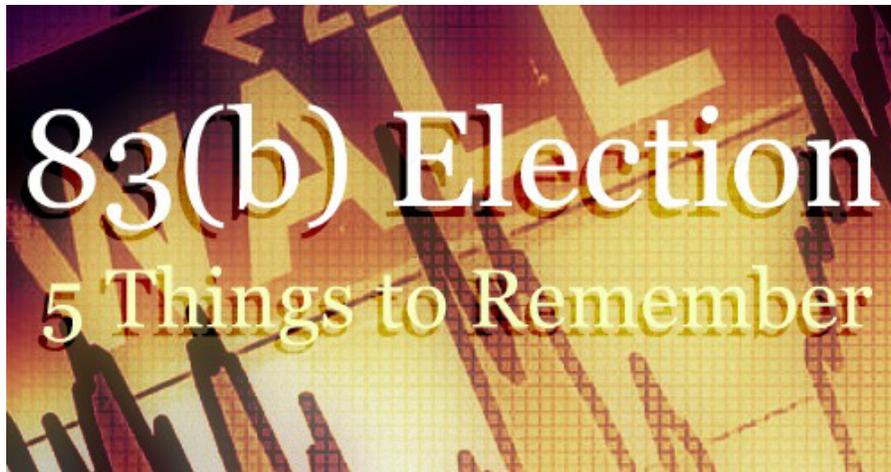




## 5 Things To Remember As You File Your Section 83(b) Election

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As the founder of a startup company, by the time you get to the point of filing a Section 83(b) election, you will have most likely already bought a helmet to keep your brains from flowing freely out of your ears from the mindboggling number of details involved in starting a company. You have been counseled on what type of entity to form, where to incorporate, founder vesting schedules, and myriad other details. You have gotten all of your documents executed and in place. You have properly completed and filled out your Section 83(b) election. Now all you have to do is file it. You are just about done! The purpose of this post is to give you guidance on this last step.

There are few tax code sections with rules as stringent as Section 83(b). Along with the rules being very specific and time sensitive, not complying with them could cause a founder to owe substantially more income tax down the road than necessary. So, put the helmet on and let's go.

### What is an IRS Section 83(b) Election?

Section 83(b) is a small, but very significant section of the federal tax code. Generally, under the U.S. tax law if you receive property in connection with the performance of services that is not transferable or is subject to a substantial risk of forfeiture, you don't have to pay tax on the value of the property until it is transferable or not subject to a substantial risk of forfeiture. The Section 83(b) election is an election to include in



income the value of property received in connection with the performance of services, despite the fact that the property is not transferable and subject to a substantial risk of forfeiture.

See why we warned you about your helmet? Whether you are a founder or an employee, if you receive an amount of stock in a company that may not be recognized as income until the stock vests, paying taxes on it could be a very different proposition between receipt and vesting. That is the purpose of the 83(b) election. If a founder or employee makes a voluntary Section 83(b) election, they recognize the stock as income upon the purchase of the stock rather than later, when the stock might be worth much more (and the tax would be much greater).

“Without such election, the forfeiture and transfer restrictions would postpone the time at which the service provider recognizes compensation income with respect to such property to when the restrictions lapse,” Michael Gentile (of DWT) advises. “Because a Section 83(b) election affects the timing (and thus potentially the character) of income recognized by a service provider with respect to property he or she receives in connection with the performance of services, there are a number of factors to consider in deciding whether to make such election.”

## Section 83(b) Election: 5 Things To Remember

We have provided a sample 83(b) transmittal letter to the IRS for your convenience. Beyond the stringent rules and confusing verbiage behind the code, and making sure that you have completed the election form correctly, it is important that you don't screw up the mechanics of making the election. Remember these things as you actual file the election.

- **Deadline** – You have 30 days upon receipt of the stock to send your election letter. Don't miss the deadline; there is no reprieve. It's not personal, it's an IRS thing.
- **Filing address** – File your election with the right office of the IRS – the internal revenue office where you file your tax returns. Check the filing address on the IRS web site to make sure you have it right.
- **Certified mail** – Send the letter by certified mail with a return receipt requested. Sure, it costs a little more, but every detail and countermeasure counts.
- **Spousal signature** - If you are married and in a community property state, have your spouse sign too.



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- **Disclosure** - Provide a copy of the election letter to the company, not-only for their records, but for redundancy purposes also. Plus, it is required by the rules.
- **Receipt** - In your certified letter to the IRS, you will receive a receipt from the delivery certificate, but also enclose a self-addressed, stamped envelope and ask for the IRS to stamp it received and return it to you. That way you are guaranteed an actual breathing human looked at it.

## “83(b) Election, For My Protection”

Now say the above line five times fast. That should be enough to emphasize the importance of this issue to your personal income. Nobody wants to pay more taxes than they need to. Isn't the fun part about paying taxes figuring out ways NOT to pay taxes? Okay, there's nothing fun about taxes (except perhaps receiving refund checks), but there is a certain peace-of-mind in knowing that you have taken all of the proper steps and done everything you can to keep as much of that hard earned cash as you can. Or in your case, piece-of-mind. You can take your helmet off now.

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