

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-114928-07

Date:
September 28, 2007

Employer =

President =

Date 1 =

Date 2 =

Date 3 =

x =

Dear :

This is in response to your letter of March 23, 2007, in which you request consent to revoke an election that you made under § 83(b) of the Internal Revenue Code.

You represent that you were told by President that at a Board of Directors meeting on Date 1, Employer granted you a choice of x Incentive Stock Options (ISOs) or x shares of restricted stock.

On Date 2, you purchased x shares of restricted stock. On the same day, you filed an election under § 83(b) with the Internal Revenue Service Center where you file your individual income tax return with respect to the restricted stock. On Date 3, President learned that the Board of Directors had authorized the grant of ISOs rather than a choice of either ISOs or restricted stock and you were notified of the error the next day. Thus, the restricted award was not authorized by the Board of Directors. You subsequently returned the stock to Employer. On March 23, 2007, you sent a letter to this office requesting consent to revoke the § 83(b) election.

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 § 83(b) of the Code, 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 § 83(b) must be filed with the Internal Revenue Service not later than 30 days after the date the property is transferred.

Section 83(b)(2) of the Code and § 1.83-2(f) of the Income Tax Regulations provides that an election under § 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.

Rev. Proc. 2006-31, 2006-27 I.R.B. 32, provides guidance on revoking an election under § 83(b) of the Code. Section 5, Example 3 describes a situation involving a mistake of fact as to the underlying transaction. In Example 3, B begins employment with Company O under an employment contract that provides B will receive substantially nonvested Company O Class A common stock. Instead, substantially nonvested Company O Class B common stock is transferred to B. B made a valid § 83(b) election with respect to the transferred stock. B subsequently discovers that Company O has 2 classes of common stock and that Company O transferred Class B common stock instead of Class A common stock. B timely requests consent to revoke the § 83(b) election. Consent to revoke B's § 83(b) election is granted because the stock B received was transferred under a mistake of fact as to the underlying transaction.

You indicate that the "mistake of fact" was that you believed based on statements from President, that the Board of Directors had authorized the grant of restricted stock, when in fact they had authorized the grant of ISOs. You have requested consent to revoke your election within 60 days of the date you first became

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aware of the mistake of fact as to the underlying transaction (the “underlying transaction” being your employer’s transfer of the restricted stock to you).

Accordingly, because you were under a mistake of fact as to the underlying transaction and you requested consent to revoke your §83(b) election within 60 days of when the mistake of fact first became known to you, consent to revoke your § 83(b) election is granted.

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. The 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. A copy of this letter should be attached to your income tax return for 2007.

Sincerely yours,

CATE LIVINGSTON FERNANDEZ
Chief, Executive Compensation Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)