



[Making Life Better For Founders With Respect To Section 83\(b\) Elections](#)

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There has been quite a bit of great press lately on “*Startup America*“, President Obama’s new initiative. You can follow the initiative on Twitter at @startupamerica. And you can also go to the site and sign up to volunteer, stay informed, etc. I am hoping many good and positive changes in the legal landscape come out of this initiative. I have blogged before about the *numerous suggestions* I have about how to make life better for startups, and through the Startup America web site, I’ve also submitted those ideas. It would be great to get some buy in on these ideas from the folks running this initiative.

One of the ways I’ve suggested making life better for founders is to “reverse the presumption on Section 83(b) elections.”

If you are not familiar with Section 83(b) elections, they are a pain because they have to be filed within 30 days of a startup founder receiving shares which are subject to an at-cost repurchase right lapsing over a vesting period (reverse vesting). There is no extension available, or any easy cure for missing the 30 day filing deadline. In my opinion, the default rule ought to be—you are deemed to have made the election unless you elect out. The entire process for making Section 83(b) elections amounts to a trap for the unwary, and creates unnecessary work for founders and their legal and/or tax advisors.

To that end, I have drafted the proposed legislative language to amend Section 83(b) of the Internal Revenue Code. Perhaps someone at Startup America will pick this up and run with this.

Section 83(b) of the Internal Revenue Code of 1986, as amended, is hereby amended by adding a new paragraph (3) as follows:

(3) Deemed Election

An election under paragraph (1) with respect to any transfer of property shall be deemed made by any person who has paid the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), unless the person elects (in such manner as the Secretary prescribes) not to include



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in his or her gross income for the taxable year in which such property is transferred the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

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