



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

This letter responds to your request for information submitted on behalf of _____ and dated October 16, 2018.

You requested information about the tax consequences of issuing stock to a service provider in exchange for services rendered. We are glad to provide you with the following general information concerning section 83 of the Internal Revenue Code (the "Code"). Section 83 provides rules for the taxation of property transferred to an employee or independent contractor in connection with the performance of services by such employee or independent contractor.

Code section 83(a) provides generally that if, in connection with the performance of services, property (such as stock) is transferred to any person other than the person for whom such services are performed, 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, shall be included in the gross income of the person who performed such services in the first taxable year in which 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 is applicable. Under section 1.83-3(b) of the Treasury Regulations (the "Regulations"), property is considered substantially vested when it is either transferable or not subject to a substantial risk of forfeiture. Thus, the person who performed the services must include the fair market value of the property transferred, minus any amount the person paid for the property, in income for the year when the property becomes substantially vested.

Regulations section 1.83-3(f) provides that property is considered transferred in connection with the performance of services within the meaning of section 83 if property

is transferred to an employee or an independent contractor (or beneficiary thereof) in recognition of the performance of, or the refraining from performance of, services. The existence of other persons entitled to buy stock on the same terms and conditions as an employee, whether pursuant to a public or private offering may, however, indicate that in such circumstances a transfer to the employee is not in recognition of the performance of, or the refraining from performance of, services. The transfer of property is subject to section 83 whether such transfer is in respect of past, present, or future services.

Regulations section 1.83-3(c) provides that, for purposes of section 83 and the regulations thereunder, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. Except as set forth in sections 1.83-3(j) and (k), a substantial risk of forfeiture exists only if rights in a property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or upon the occurrence of a condition related to a purpose of the transfer if the possibility of forfeiture is substantial. Property is not transferred subject to a substantial risk of forfeiture if at the time of transfer the facts and circumstances demonstrate that the forfeiture condition is unlikely to be enforced. Further, property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon return of such property.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only, does not constitute a ruling and may not be relied upon as such, and has no binding effect on the Internal Revenue Service. See section 2.04 of Rev. Proc. 2018-1, 2018-1 I.R.B. 1 (2018). For additional information regarding the tax consequences of the transfer of property in connection with the performance of services, you may also refer to Internal Revenue Service Publication 525. If you have any additional questions, please contact our office at

Sincerely,

Thomas D. Scholz
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(Employee Benefits)
(TEGE Associate Chief Counsel)