

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:

Index Number: 83.02-04

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-113946-08
Date:
June 25, 2008

In Re:

LEGEND:

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5
Date 6 =

Dear :

This letter is in response to a letter dated March 19, 2008, submitted by your authorized representative, requesting consent to correct three elections you made pursuant to section 83(b) of the Internal Revenue Code (Code). The facts, as represented, are as follows.

On Date 1, you received interests as a limited partner in three limited partnerships as consideration for performance of services. You were required to submit payment for these interests to the partnerships by Date 2. The partnerships funded your interests in advance and charged a fee for the advance funding.

On Date 3, the partnerships provided instructions to you to make elections pursuant to section 83(b). Specifically, the partnerships instructed you to report the fee as the amount paid for each partnership interest. You followed these instructions when executing three separate elections pursuant to section 83(b) for each partnership interest. On Date 4, you timely filed the elections with the Internal Revenue Service.

On Date 5, you submitted payment for the partnership interests and provided copies of the elections to the partnerships. On Date 6, the partnerships contacted you to inform you that you understated the amount paid for each partnership interest.

Section 83(a) of the Code provides 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 fair market value of the property (less the amount paid for the property) shall be included in the gross income of the recipient in the first taxable year in which the recipient's interest in the property is not subject to a substantial risk of forfeiture.

Under section 83(b), any person who performs services with respect to which property is transferred may elect to include in his or her gross income, for the taxable year in which the property is transferred, the excess of the fair market value of the property over the amount paid. An election under section 83(b) must be filed with the Internal Revenue Service not later than 30 days after the date the property is transferred.

Section 83 of the Code and section 1.83-2(f) of the Income Tax Regulations provide that an election under section 83(b) may not be revoked without the consent of the Commissioner of Internal Revenue. 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. In any event, neither a mistake as to the value (or decline in the value) of the property for which an election was made, nor the failure of anyone to perform an act that was contemplated at the time of "transfer" of the property constitute a "mistake of fact" for this purpose.

Based solely on the representations provided, and the information and documents submitted, we conclude that the proposed changes to your elections pursuant to section 83(b) with respect to the partnership interests are not revocations of your elections within the meaning of section 83(b)(2) of the Code, but rather corrections to your original elections to reflect the appropriate amounts paid for the partnership interests.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning other tax consequences of section 83 and its applicability to the transaction described above.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. The taxpayer should attach a copy of this ruling to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Kenneth M. Griffin
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel /
Associate Chief Counsel /
Tax Exempt & Government Entities