

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-144040-01

Date:

December 20,2001

LEGEND:

date 1 =

amount 1 =

amount 2 =

This is in response to your undated letter, which was post marked August 15, 2001, and subsequent correspondence, requesting permission to revoke an election made on date 1, under section 83(b) of the Internal Revenue Code. The information submitted is summarized below.

Some time prior to date 1, your employer granted you an incentive stock option ("Option") to purchase from your employer amount 1 shares of your employer's stock.

On or before date 1, you decided to exercise the Option and informed your employer of that decision. Your employer responded by providing you with a "standard package of documents" relating to your exercise request.

You represent that the package of documents included a form for making an election under section 83(b) of the Code with a "Sign Here" sticker adjacent to the form's signature line.

You exercised the Option on date 1. The stock you received was restricted, but your submission does not specify the nature of the restrictions. On date 1, you also executed the section 83(b) election form contained in the package of documents you received from your employer.

Your election under section 83(b) of the Code resulted in an adjustment under section 56(b)(3) to your alternative minimum taxable income as defined in section 55(b)(2). The amount of the adjustment was amount 2.

You represent that you signed the section 83(b) election form because you thought its execution was necessary to effect the exercise of the Option. You further represent that you were wholly ignorant of the purpose and possible tax implications of making a section 83(b) election when you signed the election form.

Section 1.83-2(f) of the Income Tax Regulations provides that a section 83(b) election can only be revoked with the consent of the Commissioner, and that such consent will be granted only in the case where the transferee is under a mistake of fact as to the underlying transaction. A mistake of fact as to the value, or decline in the value, of the property with respect to which an election under section 83(b) has been made, or a failure to perform an act contemplated at the time of transfer of such property, does not constitute a mistake of fact.

A mistake of fact is an unconscious ignorance of a fact, past or present, material to a transaction, and it exists where a person understands the facts to be other than they actually are. The mistake must concern a fact which forms the very basis of the transaction. The term "mistake of fact" does not include an erroneous belief concerning a collateral matter which does not relate to the essence of the underlying transaction. See 17A Am. Jur. 2d Contracts, section 213 (1991); 17A C.J.S. Contracts, section 147 (1999); Williston on Contracts, sections 1544 and 1569 (3rd Ed. 1970, Supp. 1995).

A mistake of law, by contrast, is an incorrect exercise of judgment based on the facts as they are. A situation resulting from ignorance of the law is not a mistake of fact. See 17A C.J.S. Contracts, section 150 (1999). There is a mistake of law where a person has knowledge of the facts and reaches an erroneous conclusion as to their legal consequences.

The question presented by your request is whether your ignorance of the law regarding section 83(b) of the Code amounts to a mistake of fact as to the underlying transaction, or whether such ignorance concerns a collateral matter that does not relate to the essence of that transaction.

Your ruling request asserts that your ignorance of the effects of an election under section 83(b) of the Code constitutes a per se mistake of fact, and that the nature of your mistake formed the basis of the transaction.

The mistake of fact contemplated by section 1.83-2(f) of the regulations is narrow in scope. Once a section 83(b) election is made, consent will be granted to revoke that election only where there is a "mistake of fact as to the underlying transaction." The transaction lying beneath your section 83(b) election was the transaction whereby you acquired the restricted stock. Your exercise of the section 83(b) election was not a part of that basic transaction, rather it related only to the taxability of the stock transferred. The tax consequences of your stock acquisition do not concern the underlying transaction; they are collateral matters.

From your submission, it appears that you understood all of the material elements of the underlying transaction. That is, you knew you would have to pay for the stock, and you knew that the stock would be subject to restrictions. Your failure to inquire whether making an election under section 83(b) of the Code was optional, and to apprise yourself of the implications of making such an election are not grounds for relief under section 1.83-2(f) of the regulations.

It should be noted that mere "oversight, poor judgment, ignorance of the law, misunderstanding of the law, unawareness of the tax consequences of making an election, miscalculation, and unexpected subsequent events have all been held insufficient to mitigate the binding effect of elections made under a variety of provisions of the Code." Estate of Stamos v. Commissioner, 55 T.C. 468, 474 (1970).

Accordingly, based upon the information provided we conclude that consent to revoke your election under section 83(b) of the Code cannot be granted.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that this letter may not be used or cited as precedent.

Sincerely,
Robert B. Misner
Assistant Chief
Executive Compensation Branch
Office of the Division Counsel/Associate
Chief Counsel
(Tax Exempt and Government Entities)

Enclosure:

Copy for 6110 purposes