Cooley

Year-End Reporting for ISOs and ESPPs

January 23, 2019

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 2018.

For incentive stock option exercises and transfers of stock acquired under employee stock purchase plans in 2018, the employer must furnish employee information statements no later than January 31, 2019, and must file information returns with the IRS no later than February 28, 2019 (or April 1, 2019, if filing electronically).

Employee information statement

Every corporation that in 2018 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, 2019, furnish to the employee (or former employee) who exercised the option a written statement containing the information contained on Form 3921.

Get Form 3921 at the IRS website. Note that copy A downloaded from this website should not be filed. 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 $270 per information return may be imposed for filing forms that cannot be scanned (lowered to $50 if corrected within 30 days, and $100 if corrected prior to August 1). The official form may be **ordered from the IRS website**.

Similarly, every corporation that in 2018 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, 2019, furnish to the employee (or former employee) transferring the stock a written statement containing the information contained on Form 3922.

Get Form 3922 at the IRS website. As discussed above, copy A that is filed with the IRS needs to be scannable.

Form of employee information statement

The employee information statement must either be (i) contained on the appropriate form (i.e., Form 3921 with respect to incentive stock option exercises or Form 3922 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.

A separate form must be filed for each transaction, even if one employee has more than one transaction during the year and, if an employee has more than one transaction, then each such form must contain a unique account number (such as a number provided by equity tracking software). However, if a substitute form is used, the company may aggregate transactions, providing a single form to each employee.

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 2018, the information returns must be filed no later than February 28, 2019 (or April 1, 2019, if filing electronically).

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.

It is possible to file Form 8809 to get an automatic 30-day extension to the due date for filing information returns. **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 recipients.

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

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Key Contacts

Blake Martell San Francisco	bmartell@cooley.com +1 415 693 2099
Barbara Mirza Los Angeles Santa Monica	bmirza@cooley.com +1 310 883 6465
Megan Arthur Schilling San Diego	marthur@cooley.com +1 858 550 6195
David Walsh Reston	dwalsh@cooley.com +1 703 456 8021

Thomas Welk San Diego	twelk@cooley.com +1 858 550 6016

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