Cooley

Year-End Reporting for ISOs and ESPPs

January 13, 2016

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 2015.

For incentive stock option exercises and transfers of stock acquired under employee stock purchase plans in 2015, the employer must furnish employee information statements no later than February 1, 2016 and must file information returns with the IRS no later than February 29, 2016 (or March 31, 2016 if filing electronically).

Employee information statement

Every corporation that in 2015 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 February 1, 2016, 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 2015 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 February 1, 2016, 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[3]), 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 2015, the information returns must be filed no later than February 29, 2016 (or March 31, 2016 if filing electronically).[4]

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.

If you have any questions about this alert, please contact one of the attorneys listed here.

Notes

1. You can get Form 3921 at the IRS website. Note, do not file copy A downloaded from this website. The official printed version of this IRS form is scannable, but the online version of it, printed from the IRS website, is not. A penalty of $100 per information return may be imposed for filing forms that cannot be

scanned (lowered to $30 if corrected within 30 days, and $60 if corrected prior to August 1). Order the official IRS forms at the IRS website.
2. You can get Form 3922 at the IRS website. As discussed in footnote 1, copy A filed with the IRS needs to be scannable.
3. It is also possible to order Forms 3921 and 3922 from the IRS by calling 1-800-TAX FORM (829-3676).
4. It is possible to file Form 8809 to get an automatic 30-day extension to the due date for filing information returns. You can get Form 8809 at the IRS website. Note, the extension will only extend the due date for filing the returns with the IRS. It will not extend the due date for furnishing statements to employees or former employees.

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