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IRS Issues Final Regulations Regarding Annual ISO/ESPP Reporting Requirements

The Internal Revenue Service (the "IRS") has issued [final regulations](#) regarding the information return and information statement requirements under Section 6039 of the Internal Revenue Code. Section 6039 was amended in 2006 to require corporations to file an information return with the IRS (the "Return") and furnish a written information statement (the "Statement") to each employee who exercises incentive stock options ("ISOs") or sells or otherwise transfers shares acquired under an employee stock purchase plan ("ESPP") by January 31 following the year in which such transactions occur. As we reported in our July 23, 2008 [blog article](#), the IRS issued proposed regulations relating to these requirements in July 2008, which, among other things, relieved corporations of the requirement to file a Return for stock transfers that occurred during the 2007 and 2008 calendar years.

The final regulations, issued November 17, 2009, largely adopt the proposed regulations, with some changes made in response to comments received by the IRS. The final regulations apply as of January 1, 2007, but employers are not required to comply with the Return requirement for stock transfers that occur during the 2007, 2008 or 2009 calendar years. However, employers must continue to provide the Statement to employees for transfers that occurred during those years. In furnishing the Statement for transfers that occur during the 2009 calendar year, employers may rely upon the prior 2004 final regulations, the 2008 proposed regulations, or the newly issued 2009 final regulations. Employers may wish to continue following the prior 2004 final regulations, with which they are familiar and which do not include certain enhanced disclosure requirements (for example, as reported in our July 23, 2008 [blog article](#), the new regulations require the Statement to report the exercise price per share with respect to ESPP stock transfers, rather than the total cost of all shares acquired). However, employers will be required to comply with the new regulations with respect to transfers that occur in 2010. The IRS plans to issue two forms in the near future (Form 3921 for ISO transactions and Form 3922 for ESPP transfers) to be used to satisfy both the Return and the Statement reporting requirements under Section 6039.

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