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New Form Section 83(b) Election Released by IRS

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On November 7, 2024, the IRS released Form 15620, which can be used by taxpayers to file Section 83(b) elections in connection with transfers of property that are subject to a substantial risk of forfeiture when transferred (for example, unvested restricted stock in a corporation or unvested profits interests in a partnership or certain LLCs). Prior to the issuance of Form 15620, taxpayers who wished to file a Section 83(b) election were required to submit a written statement to the IRS regarding the election, and to include a copy of that written statement with his or her income tax return for the tax year in which the property was transferred. If taxpayers instead use Form 15620 to file a Section 83(b) election, they do not have to include a copy of the Form with their income tax return for the relevant tax year.

In general, Code Section 83(a) provides that if restricted property (i.e., property that is subject to a substantial risk of forfeiture) is transferred to a taxpayer in connection with the performance of services, the excess of the fair market value of the property over the amount paid (if any) for the property is treated as ordinary income to the taxpayer, at the time the property is no longer subject to a substantial risk of forfeiture (i.e., when the property "vests"). The exception to this general rule is found in Code Section 83(b) and Treas. Reg. Section 1.83-2. If a service provider makes a timely Section 83(b) election, the service provider is subject to income taxation (at ordinary income tax rates) upon grant of the equity award, rather than upon the later lapse of risk of forfeiture. Please see our prior blog post for further details about Section 83(b) elections.

If a taxpayer wishes to make a Section 83(b) election, the taxpayer must file an election statement with the IRS within 30 days after the property is transferred. Prior to the release of Form 15620, taxpayers were responsible for drafting their own election forms if they wanted to make a Section 83(b) election. Although the IRS previously provided a sample Section 83(b) election statement in Rev. Proc. 2012-29, Form 15620 is the first official form produced by the IRS for making the written statement under Section 83(b).

Form 15620 is not required and taxpayers who receive restricted property can continue to file Section 83(b) elections using the procedures outlined in the sample election statement in Rev. Proc. 2012-29 and described in Treas. Reg. Section 1.83-2(e).

If using Form 15620, the Section 83(b) election must be submitted via mail to the IRS office with which the taxpayer files his or her federal income tax return. At this time, Form 15620 cannot be filed with the IRS electronically, but the IRS is expected to make electronic filing available in the future.

If you have any questions about making a Section 83(b) election or the new IRS Form 15620, please reach out to a member of the Kilpatrick Employee Benefits team.