact and are not decided in this Service Center Advice.

Set forth below is a list of all of the employees on whose behalf a section 83(b) election was filed and the Service Center where the election was filed.

#### LIST OF EMPLOYEES AND SERVICE CENTERS

FREV-122326-00

FREV-122326-00

FREV-122326-00

FREV-122326-00



FREV-122326-00

FREV-122326-00

10

FREV-122326-00

Please call if you have any further questions.

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