
Legal Updates & News

Legal Updates

Reminder: Information Statements Must Be Provided by January 31, 2008, to Employees and Former Employees Who Exercised Incentive Stock Options or Transferred Stock Acquired Pursuant to an Employee Stock Purchase Plan

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This is a reminder to public and private companies that grant incentive stock options (“ISOs”) or maintain an employee stock purchase plan (“ESPP”). Under IRS regulations, these companies must provide information statements no later than January 31, 2008, to any employee or former employee who either exercised an ISO during 2007 or transferred stock during 2007 that was previously acquired pursuant to the ESPP. Companies that fail to provide such statements on a timely basis may be liable for penalties of \$50 per statement, up to a maximum of \$100,000 per year.

Content of Information Statements. The IRS has prescribed the required content (although not the format) of the information statements that must be provided to employees and former employees with respect to ISO exercises and transfers of ESPP stock. The required content of each statement differs depending on whether it relates to an ISO or an ESPP.

ISO Statements. If a statement relates to the exercise of an ISO, the following information must be provided:

1. The name, address, and employer identification number of the corporation transferring the stock;
2. The name, address, and identifying number of the person to whom the share or shares of stock were transferred;
3. The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);
4. The date the option was granted;
5. The date the shares were transferred to the person exercising the option;
6. The fair market value of the stock at the time the option was exercised;
7. The number of shares of stock transferred pursuant to the option;
8. The type of option under which the transferred shares were acquired; and
9. The total cost of all the shares.

ESPP Statements. If a statement pertains to the transfer of ESPP stock after the employee or former employee has acquired it, the statement must include the following:

1. The name and address of the corporation whose stock was transferred;
2. The name, address, and identifying number of the transferor (*i.e.*, the employee or former employee who transferred the previously - acquired ESPP stock);
3. The date such stock was originally acquired by the transferor;
4. The number of shares to which title was transferred; and
5. A statement that the transferor acquired the transferred shares pursuant to an option under an ESPP.

New Information Return Requirement. Companies that must provide statements to employees or former employees will also be required to provide generally the same information to the IRS with respect to exercises and transfers that occur beginning in 2008.

The Tax Relief and Health Care Act of 2006 included a requirement that the ISO and ESPP transaction information be provided to the IRS for transactions beginning in 2007. However, because the IRS has not yet issued definitive guidance on the new information return, it has waived the filing requirement for such returns for 2007 transactions.