**Rev. Rul. 83-22, 1983-1 CB 17, January 1, 1983.**

**[IRS Headnote]**

Employee compensation: election under section 83(b).– Dividends paid on substantially nonvested stock transferred to an employee in connection with the performance of services are treated as dividends and not as compensation if the employee makes the election under section 83(b) of the Code.

**ISSUE**

What is the federal income tax treatment of dividends paid on substantially nonvested stock transferred to an employee in connection with the performance of services if the employee makes an election under section 83(b) of the Internal Revenue Code?

**FACTS**

On May 3, 1982, X, a corporation, established a restricted stock plan for the benefit of certain key employees in connection with services rendered to the corporation. The terms of the plan are such that at the time the corporation's stock is transferred to the employee, the stock is subject to a substantial risk of forfeiture within the meaning of section 83(c)(1) of the Code and is not transferable within the meaning of section 83(c)(2) of the Code.   
All dividends earned on the restricted stock   
are paid to the employee. As a condition of receiving the stock, the employee is required to make the election provided under section 83(b) of the Code to include in gross income, for the taxable year the stock is transferred, the excess of the fair market value of the stock at the time of transfer over the amount paid for the stock.

On May 4, 1982, X transferred X's restricted stock pursuant to the plan to A, an employee of X. A made a proper election under section 83(b) of the Code. A's stock under the plan earned $30 of dividends and such amount was paid to A in 1982.

**LAW AND ANALYSIS**

Section 83(a) of the Code provides that the excess of the fair market value of property transferred in connection with the performance of services over the amount (if any) paid for the property is included in the gross income of the person performing the services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.

Section 83(b) of the Code permits any person performing services in connection with which property is transferred to elect to include in gross income for the taxable year in which the property is transferred the excess of its market value (determined without regard to restrictions that can lapse) over the amount (if any) paid for the property.

Section 1.83-1(a) of the Income Tax Regulations provides that property transferred to an employee in connection with the performance of services by such employee is not taxable until the employee acquires a beneficial ownership interest in such property and it has become substantially vested (as defined in section 1.83-3(b)) in such employee. Until such property becomes substantially vested, the transferor (employer) shall be regarded as owner of such property, and any income from such property received by the employee shall be included in the gross income of such employee as additional compensation for the taxable year in which such income is received.

Section 1.83-3(b) of the regulations provides that a property is substantially nonvested if it is subject to a substantial risk of forfeiture and is nontransferable.

Rev. Proc. 80-11, 1980-1 C.B. 616, provides guidance to individual taxpayers on reporting dividends on restricted stock that is not substantially vested within the meaning of section 83 of the Code. The revenue procedure, citing 1.83-1(a) of the regulations, instructs taxpayers to report such dividends as compensation income.

Section 1.83-2(a) of the regulations provides that the employee performing services may elect to include in gross income under section 83(b) of the Code, as compensation for services, the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction) over the amount (if any) paid for such property. If this election is made, the substantial vesting rules of section 83(a) and the regulations thereunder do not apply with respect to such property. Thus, property with respect to which this election is made is includible in gross income as of the time of transfer, and no compensation will be includible in gross income when such property becomes substantially vested. In computing the gain or loss from a subsequent sale or exchange of such property, its basis is the amount paid for the property increased by the amount included in gross income under section 83(b). If such property is forfeited while substantially nonvested, the forfeiture is treated as a sale or exchange upon which there is a realized loss equal to the excess (if any) of the **amount paid** (if any) for such property over the amount realized (if any) upon such forfeiture. If such property is a capital asset in the hands of the taxpayer, such loss will be a capital loss.

Section 1.83-4(a) of the regulations provides that if the person who has performed the services in connection with which property is transferred has made an election under section 83(b), the holding period of such property will begin just after the date such property is transferred.

The regulations under section 83(b) treat stock transferred to an employee in connection with the performance of services as substantially vested when the employee makes the election. **The employee is considered to be the owner of the stock**. Accordingly, a dividend paid to the employee under these circumstances is not additional compensation to the employee but retains its character as a dividend in the hands of the employee.

**HOLDING**

Except as provided by section 116 of the Code, A will include the $30 received in gross income in 1982 as dividend income.

Because the dividends paid to A exceed 10 dollars, an information return on a Statement for Recipients of Dividends and Distributions, Form 1099-DIV must be made by the payor. See section 6042 of the Code and the regulations thereunder.