

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:EEE:EB:EC
PLR-125288-20

Date: March 18, 2021

Legend

Date 1 =
X =
Employer =
Date 2 =

Dear _____ :

This letter is in response to your request for a letter ruling, submitted July 12, 2020, in which you asked for consent to revoke the election you made under § 83(b) of the Internal Revenue Code (Code). The facts, as represented, are as follows.

On Date 1, you received, in exchange for the performance of services, X shares of Employer common stock granted to you by Employer, subject to a substantial risk of forfeiture. On Date 2, 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 X shares of common stock received from Employer on Date 1. On July 12, 2020, you submitted by fax 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 (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 Regulations provide that an election under § 83(b) may not be revoked without the consent of the Commissioner. 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, 2006-2 C.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 accordance with Notice 2020-23, 2020-18 I.R.B. 742 (April 27, 2020), the time period for filing your § 83(b) election was extended to July 15, 2020. You filed your request to revoke your § 83(b) election within the time period allowed under § 83(b) for making the election, as modified by Notice 2020-23. Based solely on the representations provided and the information and documents submitted, consent to revoke your § 83(b) election is granted.

This ruling is based on the information and representations submitted by you and accompanied by a penalty of perjury statement executed by you. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. 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 § 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 must be attached to any income tax return to which it is relevant.

Sincerely,

THOMAS D. SCHOLZ
Senior Counsel
Executive Compensation Branch
Office of the Associate Chief Counsel
(Employee Benefits, Exempts
Organizations, and Employment Taxes)

cc: