

Deadlines: Founders, Which Deadlines Should You Worry About?

If you are a founder starting a company, you will want to keep in mind certain key deadlines. These are deadlines that you will not want to miss.

This blog post focuses on what I consider to be the two most important deadlines you want to worry about. Of course, as your company grows other deadlines will arise as well. But at the founding, there are two deadlines you will want to be especially focused on.

What are the two most important deadlines you want to worry about?

There are two deadlines that stand out as especially important if you are a company founder:

- 1) Your Section 83(b) election deadline; and
- 2) The Form D filing deadline.

The Section 83(b) Election Deadline

The biggest, most important of all founder deadlines is the 83(b) election deadline. If your founder shares are subject to vesting, you will want to file an 83(b) election. You only have 30 days to file this election--from the date you execute your stock subscription documents.

If you miss the 83(b) election filing, you will have put yourself in a grave tax situation. Not making the election timely results in the following:

- 1) When your shares vest, you will owe taxes on the difference between the value of the shares at the time of vesting and what you paid for them.
- 2) This is a disaster because you probably paid virtually nothing for your shares, and they will go up in value. Plus, this tax hit occurs every vesting period. So as your shares go up in value, you will owe more and more taxes as the shares vest.
- 3) The 83(b) election is a deadline you do not want to miss. Do stay up late worrying about it. File it early. File it return receipt requested. Here is [a blog post with instructions on how to file the 83\(b\) election](#).
- 4) Take personal responsibility for this filing. Don't expect company counsel to make the filing for you. It is your personal tax filing. Like your Form 1040. You should not expect the company's lawyer to file your personal Form 1040, or your Form 83(b) election.

The Form D Deadline

The SEC in its wisdom decided that companies have 15 days from taking money in an accredited investor securities offering to file a Form D with the SEC.

What is a Form D?

A Form D is a form that contains a little bit of information about a company raising money in a Rule 506 securities offering. Rule 506 is the most commonly relied upon securities law exemption for startups raising money in a securities offering. If you are raising money for your company in a securities offering, you are almost certainly relying on Rule 506--but confirm with your lawyer.

States Are Persnickety About Form D Filing Deadlines

Many states demand you file a Form D in their state within 15 days of accepting funds or receiving a contractual commitment to invest (if you have an investor there), and pay a fee. The SEC has actually issued a release saying the Form D filing is not a condition to the Rule 506 securities law exemption, but state securities regulators do not go along with this conclusion (at least in some states).

The answer--don't be late filing your Form D. If you are raising money, stay in touch with your company's counsel. Keep him or her apprised of what you are doing. If you take a check, but don't call your lawyer for a week--you may miss the deadline because there are EDGAR filing codes that have to be obtained before you file. So, if you don't call your lawyer until day 12, you might very well miss the deadline.

Public Policy Recommendations

Congress ought to do the following:

- 1) Extend the 83(b) filing deadline, or even reverse the presumption under Section 83(b) so that no election is due at all unless the founder wants to be taxed in this extremely unfavorable way.
- 2) Extend the Form D filing deadline to something more reasonable than 15 days and expressly preempt any state laws that make life harder for companies--like conditioning the availability of a securities law exemption on timely filing the form with a state.

Disclaimer

This blog is provided for informational purposes only, and is not legal advice, or to be relied upon as legal advice.

Please consult a lawyer as you grow your company.