

## Publications

## IRS Releases New Form for 83(b) Elections

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Earlier this month, the IRS released [Form 15620](#), a new standardized form for taxpayers seeking to make elections under Internal Revenue Code (“Code”) section 83(b). Previously, to make this election, taxpayers needed to execute their own election form, a sample of which was set out in Rev. Proc. 2012-29.

## Section 83(b) Elections

Section 83(b) elections are most commonly used in connection with the grant of restricted shares or profit interests in emerging businesses, when the value of the underlying property is expected to increase significantly over time.

Under Code section 83(a), a taxpayer who receives property (*e.g.*, restricted stock) in connection with the performance of services must include the excess of the fair market value of the property over the amount paid (if any) for the property in their gross income when the property “vests” (meaning it is no longer subject to a substantial risk of forfeiture). In practice, this can lead to heavy income tax consequences if the value of the property has increased substantially between the time it was transferred and the time it vests.

Code section 83(b) permits taxpayers to elect to include the excess of the property’s fair market value over the amount paid (if any) in their gross income at the time the property is transferred, rather than at the time it vests. This election allows the taxpayer to pay income tax on the property at the ordinary rate when it has a lower valuation. When the property is sold, any increase in the value of the property is taxed at the generally more favorable capital gain rate. However, section 83(b) elections are generally irrevocable, so a taxpayer making a section 83(b) election risks potentially overpaying taxes if the value of the property diminishes between the time it is transferred and the time it is sold, or if the taxpayer forfeits the property before it is fully vested.

## Using Form 15620

Form 15620 is a straightforward form that taxpayers can use to make a section 83(b) election. The form is available for use immediately, though taxpayers may still opt to file their own form modeled after Rev. Proc. 2012-29 (which generally requires the

same information). The form must be filed within 30 days after the date the property is transferred, and a copy of the form must be furnished to the person for whom the services are performed. The instructions to the form clarify that if the 30<sup>th</sup> day following the transfer of property falls on a Saturday, Sunday or legal holiday, the election will be considered timely filed if it is postmarked by the next succeeding business day. Form 15620 cannot be e-filed at this time, but must be sent via mail to the IRS.

If you have any questions about making a section 83(b) election or the new IRS Form 15620, you can reach out to a Groom attorney.