

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:EC-PLR-133100-02

Date:

August 16,2002

Employer =

X =

Dear :

This is in response to your letter dated June 5, 2002, in which you request to revoke an election you made under section 83(b) of the Internal Revenue Code.

You have represented that on May 13, 2002, in connection with the performance of services, you received an award of X shares of restricted common stock of Employer. The stock was subject to a substantial risk of forfeiture. On May 13, 2002, you filed an election under section 83(b) with the Internal Revenue Service Center in Atlanta with respect to the stock you received. On June 10, 2002, you sent a letter to this office asking for consent to revoke your section 83(b) election.

Section 83 of the Code contains the rules for transfers of property in connection with the performance of services. Section 83(a) provides generally that the excess of the fair market value of the property transferred, at the time the property becomes substantially vested, over the amount paid for the property shall be included as compensation in the gross income of the person who performed the services in the taxable year in which the property becomes substantially vested. Property is substantially vested when it is either transferable or not subject to a substantial risk of forfeiture. Under section 83(c)(1), the rights of a person are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of the property are conditioned upon the future performance of substantial services by any individual.

Section 83(b)(1) of the Code provides that the person who performs services in connection with which property is transferred may elect to include in gross income for the taxable year of transfer the excess of the fair market value of the property over the amount paid for it. Section 83(b)(2) states that an election under section 83(b)(1) shall

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be made not later than 30 days after the date of transfer of the property and may not be revoked without the consent of the Secretary.

Section 1.82-2(f) of the Income Tax Regulations provides that an election under section 83(b) may not be made except with the consent of the Commissioner. Consent to revoke a section 83(b) election will be granted only in a case where the transferee 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.

In National Lead Company v. Commissioner, 336 F. 2d 134 (2d Cir. 1964), the taxpayer made an election for the taxable year 1950 to use the Last-In, First-Out (LIFO) inventory replacement provisions of section 22(d)(6)(F) of the Internal Revenue Code of 1939. Section 22(d)(6)(D) generally provided that an election to use the LIFO method, once made, shall be irrevocable. Regulation 111, 1952-2 C.B. 76, provided that a taxpayer could elect to have section 22(d)(6)(F) apply for certain years ending after June 30, 1950 and before March 1, 1952 and that such election could be made anytime up to December 15, 1952. On March 4, 1952, the taxpayer notified the Commissioner that it was revoking its election. The reason for the revocation was a change in market conditions under which the taxpayer would benefit by revoking its election. The court, citing Haggar v. United States, 308 U.S. 389 (1940), as authority for the proposition that an election can be validly revoked within the time allowed for making it, held that the taxpayer properly revoked its election, even though the statute provided that the election, once made, was irrevocable. The court reasoned that the government is in no way disadvantaged by such a result since the final election was made within the time specified by law.

The Service has previously recognized the principle that an election made under the Code or regulations may be revoked before the due date for making the election. Rev. Rul. 56-67, 1956-1 C.B. 437, dist. by Rev. Rul. 76-393, 1976-2 C.B. 255, involved the question of whether an affiliated group of corporations, having properly made an election to file a consolidated return, may, on or before the due date of such return, file their returns on a separate basis. Rev. Rul. 56-67 held that, notwithstanding that an election to file a consolidated return had been properly made, the members of an affiliated group could validly revoke that election by filing returns on a separate basis, on or before the due date of such returns, and that a consolidated return may be properly filed on or before the due date of a consolidated return, notwithstanding the earlier filing of separate returns. See Rev. Rul. 78-295, 1978-2 C.B. 165.

In the instant case, you filed your request to revoke your section 83(b) election within the 30 day time period allowed under section 83(b) for making the election. Accordingly, consent to revoke your section 83(b) election is granted.

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A copy of this letter should be attached to your federal income tax return. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

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Robert B. Misner  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt and  
Government Entities)

Enclosure:  
Copy for 6110 purposes