Section 83(b) Elections: A Short Deadline and Lasting Tax Consequences

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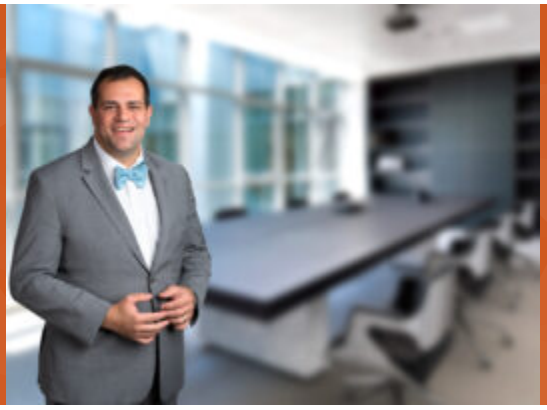

A Section 83(b) election is one of the most valuable – and least forgiving – tax elections in an equity grant. It allows a service provider who receives substantially nonvested property to recognize compensation income at transfer rather than as the property vests. When the value at transfer is low, the election may start the capital-gain holding period early, prevent later appreciation from being taxed as compensation, and, for qualifying stock, start the Section 1202 holding period. But the election has a strict 30-day deadline, generally cannot be revoked, and can produce tax on value the recipient never realizes.

The analysis is therefore not simply whether an election is available. The real questions are what property was transferred, when the transfer occurred, how the property should be valued, how likely forfeiture is, and whether the expected tax benefit justifies accelerating income today.

How Section 83 Applies Without an Election

Section 83 generally applies when property is transferred in connection with services. Unless an exception applies, the service provider recognizes ordinary compensation income when the property first becomes transferable or is no longer subject to a substantial risk of forfeiture. The income is the property's fair market value at that time, determined without regard to lapse restrictions, less the amount paid.

A timely Section 83(b) election changes that timing. At transfer, the service provider recognizes compensation income equal to the property's fair market value minus the amount paid for it. That difference is commonly called the "spread." For example, if stock is worth $10,000 and the recipient pays $1,000 for it, the spread – and the amount generally recognized as compensation income – is $9,000. Later appreciation generally is not compensation income; instead, it is taken into account when the property is sold or otherwise disposed of. The amount paid, plus the amount included in income, generally becomes tax basis, and the capital-gain holding period begins on the transfer date.

Without an election, each vesting event may create compensation income based on the spread at that time; that is, the fair market value of the portion that vests minus the amount the recipient paid for it. Each vested tranche also has a separate tax basis and holding period. In a growing private company, the spread may increase substantially before vesting, creating taxable income before there is a sale or other source of cash for the service provider.

The election is most attractive when the spread at transfer is small, meaning the property's fair market value is close (or equal) to the price paid, appreciation is reasonably expected, and the recipient is likely to satisfy the vesting conditions. In that situation, the recipient accelerates relatively little compensation income and may convert substantial future appreciation into capital gain. The election is less attractive when the spread is already large, the equity is difficult to value, or the risk of forfeiture is meaningful.

The QSBS Overlay

For stock that otherwise qualifies as qualified small business stock under Section 1202, an 83(b) election can be especially powerful. Before Public Law 119-21 (commonly referred to as the One Big Beautiful Bill Act, or "OBBBA"), the Section 1202 exclusion generally required a taxpayer to hold qualifying stock for more than five years. For qualifying stock acquired after July 4, 2025, OBBBA replaced that all-or-nothing rule with a graduated exclusion: 50% of eligible gain after the stock has been held for at least three years but less than four years, 75% after at least four years but less than five years, and 100% after at least five years.

A valid 83(b) election generally starts that holding period on the date the stock is transferred, rather than starting a separate clock each time another portion of the stock vests. The election can therefore determine whether an exit falls below the three-year threshold or qualifies for a 50%, 75%, or 100% exclusion. The election does not, however, make stock eligible for Section 1202: the stock's acquisition date and the issuer, original-issue, gross-assets, active-business, and other requirements must be analyzed separately.

The Principal Traps

Forfeiture risk

If the recipient later forfeits the property, Section 83(b)(1) generally allows no deduction for the compensation income previously recognized. Any loss is generally limited to the amount paid for the property, less any amount received on forfeiture. An election can therefore create a permanent tax cost even though the recipient never receives vested equity or sale proceeds.

Revocation is exceptional

An election cannot be revoked without the Commissioner's consent. Revenue Procedure 2006-31 provides a limited procedure where the taxpayer made a mistake of fact concerning the underlying transaction and requests relief within 60 days after discovering the mistake. A valuation error, a later decline in value, or a failure by a party to perform as expected is not a qualifying mistake of fact. A change of mind is not enough.

Valuation risk

The election reports fair market value at transfer without regard to restrictions that will lapse. A nominal purchase price does not itself establish nominal value. For a private company, a current and defensible valuation prepared in compliance with Section 409A is therefore crucial. It gives the company a supportable basis for pricing equity awards and helps reduce the risk that the IRS will later assert a higher value. It also makes the recipient's decision easier by providing a concrete, independently supported value for calculating the spread and assessing the immediate tax cost of an 83(b) election. The company and recipient should nevertheless confirm that the valuation remains reliable based on the facts existing on the transfer date, including any material events occurring after the valuation date.

Liquidity risk

The election accelerates compensation income even though the property remains illiquid and subject to forfeiture. If the spread is significant, the recipient must be prepared to fund the resulting tax without relying on a near-term sale.

There is generally no second chance after the deadline. The 30-day period is statutory, so the discretionary relief available for certain regulatory elections under Treasury Regulations Sections 301.9100-1 and 301.9100-3 generally is not available. A few narrow rules can affect the calculation of the deadline: Section 7503 may carry a deadline falling on a Saturday, Sunday, or legal holiday to the next business day, and a specific IRS postponement for a federally declared disaster, combat-zone service, or similar event may apply to a qualifying taxpayer. These exceptions are unusual and highly fact specific. They depend on the taxpayer, the event,

the applicable dates, and the precise terms of the governing guidance, and should not be viewed as a reliable means of curing a missed election.

The signing date may not be the transfer date

The 30-day period begins when beneficial ownership of the property is transferred. Board approval, execution of the award documents, book-entry issuance, payment of the purchase price, and delivery of a certificate may occur on different dates; no single formality necessarily controls. The contemporaneous corporate records and the parties' actual rights must establish when the transfer occurred.

First ask whether there was anything to elect on

An election is relevant only if property was actually transferred in connection with services and was substantially nonvested at that time. Restricted stock is the classic case. An option generally is not eligible at grant unless it has a readily ascertainable fair market value, although an election may be relevant when an option is early exercised for unvested stock. A restricted stock unit ordinarily is an unfunded contractual right rather than transferred property, so an election generally is unavailable. Partnership and LLC interests require separate analysis; applicable IRS guidance may make an election unnecessary for a qualifying profits interest, although protective elections are often considered based on the facts and governing documents.

If beneficial ownership never passed, the 30-day period may never have started. Conversely, if the property was already vested when transferred, Section 83(a) generally taxes it at transfer, and an election ordinarily would not change the timing. A missing certificate or defective paperwork is relevant but not necessarily dispositive. The review should include the board authorization, purchase or restricted stock agreement, capitalization records, payment evidence, and the vesting and repurchase provisions in effect on the asserted transfer date.

A restructuring is not a late election

If substantially nonvested property was transferred and the deadline expired, the original election cannot be recreated retroactively. Depending on the facts, the parties may consider accelerating vesting, modifying transfer or repurchase provisions, or canceling and making a genuinely new grant. Those steps may cause current compensation income at current fair market value, alter retention economics, require corporate approvals, and raise questions whether a purported new grant will be respected as a new transfer. No general IRS safe harbor blesses these techniques as a cure.

Filing the Election

The election must be filed with the IRS no later than 30 days after the transfer date (the date on which beneficial ownership of the property is transferred). As discussed above, board approval, execution of the grant agreement, commencement of vesting, issuance of a valuation report, book-entry issuance, payment, and delivery of a certificate may be relevant evidence, but no one of those events necessarily determines the transfer date. The IRS now provides Form 15620, *Section 83(b) Election*, although a compliant written statement may also be used. The filing goes to the IRS service center where the taxpayer files the taxpayer's federal income tax return; the taxpayer should verify the current filing address rather than rely on an address embedded in an older form or closing checklist.

The taxpayer must also provide a copy to the person for whom the services were performed and, if different, to the transferee of the property. The taxpayer should retain the signed election, the grant or purchase documents, valuation support, and reliable evidence of timely filing, such as certified-mail or approved private-delivery-service records or an electronic submission confirmation if the applicable IRS process permits online filing. The company should retain its copy and the related grant records as well. Those records can support the company's income and employment tax withholding and reporting position in an audit and are likely to be requested in

the routine tax and equity-compensation diligence conducted in future financings or acquisition transactions. Current federal rules do not require a copy to be attached to the taxpayer's income tax return, but state filing requirements should be checked separately.

The Takeaway: Decide Early and Document Everything

Treat the 30-day deadline as part of the equity grant itself, not as tax paperwork to address later. Before the transfer, identify the property, establish the transfer date and fair market value, understand the vesting and forfeiture terms, evaluate the Section 1202 implications, and assign responsibility for preparing, filing, delivering, and retaining the election. A timely and well-supported election can protect years of future tax value. Miss the deadline, and any potential fix is likely to be far more complicated and expensive than getting it right the first time.

For more information, please contact Joe Hunt.

See also Section 83(b) Elections – Navigating Fertile Ground for Bad Results for additional guidance on this type of election.