
Legal Updates & News

Legal Updates

Reminder: Information Statements Due by January 31, 2009 for 2008 Incentive Stock Options and Employee Stock Purchase Plan Transactions

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This is a reminder to public and private companies that grant incentive stock options (“ISOs”) or maintain a tax advantaged employee stock purchase plan (“ESPP”). Under IRS regulations, these companies must provide information statements no later than January 31, 2009, to any employee or former employee who exercised an ISO during 2008 or transferred stock during 2008 that was previously acquired pursuant to an 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 of the information statements. 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 under an ESPP.

We have prepared sample forms to assist in producing statements for 2008 [ISO](#) and [ESPP](#) transactions.

New Information Return Requirement for 2009 Transactions. 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 ISO exercises and transfers of ESPP stock that occur beginning in 2009.

Proposed IRS regulations slightly alter the required content of information statements in January 2010. We expect the IRS to issue new forms to facilitate these obligations. We suggest that companies establish systems to collect the required information during 2009 so that it may be accurately reported beginning in January 2010.

ISO Statements. For 2009 transactions reported in 2010, the statements will include most of the information required for 2008 transactions, except that they will need to include the exercise price per share of ISOs exercised rather than the total cost of all the shares.

ESPP Statements. For 2009 transactions reported in 2010, companies will need to include the following information in addition to the information required for 2008 transactions:

1. The date the purchase right was granted to the transferor;*
2. The fair market value of the stock on the date the purchase right was granted;
3. The purchase price per share;
4. The date the stock was purchased by the transferor; and
5. The fair market value of the stock on the date it was purchased by the transferor.

*Under proposed IRS regulations, the first day of an offering period may only be considered the date of grant if the ESPP designates a maximum number of shares (as a fixed number or based on a formula) that may be purchased by each employee during the offering period. If no such maximum is set, the stock purchase date will be considered to be the date of grant.