RAYMOND JAMES

DETERMINING IF AN 83(b) ELECTION IS RIGHT FOR YOU

Whether you pay taxes on your stock award when you receive it or at the end of your vesting period depends on a variety of factors.

Many companies, both public and private, use restricted stock awards within executive compensation packages as a way to attract and retain talent and drive performance. To maximize the value of their awards, executives have long used 83(b) elections when significant share price appreciation is expected over the award's vesting period.

83(B) ELECTIONS

The purpose behind making an 83(b) election is in effect to pre-pay taxes on the stock as income to avoid paying more in taxes later should the stock rise in value. Generally, taxes levied on a restricted stock award are calculated at the fair market value of the stock on the day of vesting as ordinary income. However, executives can make an 83(b) election within the first 30 days after receiving the stock grant, whereby ordinary income is recognized and taxed on the fair market value of the stock when it's received. This technique essentially converts potential future appreciation into a capital gain, which typically results in a lower tax rate if the stock is held more than 12 months prior to being sold.

KEY TAKEAWAYS

Under the right circumstances, making an 83(b) election can significantly reduce your tax liability on a stock award.

Generally, an 83(b) election should be considered if the outlook of the stock is bullish over the vesting period.

The decision to elect or not involves several factors. The experts on the Raymond James Executive Compensation Services team are available to help as needed.

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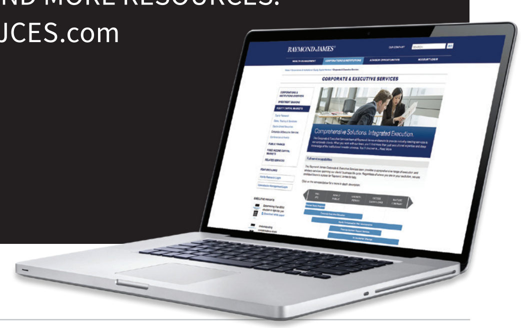

INPUTS FOR THE 83(b) ELECTION DECISION

Many factors go into the 83(b) decision. These are several of the inputs:

Stock Price Appreciation
Assessing expectations for where the stock price will be at the time of vesting is a key component to the 83(b) decision. An 83(b) election becomes more favorable as you become more confident that the stock price will be higher when the award vests.

Tax Rate Expectations
If higher tax rates are expected to take effect by the time the award vests, an 83(b) election may be favorable, depending on the magnitude of the expected tax rate increase.

Risk Tolerance
83(b) elections create additional levels of risk that need to be considered prior to making a decision; this risk may be offset by a higher after-tax value, but the risk-reward trade-off is important to understand.

Existing Concentration
If you have a concentrated exposure to a company's stock, even with favorable expectations, you may choose not to elect an 83(b). This decision can be made to avoid adding risk that is already inherent in a concentrated position.

Company Policies
Each company has a unique set of policies governing what employees can and can't do in regard to their stock; these policies should be reviewed prior to finalizing an 83(b) decision.

PURCHASING ADDITIONAL STOCK

Making an 83(b) election requires you to pay out cash to cover the necessary tax withholdings of the election. But executives may consider using that cash in another way – to purchase additional stock.

In this scenario, you would own two buckets of employer stock: one that will be taxed as ordinary income on the vesting date (since an 83(b) election was not made) and another that will be taxed as a long-term capital gain or loss after being held for 12 months (purchased with the cash that would have been used to meet the tax withholding had an 83(b) election been made). Depending on the outcome of the stock's performance and the prevailing tax rates at the time of vesting, this option may provide incremental economic value over an 83(b) election. This strategy still carries risk as the increase in exposure to employer shares could add to an existing concentration in the stock.

You should analyze the impact of all three strategies to determine which best suits your specific circumstances. A tenured employee with an existing concentration in employer shares may make a different decision than a new executive seeking to build a position in the company's stock to meet a mandated holding level.

THE RISKS OF 83(B) ELECTIONS

The tax code in Section 83(b) allows for this one-time election as long as you are subject to a substantial risk of forfeiture either by leaving the company before the vesting date and/or not meeting certain performance thresholds.

Making an 83(b) election increases the potential impact of this risk as you will have paid taxes on income that you won't receive until the vesting period is complete. Additionally, it's possible that the stock price will not appreciate, thus you will pay tax early without receiving any additional benefits.

ELECTING 83(b)

Making an 83(b) election is straightforward, although the IRS does not provide a standardized form for doing so. Within 30 days of receiving the stock grant, you must file a written statement with the IRS that contains the following information:

- Your name, address and taxpayer identification number
- A description of the restricted stock award (note 83(b) elections cannot be made with restricted stock units)
- The date of grant and tax year for which the election is being made
- Any restrictions on the grant
- The fair market value at the time of grant
- Any amount paid for the grant
- A statement verifying you provided copies of the election letter to the appropriate persons at your employer

A copy of the statement must be provided to the employer, typically via the HR or Benefits department, and should be attached to the executive's tax return for the year of the grant. We typically recommend the letter be delivered to the IRS using certified mail to confirm receipt.

TALK TO OUR TEAM

The decision to elect 83(b) or not requires effort and analysis to ensure you are maximizing the value of your restricted stock awards given your outlook, tax circumstances and risk tolerance. At a time when equity awards, including restricted stock grants, are a growing portion of overall compensation, you should consider engaging advisors well versed in equity compensation planning to ensure you maximize the value of your compensation packages. The Raymond James Executive Compensation Services team welcomes the opportunity to assist public company executives with 83(b) decisions.

Please contact our team at **866.326.3863** with any questions.

Raymond James does not offer tax or legal advice. Please consult the appropriate professional before making any decision that may affect your tax or legal situation.

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