



YEAR-END REPORTING OF ISO EXERCISES AND ESPP PURCHASES

January 2012

This is a reminder that employers must file information returns with the IRS and provide employees with information statements related to incentive stock option exercises that occurred during the 2011 calendar year. Similarly, employers (typically relevant only for public companies) must file information returns with the IRS and provide employees with information statements related to initial transfers of stock acquired under an employee stock purchase plan that complies with Internal Revenue Code Section 423 during the 2011 calendar year.

The information returns to be filed with the IRS are Form 3921 (for incentive stock option exercises) and Form 3922 (for transfers of shares acquired under an employee stock purchase plan). Employers may satisfy the requirement to provide employees with an information statement (formerly referred to as a Section 6039 statement) by delivering to the employee "Copy B" of the applicable Form 3921 or 3922 or they may use substitute forms for the employee information statements, so long as the substitute forms meet published IRS guidance as to form and content.

The delivery and filing deadlines are as follows:

- January 31 – Deadline to furnish an information statement copy to employees.
- February 28 – Deadline to file paper copy with IRS, if filing a paper return.
- April 2 – Deadline to file electronically with IRS. (March 31st is a Saturday, so the deadline this year is April 2nd)

Companies reporting 250 or more transactions (applied separately to transactions under Form 3921 and Form 3922) in the year must file electronically. Note that each option exercise or stock transfer is a separate transaction, and therefore multiple transactions by a single individual trigger multiple filings.

The penalty for late and incorrect filings ranges from \$30 - \$100 per form, with a maximum penalty of \$1.5 million. The penalty for intentional disregard of these requirements is \$250 per form, with no maximum. The IRS will grant an automatic 30-day extension upon filing a Form 8809, which must be filed electronically or by paper by the applicable deadline. Companies may request an additional 30-day extension due to a claimed hardship, but such extension will not be automatically granted by the IRS.

Certain third-party vendors, such as Stock & Option Solutions at www.sos-team.com, are available to assist companies with preparing and filing Forms 3921 and 3922. For additional vendors, please see the IRS website at www.irs.ustreas.gov/pub/irs-pdf/p1582.pdf or contact the attorney with whom you regularly work at Gunderson Dettmer.

Gunderson Dettmer's lawyers are available to assist in addressing questions you may have regarding the issues discussed in this Alert. Please contact the Gunderson Dettmer attorney with whom you regularly work. Contact information for our attorneys can be found at www.gunder.com.

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