

# Section 83.—Property Transferred in Connection With Performance of Services

26 CFR 1.83–7: Taxation of nonqualified stock options.

**T.D. 9148**

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Transfers of Compensatory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that provide rules governing transfers of certain compensatory stock options (nonstatutory stock options). The regulations affect persons who have been granted

nonstatutory stock options, as well as service recipients who may be entitled to deductions related to the options.

**DATES:** *Effective Date:* These regulations are effective August 10, 2004.

*Applicability Dates:* These regulations apply to transfers of nonstatutory stock options on or after July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

These regulations amend 26 CFR part 1. On July 2, 2003, a temporary regulation (T.D. 9067, 2003–32 I.R.B. 287) relating to transfers of compensatory options was published in the **Federal Register** (68 FR 39453). A notice of proposed rulemaking (REG–116914–03, 2003–32 I.R.B. 338) was published in the **Federal Register** for the same day (68 FR 39498). No public hearing was requested or held. No written or electronic comments responding to

the notice of proposed rulemaking were received. The proposed regulations are adopted without change by this Treasury decision, and the corresponding temporary regulations are removed.

### Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these final regulations is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for “1.83–7T” and continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*.

Par. 2. §1.83–7 is amended as follows:

1. Paragraph (a) is amended by adding two sentences at the end.

2. Paragraphs (a)(1) and (a)(2) are added.

3. Paragraph (d) is revised.

The additions read as follows:

#### §1.83–7 Taxation of nonqualified stock options.

(a) \* \* \* The preceding sentence does not apply to a sale or other disposition of the option to a person related to the service provider that occurs on or after July 2, 2003. For this purpose, a person is related to the service provider if—

(1) The person and the service provider bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the modifications that the language “20 percent” is used instead of “50 percent” each place it appears in sections 267(b) and 707(b)(1), and section 267(c)(4) is applied as if the family of an individual includes the spouse of any member of the family; or

(2) The person and the service provider are engaged in trades or businesses under common control (within the meaning of section 52(a) and (b)); provided that a person is not related to the service provider if the person is the service recipient with respect to the option or the grantor of the option.

\* \* \* \* \*

(d) This section applies on and after July 2, 2003. For transactions prior to that date, see §1.83–7 as published in 26 CFR Part 1 (revised as of April 1, 2003).

#### §1.83–7T [Removed]

Par. 3. Section 1.83–7T is removed.

Linda M. Kroening,  
*Acting Assistant Deputy Commissioner for  
Services and Enforcement.*

Approved July 28, 2004.

Gregory Jenner,  
*Acting Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on August 9, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 10, 2004, 69 F.R. 48392)