

Jan. 31 Is IRS Deadline to Notify Employees Who Exercised Certain Stock Options in 2010

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Section 6039 of the Internal Revenue Code requires employers to provide certain information to employees who exercised incentive stock options (ISOs) or acquired stock under an employee stock purchase plan (ESPP) during 2010.

The necessary information must be provided to the employees by Jan. 31, 2011, with a corresponding report filed with the Internal Revenue Service no later than Feb. 28, 2011 (March 31, 2011, if filed electronically).

Affected employers should take action now, if they have not done so already. This advisory provides a brief background on Section 6039 and an analysis of what information should be provided.

Background

Section 6039 of the Internal Revenue Code has for a number of years required an employer sponsoring an ISO plan or an ESPP to provide certain information to employees who acquired shares under the plans.

The Tax Relief and Health Care Act of 2006 amended Section 6039 and changed an employer's obligations. The IRS wrestled with issuing regulatory guidance and during that transition period allowed employers to satisfy the requirements in a modified fashion.

Final regulations were issued in 2009 and became fully effective for transactions occurring in 2010. In short, employers who sponsored a stock option plan under which ISOs were issued, or maintained an ESPP, must report transactions that occurred in 2010.

Analysis

For ISO exercises that occurred in 2010, an employer should report using new IRS Form 3921, which includes the following information:

- The name, address, and employer tax ID number of the company transferring the stock
- The name, address, and employer tax ID number of the company whose stock is subject to the option (if different from the entity designated above)
- The name, address, and Social Security or tax ID number of the person receiving the shares upon exercise
- The date the option was granted
- The exercise price per share
- The date the option was exercised
- The fair market value of a share on the date the option was exercised
- The number of shares transferred on exercise of the option

With respect to reporting on the transfer of shares under an ESPP, the employer should report using new IRS Form 3922. That form requires information that is almost identical to the information required in connection with the exercise of ISOs.

In providing the necessary information to applicable ISO plan or ESPP participants, an employer can use either the related Form 3921 or 3922, or a comparable substitute statement (see Section M of IRS publication, "General Instructions for Certain Informational Returns").

Action steps

Because over the last few years the IRS has alternatively suspended, modified, or delayed the requirement to report under Section 6039, some employers may be confused about the requirements, or perhaps wrongly assumed the requirement would be delayed again.

That is not the case. Companies that sponsor ESPPs or stock option plans that offer ISOs should check with the plan administrator to confirm that the necessary disclosure information is being sent in a timely manner to applicable plan participants and the required information will be filed with the IRS.

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