

Reminder - Reporting Required for Exercise of ISOs, ESPP Options

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The end is near for a temporary reprieve from reporting exercises of incentive stock options (“ISOs”) and options under employee stock purchase plans (“ESPP”). On November 6, 2010, the Internal Revenue Service released final versions of Form 3921 and 3922 on which employers are required to report information relating to the exercise of ISOs and ESPP options.

For ISO or ESPP option exercises that occurred in 2010, Form 3921 or Form 3922 must be: (i) provided to employees by January 31, 2011; and (ii) filed with the Internal Revenue Service by February 28, 2011 (for paper filers) or March 31, 2011 (for electronic filers). Electronic filing is mandatory if 250 or more forms are being filed. An employer that voluntarily files electronically may take advantage of the extended filing deadline.

Reporting for exercise of ISOs. The following information must be reported on Form 3921:

- Grant date of the ISO;
- Exercise date of the ISO;
- Exercise price per share;
- Fair market value of a share on the exercise date; and
- Number of shares transferred pursuant to exercise of the ISO.

Reporting for exercise of ESPP options. The following information must be reported on Form 3922:

- Grant date of the option;
- Exercise date of the option;
- Fair market value of a share on the grant date;
- Fair market value of a share on the exercise date;
- Price paid per share on the exercise date;
- Number of shares to which legal title was transferred;
- Date legal title of shares was first transferred; and
- If the exercise price per share was not fixed or determinable on the grant date, the exercise price per share determined as if the option was exercised on the grant date.

An employer that fails to file (or fails to timely file) Form 3921 or Form 3922 with the Internal Revenue Service is subject to a penalty of up to \$50 per form (capped at \$250,000 per year) and an employer that fails to provide employees with a copy of Form 3921 or Form 3922 is subject to a penalty of \$50 per form (capped at \$100,000 per year).

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

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