

IRS Tax Notice For Incentive Stock Options and Employee Stock Purchase Plans

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Section 6039 of the Internal Revenue Code of 1986, as amended (the “Code”) requires that by January 31, 2009, employers provide certain information to their employees (or former employees) who in 2008 either exercised “incentive stock options” (“ISOs”) or transferred shares purchased under an “employee stock purchase plan” (an “ESPP”). The required information is outlined below.

ISOs - Corporations that in the last calendar year issued stock upon the exercise of an ISO, must furnish, by January 31, 2009, to the person exercising the ISO a written notice stating:

- (i) The name, address, and employer identification number of the corporation transferring the stock;
- (ii) If other than the corporation identified in (i) above, the name, address and employer identification number of the corporation whose stock is being transferred;
- (iii) The name, address, and social security number of the person (for privacy reasons, the social security number may be limited to the last four digits) to whom the share or shares of stock were transferred pursuant to the exercise of the ISO;
- (iv) The date the ISO was granted to the person;
- (v) The exercise price per share;
- (vi) The date in 2008 the ISO was exercised by the person;
- (vii) The fair market value of a share of stock on the date the ISO was exercised; and
- (viii) The number of shares of stock transferred pursuant to exercise of the ISO.

ESPPs- Corporations that in the last calendar year recorded (or had recorded by their transfer agent) a change in title of stock purchased pursuant to an ESPP (including, but not limited to registration of the shares in “street name” or a sale of the shares), must furnish to the employee a written notice stating:

- (i) The name, address, and social security number of the transferor;
- (ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date of grant of the purchase right (typically the offering date for the offering period of the ESPP) under which the shares were issued to the transferor;

(iv) The fair market value of the stock on the date of grant;

(v) The price per share at which the shares were purchased under the ESPP;

(vi) The date the shares were purchased by the transferor;

(vii) The fair market value of the stock on the date of purchase by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

A penalty of \$50 is imposed for each statement not timely furnished or containing incomplete or incorrect information (an intentional failure to report is subject to a greater penalty).

Looking Ahead: Reporting to the IRS of Exercises/Transfers Occurring in 2009

For 2008 exercises and transfers the IRS has again waived the requirement that the employer provide the IRS with the information described above. However, the IRS will require this information be reported to them (and will provide template forms) for ISO exercises and transfers of ESPP shares that occur in 2009 (with a filing deadline of January 31, 2010).

For more information on this, or related matters, you may wish to contact any attorney in the Executive Compensation and Employee Benefits Group:

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