

April 20, 2020

Internal Revenue Code Section 83(b) Deadline Extended to July 15, 2020 as a Result of COVID-19

Key Takeaway

- As a result of the COVID-19 pandemic, the 30-day period for making an Internal Revenue Code Section 83(b) election with respect to grants of restricted property has been extended to July 15, 2020.

Generally the value of property transferred to a service provider in connection with the performance of services (e.g., restricted stock) is not taxable as compensation income to the service provider until the restrictions on the property lapse.

However, if a service provider makes a so-called “Section 83(b) election” pursuant to Section 83(b) of the Internal Revenue Code within 30 days after the date of grant, the service provider is taxed on the date of grant, there is no tax when the property subsequently vests and the gain (or loss) from the grant date until the property is sold is taxed as a capital gain (or loss). The top federal ordinary income tax rate is currently 37% and the top federal long term capital gains rate is 20%.

Section 83(b) elections are commonly made when “profits interests” in a partnership or LLC are granted or when the value of the restricted stock granted is very low and substantial future appreciation is anticipated.

The 30-day period for making the Section 83(b) election is strictly construed and generally no exceptions are permitted. However, in response to the COVID-19 pandemic, the Internal Revenue Service issued Notice 2020-23 which extended until July 15, 2020, the deadline for making Section 83(b) elections that would otherwise be due on or after April 1, 2020 and before July 15, 2020. Taxpayers should be aware of this limited exception to the 30-day period for making Section 83(b) elections.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Andrew Gaines

+1 212-373-3339

againes@paulweiss.com

Jean M. McLoughlin

+1 212-373-3135

jmcloughlin@paulweiss.com

Brad R. Okun

+1 212-373-3727

bokun@paulweiss.com

Lawrence I. Witdorchic

+1 212-373-3237

lwitdorchic@paulweiss.com

Reuven Falik

+1 212-373-3399

rfalik@paulweiss.com