Structuring Restricted Stock Executive Compensation: Navigating Tax Consequences

Strategies for Handling IRC 83(b) Elections, Substantial Risk of Forfeiture, FICA Withholding, IRC 162 Deductions and More

THURSDAY, JUNE 19, 2014

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today’s faculty features:

Stanley Baum, Of Counsel, Cary Kane, New York
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9659]

RIN 1545-BJ15

Property Transferred in Connection with the Performance of Services under Section 83

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to property transferred in connection with the performance of services under section 83 of the Internal Revenue Code (Code). These final regulations affect certain taxpayers who receive property transferred in connection with the performance of services.

DATES: Effective Date: These regulations are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas Scholz or Michael Hughes at (202) 317-5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 2012, the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking (REG-141075-09) in the Federal Register (77 FR 31783) under section 83 of the Code. Treasury and the IRS received two
comments responding to the notice of proposed rulemaking. No public hearing was requested and no public hearing was held. After consideration of these comments, Treasury and the IRS adopt the proposed regulations as final regulations with the modifications described in this preamble.

**Explanation of Provisions**

Section 83 of the Code addresses the tax consequences of the transfer of property in connection with the performance of services. These final regulations provide several clarifications regarding whether a substantial risk of forfeiture exists in connection with property subject to section 83. Specifically, the final regulations clarify that (1) except as specifically provided in section 83(c)(3) and §§1.83-3(j) and (k), a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer, (2) in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered, and (3) except as specifically provided in section 83(c)(3) and §§1.83-3(j) and (k), transfer restrictions do not create a substantial risk of forfeiture, including transfer restrictions that carry the potential for forfeiture or disgorgement of some or all of the property, or other penalties, if the restriction is violated.

**Summary of Comments**

Treasury and the IRS received two written comments on the notice of proposed rulemaking. The first comment was not responsive to the notice of proposed rulemaking. The second comment expressed concern that the proposed regulations result in a narrowing of the circumstances that would establish a substantial risk of forfeiture and requested clarification regarding whether an involuntary separation from service without cause could establish a substantial risk of forfeiture. The comment noted that, for purposes of section 409A, an amount
that is payable only upon a service provider’s involuntary separation from service without cause is subject to a substantial risk of forfeiture if the possibility of forfeiture is substantial, and it suggested that these regulations specifically state that an involuntary separation without cause may qualify as a substantial risk of forfeiture under section 83 in appropriate circumstances.

These regulations are intended to clarify the definition of a substantial risk of forfeiture and are consistent with the interpretation that the IRS historically has applied, and therefore from the perspective of Treasury and the IRS they do not constitute a narrowing of the requirements to establish a substantial risk of forfeiture. See Robinson v. Commissioner, 805 F.2d 38 (1st Cir. 1986). Further, Treasury and the IRS believe that these regulations should not be modified to state that an involuntary separation from service without cause may qualify as a substantial risk of forfeiture under section 83. While a service provider’s right to receive property (or an amount in cash) in the future upon the service provider’s involuntary separation from service without cause may be subject to a substantial risk of forfeiture for purposes of section 409A if the possibility of forfeiture is substantial, a substantial risk of forfeiture under section 83 can exist only when property is actually transferred in connection with the performance of services. A right to receive property in the future is generally not property for purposes of section 83. See §1.83-3(e). Accordingly, an involuntary separation from service without cause cannot qualify as a substantial risk of forfeiture under section 83 if property is not transferred until after the separation from service occurs.

When a transfer of property does occur, a substantial risk of forfeiture may be established through a substantial services condition or a condition related to the purpose of the transfer if the possibility of forfeiture is substantial. The acceleration of vesting upon an involuntary separation from service without cause (or separation from service as a result of death or disability) will not
cause a requirement of substantial services that otherwise would be treated as a substantial risk of forfeiture to fail to qualify as a substantial risk of forfeiture, provided that facts and circumstances do not demonstrate that the occurrence of an involuntary separation from service without cause is likely to occur during the agreed upon service period.

Certain practitioners informally requested clarification regarding the application of section 83(c)(3) to a variation of the facts set forth in Example 4 of proposed regulation §1.83-3(j)(2). Specifically, practitioners asked whether the purchase of shares in a transaction not exempt from section 16(b) of the Securities Exchange Act of 1934 prior to the exercise of a stock option that would not otherwise give rise to section 16(b) liability would defer taxation of the stock option exercise. Treasury and the IRS do not believe that such a non-exempt purchase of shares would defer taxation of the subsequent stock option exercise. This result is consistent with Example 3 of §1.83-3(j)(2). In response to these requests for clarification, Treasury and the IRS have revised Example 4 of proposed regulation §1.83-3(j)(2) to address the situation raised.

Applicability Date

These regulations apply to property transferred on or after January 1, 2013.

Effect on Other Documents


Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and
because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rule making preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal authors of these final regulations are Thomas Scholz and Michael Hughes, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Other personnel from Treasury and the IRS also participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.83-3 is amended by:

1. Revising paragraph (c)(1).
2. Adding Example 6 and Example 7 to paragraph (c)(4).
3. Adding Example 4 to paragraph (j)(2).
4. Removing paragraph (j)(3).
5. Removing paragraph (k).
6. Redesignating paragraph (k)(1) as paragraph (k).
7. Adding paragraph (l).

The revisions and additions read as follows:

§1.83-3 Meaning and use of certain terms.

* * * * *

(c) Substantial risk of forfeiture. (1) In general. For purposes of section 83 and these regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. Except as set forth in paragraphs (j) and (k) of this section, a substantial risk of forfeiture exists only if rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or upon the occurrence of a condition related to a purpose of the transfer if the possibility of forfeiture is substantial. Property is not transferred subject to a substantial risk of forfeiture if at the time of transfer the facts and circumstances demonstrate that the forfeiture condition is unlikely to be enforced. Further, property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon the return of such property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, will not result in a substantial risk of forfeiture. A restriction on the transfer of property, whether contractual or by operation of applicable law, will result in a substantial risk of forfeiture only if and to the extent that the restriction is described in paragraph (j) or (k) of this section. For this purpose, transfer restrictions that will not result in a substantial risk of forfeiture include, but are not limited to, restrictions that if violated, whether by transfer or attempted transfer of the property, would result in the forfeiture
of some or all of the property, or liability by the employee for any damages, penalties, fees, or other amount.

* * * * *

(4) * * *

Example 6. On April 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. On August 1, 2013, Y sells its common stock in an initial public offering. Pursuant to an underwriting agreement entered into in connection with the initial public offering, Q agrees not to sell, otherwise dispose of, or hedge any Y common stock from August 1 through February 1 of 2014 ("the lock-up period"). Q exercises the option and Y shares are transferred to Q on November 15, 2013, during the lock-up period. The underwriting agreement does not impose a substantial risk of forfeiture on the Y shares acquired by Q because the provisions of the agreement do not condition Q’s rights in the shares upon anyone’s future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, neither section 83(c)(3) nor the imposition of the lock-up period by the underwriting agreement precludes taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

Example 7. Assume the same facts as in Example 6, except that on August 1, 2013, Y also adopts an insider trading compliance program, under which, as applied to 2013, insiders (such as Q) may trade Y shares only during a limited number of days following each quarterly earnings release ("a trading window"). Under the program, if Q trades Y shares outside a trading window without Y’s permission, Y has the right to terminate Q’s employment. However, the exercise of the nonstatutory options outside a trading window for Y shares is not prohibited under the insider trading compliance program. Q fully exercises the option, and Y shares are transferred to Q, on November 15, 2013. The exercise of the option occurs outside a trading window, and, on the date of exercise, Q is in possession of material nonpublic information concerning Y that would subject him to liability under Rule 10b-5 under the Securities Exchange Act of 1934 if Q sold the Y shares while in possession of such information. Neither the insider trading compliance program nor the potential liability under Rule 10b-5 impose a substantial risk of forfeiture on the Y shares acquired by Q because the provisions of the program and Rule 10b-5 do not condition Q’s rights in the shares upon anyone’s future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, none of section 83(c)(3), the imposition of the trading windows by the insider trading compliance program, and the potential liability under Rule 10b-5 preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

* * * * *
Example 4. (i) On June 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Y stock is traded on an established securities market. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. The grant of the option is not one that satisfies the requirements for a transaction that is exempt from section 16(b) of the Securities Exchange Act of 1934. On December 15, 2013, Y stock is trading at more than $10 per share. On that date, Q fully exercises the option, paying the exercise price in cash, and receives 100 Y shares. Q’s rights in the shares received as a result of the exercise are not conditioned upon the future performance of substantial services. Because no exemption from section 16(b) was available for the June 3, 2013 grant of the option, the section 16(b) liability period expires before the date that Q exercises the option and the Y common stock is transferred to Q. Thus, the shares acquired by Q pursuant to the exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the December 15, 2013 exercise of the option are transferred to Q.

(ii) Assume the same facts as in paragraph (i) of this Example 4 except that Q exercises the nonstatutory option on October 30, 2013 when Y stock is trading at more than $10 per share. The shares acquired are subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b) through December 1, 2013.

(iii) Assume the same facts as in paragraph (i) of this Example 4 except that on November 5, 2013, Q also purchases 100 shares of Y common stock on the public market. The purchase of the shares is not a transaction exempt from section 16(b) of the Securities Exchange Act of 1934. Because no exemption from section 16(b) was available for the November 5, 2013 purchase of shares, the section 16(b) liability period with respect to such shares will last for a period of six months after the November 5, 2013 purchase of shares. Notwithstanding the non-exempt purchase of Y common stock on November 5, 2013, the shares acquired by Q pursuant to the December 15, 2013 exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the December 15, 2013 exercise of the option are transferred to Q.

* * * * *
(l) Effective/applicability date. This section applies to property transferred on or after January 1, 2013. For rules relating to property transferred before that date, see §1.83-3 as contained in 26 CFR part 1 (as of April 1, 2012).

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: January 31, 2014.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014-03988 Filed 02/25/2014 at 8:45 am; Publication Date: 02/26/2014]
SECTION 1. PURPOSE

This revenue procedure contains sample language that may be used (but is not required to be used) for making an election under § 83(b) of the Internal Revenue Code. Additionally, this revenue procedure provides examples of the income tax consequences of making such an election.

SECTION 2. BACKGROUND

.01 Section 83(a) provides generally that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first time that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the
amount (if any) paid for the property is included in the service provider's gross income for the taxable year which includes such time.

.02 Under § 1.83-3(f) of the Income Tax Regulations, property is transferred in connection with the performance of services if it is transferred to an employee or independent contractor (or beneficiary thereof) in recognition of the performance of services, or refraining from performance of services. The existence of other persons entitled to buy stock on the same terms and conditions as an employee, whether pursuant to a public or private offering may, however, indicate that in such circumstance a transfer to the employee is not in recognition of the performance of, or refraining from performance of, services. The transfer of property is subject to § 83 whether such transfer is in respect of past, present, or future services.

.03 Section 83(b) and § 1.83-2(a) 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.

.04 Under § 83(e)(3) and § 1.83-7(b), § 83 does not apply to the transfer of an option without a readily ascertainable fair market value at the time the option is granted. As a result, a § 83(b) election may only be made with respect to the transfer of an option that has a readily ascertainable fair market value (as defined in § 1.83-7(b)), at the time the option is granted and that is substantially nonvested (as defined in § 1.83-3(b)). If substantially nonvested property is received upon exercise of an option without a readily ascertainable fair market value at grant, a service provider is permitted to make a § 83(b) election with respect to the transfer of such property upon the exercise
of the option.

.05 Under § 83(b)(2), 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. In accordance with § 7503, if the thirtieth 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 business day.

.06 Under § 1.83-2(c), an election under § 83(b) is made by filing a copy of a written statement with the Internal Revenue Service office with which the person who performed the service files his return. In addition, the person who performed the services is required to submit a copy of such statement with his or her income tax return for the taxable year in which such property was transferred. Section 1.83-2(d) requires that the person who performed the services also submit a copy of the § 83(b) election to the person for whom the services were performed.

.07 Under § 1.83-2(e), the statement must be signed by the person making the election and must indicate the election is being made under § 83(b). The statement must include the following information: the name, address and taxpayer identification number of the taxpayer; a description of each property with respect to which the election is being made; the date or dates on which the property was transferred and the taxable year for which such election is being made; the nature of the restriction or restrictions to which the property is subject; the fair market value at the time of transfer (determined without regard to any lapse restrictions, as defined in § 1.83-3(i)) of each property with
respect to which the election is being made; the amount, if any, paid for such property; and a statement to the effect that copies have been furnished to other persons as provided in § 1.83-2(d).

.08 Under § 1.83-2(f), an election under § 83(b) may not be revoked except with the consent of the Commissioner. The regulations also provide that such consent will only be granted where the person filing the election 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 of fact first became known to the person who made the election. Neither a mistake as to the value (or decline in the value) of the property for which the election was made nor the failure of anyone to perform an act that was contemplated at the time of transfer of the property constitutes a mistake of fact for this purpose. See Rev. Proc. 2006-31, 2006-2 C.B. 32, for additional guidance with respect to revoking an election under § 83(b).

SECTION 3. SCOPE

This revenue procedure applies to taxpayers who receive substantially nonvested property in connection with the performance of services and wish to file an election under § 83(b).
SECTION 4. CONSEQUENCES OF ELECTIONS UNDER § 83(b)

.01 Under § 1.83-2(a), if property is transferred in connection with the performance of services, the person performing such services may elect to include in gross income under § 83(b) the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) over the amount (if any) paid for such property, as compensation for services. If this election is made, the substantial vesting rules of § 83(a) and the regulations thereunder do not apply with respect to such property, and except as otherwise provided in § 83(d)(2) and the regulations thereunder (relating to the cancellation of a nonlapse restriction), any subsequent appreciation in the value of the property is not taxable as compensation to the person who performed the services. Thus, the value of property with respect to which this election is made is included in gross income as of the time of transfer, even though such property is substantially nonvested (as defined in § 1.83-3(b)) at the time of transfer, and no compensation will be includible in gross income when such property becomes substantially vested.

.02 In computing the gain or loss from a subsequent sale or exchange of property for which a § 83(b) election was filed, § 1.83-2(a) provides that the basis of such property shall be the amount paid for the property (if any) increased by the amount included in gross income under § 83(b).

.03 If property for which a § 83(b) election was filed is forfeited while substantially nonvested, § 83(b)(1) provides that no deduction shall be allowed with respect to such forfeiture. Section 1.83-2(a) further provides that such forfeiture shall be treated as a
sale or exchange upon which there is realized a loss equal to the excess (if any) of (1) the amount paid (if any) for such property, over (2) the amount realized (if any) upon such forfeiture. If such property is a capital asset in the hands of the taxpayer, such loss shall be a capital loss.

SECTION 5. EXAMPLES

The following examples illustrate the tax results that may occur depending on whether or not a § 83(b) election is made following the transfer of substantially nonvested stock in connection with the performance of services. The tax results in the examples do not depend on whether or not the stock transferred to the employee is traded on an established securities market.

Example 1. Company A is a privately held corporation and no stock in Company A is traded on an established securities market. On April 1, 2012, in connection with the performance of services, Company A transfers to E, its employee, 25,000 shares of substantially nonvested stock in Company A. In exchange for the stock, E pays Company A $25,000, representing the fair market value of the shares at the time of the transfer. The restricted stock agreement provides that if E ceases to provide services to Company A as an employee prior to April 1, 2014, Company A will repurchase the stock from E for the lesser of the then current fair market value or the original purchase price of $25,000. E’s ownership of the 25,000 shares of stock will not be treated as substantially vested until April 1, 2014 and will only be treated as substantially vested if E continues to provide services to Company A as an employee until April 1, 2014. On April 1, 2012, E makes a valid election under § 83(b) with respect to the 25,000 shares of Company A stock. Because the excess of the fair market value of the property ($25,000) over the amount E paid for the property ($25,000) is $0, E includes $0 in gross income for 2012 as a result of the stock transfer and related § 83(b) election. The 25,000 shares of stock become substantially vested on April 1, 2014 when the fair market value of the shares is $40,000. No compensation is includible in E’s gross income when the shares become substantially vested on April 1, 2014. In 2015, E sells the stock for $60,000. As a result of the sale, E realizes $35,000 ($60,000 sale price - $25,000 basis) of gain, which is a capital gain.

Example 2. The facts are the same as in Example 1 above, except that E does not make an election under § 83(b). Under § 83(a), E includes $0 in gross income in 2012 as a result of the transfer of stock from Company A because the stock is not substantially vested. When the shares become substantially vested on April 1, 2014, E includes $15,000 ($40,000 fair market value less $25,000 purchase price) of compensation in gross income. E’s basis in the stock as of April 1, 2014 is $40,000.
($25,000 paid for the stock and $15,000 included in income under § 83(a)). As a result of the 2015 sale of the stock for $60,000, E realizes $20,000 ($60,000 sale price - $40,000 basis) of gain, which is a capital gain.

Example 3. The facts are the same as in Example 1 above, except that E terminates employment with Company A on August 1, 2013 before the shares become substantially vested. Because the excess of the fair market value of the property ($25,000) over the amount E paid for the property ($25,000) is $0, E includes $0 in gross income for 2012 as a result of the stock transfer and related § 83(b) election. When E terminates employment on August 1, 2013, the fair market value of the stock is $30,000 but Company A purchases the stock from E for $25,000 pursuant to the terms of the restricted stock agreement. As a result of the 2013 sale of the stock for $25,000, E realizes $0 in gain ($25,000 sale price - $25,000 basis).

Example 4. Company B is a publicly held corporation and Company B stock is traded on an established securities market. On April 1, 2012, in connection with the performance of services, Company B transfers to F, its employee, 25,000 shares of substantially nonvested stock in Company B. At the time of the transfer, the shares have an aggregate fair market value of $25,000. F is not required to pay Company B any consideration in exchange for the stock. The restricted stock agreement provides that if F ceases to provide services to Company B as an employee prior to April 1, 2014, F will forfeit the stock back to Company B. F’s ownership of the 25,000 shares of stock will not be treated as substantially vested until April 1, 2014 and will only be treated as substantially vested if F continues to provide services to Company B as an employee until April 1, 2014. On April 1, 2012, F makes a valid election under § 83(b) with respect to the 25,000 shares of Company B stock. Because the excess of the fair market value of the property ($25,000) over the amount F paid for the property ($0) is $25,000, F includes $25,000 of compensation in gross income for 2012 as a result of the stock transfer and related § 83(b) election. The 25,000 shares of stock become substantially vested on April 1, 2014 when the fair market value of the shares is $40,000. No compensation is includible in F’s gross income when the shares become substantially vested on April 1, 2014. In 2015, F sells the stock for $60,000. As a result of the sale, F realizes $35,000 ($60,000 sale price - $25,000 basis) in gain, which is a capital gain.

Example 5. The facts are the same as in Example 4 above, except that F does not make an election under § 83(b). Under § 83(a), F includes $0 in gross income in 2012 as a result of the transfer of stock from Company B because the stock is not substantially vested. When the shares become substantially vested on April 1, 2014, F includes $40,000 ($40,000 fair market value less $0 purchase price) of compensation in gross income. F’s basis in the stock as of April 1, 2014 is $40,000 ($0 paid for the stock and $40,000 included in income under § 83(a)). As a result of the 2015 sale of the stock for $60,000, F realizes $20,000 ($60,000 sale price - $40,000 basis) of gain, which is a capital gain.
Example 6. The facts are the same as in Example 4 above, except that F terminates employment with Company B on August 1, 2013 and forfeits the shares before the shares become substantially vested. Because the excess of the fair market value of the property ($25,000) over the amount F paid for the property ($0) is $25,000, F includes $25,000 of compensation in gross income for 2012 as a result of the stock transfer and related § 83(b) election. In the year F terminates employment, F forfeits the 25,000 shares back to Company B and such forfeiture is treated as a sale of the shares in exchange for no consideration. Pursuant to § 1.83-2(a), F realizes no loss as the result of such sale. F is not entitled to a deduction or credit for taxes paid as the result of filing the § 83(b) election or the subsequent forfeiture of the property.

SECTION 6. SAMPLE ELECTION

.01 The sample election in this section, if properly completed and executed by an individual taxpayer, would satisfy the requirements of § 1.83-2 regarding the required content of a § 83(b) election with respect to shares of common stock subject to a substantial risk of forfeiture. For the election to be valid, the service provider must in addition satisfy all other applicable requirements, including the requirements discussed above relating to the time for filing the election, filing the election with the Internal Revenue Service, attaching a copy of the election to the tax return, and providing a copy to the service recipient. An election under § 83(b) must contain all the information required by § 1.83-2(e), but need not use the exact format or language of the sample election set forth below. In the sample election below, bracketed items and blanks should be replaced with the applicable information for the taxpayer. An election with respect to property other than common stock should include an appropriate description of the property in item 2 and modifications to items 5 and 6 as necessary.

.02 The text of the sample election follows.
Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

   TAXPAYER’S NAME: _____________________________________________
   TAXPAYER’S SOCIAL SECURITY NUMBER: __________________________
   ADDRESS: ______________________________________________________
   TAXABLE YEAR:  Calendar Year 20__

2. The property which is the subject of this election is __________ shares of common stock of __________________________.

3. The property was transferred to the undersigned on [DATE].

4. The property is subject to the following restrictions: [Describe applicable restrictions here.]

5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: $_______ per share x ________ shares = $___________.

6. For the property transferred, the undersigned paid $______ per share x _________ shares = $______________.

7. The amount to include in gross income is $______________. [The result of the amount reported in Item 5 minus the amount reported in Item 6.]

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: ______________________  ______________________  
          Taxpayer
SECTION 7: PAPERWORK REDUCTION ACT

.01 The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

.02 The collection of information in this revenue procedure is in Section 6. The use of the sample election language provided under Section 6 is voluntary, however, this information is required in order for a taxpayer to make a valid election under § 83(b) of the Code. This information on the § 83(b) elections filed by the taxpayers with the IRS will be used by the IRS for matching with the income tax returns filed by the taxpayers. The likely respondents are individuals and business or other for-profit institutions.

.03 The estimated total annual reporting and/or recordkeeping burden is 33,000 hours.

.04 The estimated annual burden per respondent/recordkeeper varies from 10 to 30 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

.05 The estimated number of respondents and/or recordkeepers is 100,000.

.06 The estimated frequency of responses (used for reporting requirements only) is on occasion.
.07 Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective June 25, 2012.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Hughes of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure contact Thomas Scholz or Michael Hughes on (202) 622-6030 (not a toll free call).