

Granting Restricted Stock in the U.S.? 83(b) Election News

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When restricted stock is transferred to a U.S. taxpayer in connection with the performance of services, Internal Revenue Code Section 83(b) allows the recipient to accelerate the taxable event to the time of transfer, rather than the time that restrictions lapse (vesting). If the taxpayer makes a Section 83(b) election, which is required to be filed with the Internal Revenue Service, then the compensatory element of the stock grant is closed so that ordinary income is recognized at the time of grant. All future growth or loss in the value of the stock is eligible for capital gains or loss tax treatment, even though the stock remains subject to forfeiture. Section 83(b) elections are frequently made by founders or executives of growth companies or start-ups when the value of the stock is very low at the time of grant.

According to an article in the BNA Tax Management Compensation Planning Journal on Nov 4, 2011, the IRS is expected to issue a model Section 83(b) election form soon. (In order to view this article, a subscription is required. For a free trial subscription click [here](#).) This model will assist the IRS, which claims that some of the Section 83(b) election statements it receives do not include all of the required information, according to the Journal article.

Generally, restricted shares are subject to Section 83, but restricted stock units, deferred stock units and phantom stock, are not.