Cooley

January 13, 2012

This Alert serves as a reminder of certain year-end reporting requirements imposed under Section 6039 of the Internal Revenue Code of 1986, as amended, with respect to incentive stock option exercises and transfers of stock acquired under employee stock purchase plans occurring during 2011.

For incentive stock option exercises and transfers of stock acquired under employee stock purchase plans in 2011, the employer must furnish employee information statements no later than January 31, 2012 and must file information returns with the IRS no later than February 28, 2012 (or March 31, 2012 if filing electronically).

Employee information statement

Every corporation that in 2011 *issued stock upon the exercise of an incentive stock option* (meaning a stock option described in Section 422 of the Code) must, on or before January 31, 2012, furnish to the employee (or former employee) who exercised the option a written statement containing the information contained on Form 3921.

Similarly, every corporation that in 2011 records (or has recorded by its transfer agent) *the first transfer by an employee or former employee of stock acquired by such employee under an employee stock purchase plan* (meaning a plan that is established under Section 423 of the Code, if the purchase price is either less than one hundred percent of the value of the stock on the grant date or is not fixed or determinable on the grant date) must, on or before January 31, 2012, furnish to the employee (or former employee) transferring the stock a written statement containing the information contained on Form 3922.

Form of employee information statement

The employee information statement must either be (i) contained on the appropriate form (*i.e.,* Form 3921[1] with respect to incentive stock option exercises or Form 3922[2] with respect to transfers of stock purchased under an employee stock purchase plan), or (ii) contained on a "substitute form" that meets the format and content requirements contained in Publication 1179.

IRS information return

A corporation is required to file an information return with the IRS in addition to providing information statements to employees. *For exercises and transfers in 2011, the information returns must be filed no later than February 28, 2012 (or March 31, 2012 if filing electronically).*[3]

The information returns must contain the same information required by the Section 6039 regulations with respect to employee information statements. Information returns with respect to incentive stock option exercises must be made on Form 3921, and information returns with respect to transfers of stock purchased under an employee stock purchase plan must be made on Form 3922.

More information

More information about the information return and tax reporting requirements may be found in our *Cooley Alert* issued in January 2011.

If you have any questions about this *Alert,* please contact one of the attorneys listed above.

Notes

1 A copy of Form 3921 may be found on the IRS website

2 A copy of the Form 3922 may be found on the IRS website

3 It is possible to file Form 8809 to get an automatic 30-day extension of the due date for filing information returns. A copy of the Form 8809 may be found on the IRS website

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