

Internal Revenue Service

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In Re:



Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No. 50-01185

Telephone Number:

Refer Reply To:

CC:TEGE:EB:EC

GENIN-133344-04

Date:

July 20, 2004

Dear :

This is in reply to your May 14, 2004, letter on behalf of the above-referenced taxpayer (the taxpayer) requesting the revocation of an election made under section 83(b) of the Internal Revenue Code. We hope that the following general information will prove helpful to you.

Section 2.04 of Revenue Procedure 2004-1, 2004-1 I.R.B. 1, defines an "information letter" as a statement issued by the Internal Revenue Service that calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. This section also states that an information letter is advisory only and has no binding effect on the Service.

Section 83(a) of the Code provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the fair market value of the property (less the amount paid for the property) shall be included in the gross income of the recipient in the first taxable year in which the recipient's interest in the property is not subject to a substantial risk of forfeiture.

Under section 83(b) of the Code, the recipient of restricted stock may elect to include the value of the stock in his or her gross income in the year in which he or she receives the stock, although the stock remains subject to a substantial risk of forfeiture during that year. An election under section 83(b) must be made not later than 30 days after the date the stock is transferred.

Section 83(b)(2) and section 1.83-2(f) of the Income Tax Regulations provide that an election under section 83(b) may not be revoked without the consent of the Commissioner of Internal Revenue. The regulations also provide that such consent will only be granted where the person filing the election 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 of fact first became known to the person who made the election. In any event, neither a mistake as to the value (or decline in the value) of the property for which an election was made, nor the failure of anyone to perform an act that was contemplated at the time of "transfer" of the property constitute a "mistake of fact" for this purpose.

You indicate that the Amistake of fact® was that the taxpayer believed the signing of the section 83(b) election was mandatory. However, the information supplied does not suggest a Amistake of fact as to the underlying transaction® (the Aunderlying transaction® being the employer-s transfer of the restricted property to the taxpayer). Rather, the information submitted suggests that the taxpayer did not understand the tax consequences of making a section 83(b) election. This is a mistake of law. Your submission also indicates that the section 83(b) election was made more than 30 days after the date of the transfer of the property. In such a case, the section 83(b) election would not have been valid when made.

We hope that the above general information is helpful to you. If the taxpayer desires a private letter ruling on the matter, you may request one under the procedures contained in Revenue Procedure 2004-1.

Sincerely yours,

Catherine Livingston Fernandez
Chief, Executive Compensation Branch
Office of the Division Counsel /
Associate Chief Counsel
(Tax Exempt and Government Entities)