
Reporting to IRS Required for 2010 Incentive Stock Option Exercises and ESPP Stock Transfers

2010-11-30

Corporations must, annually beginning with 2010, file returns with the Internal Revenue Service (IRS) and provide statements to employees reporting exercises of incentive stock options (ISOs) and transfers of stock purchased under employee stock purchase plans (ESPPs). These reporting obligations, required by Section 6039 of the Internal Revenue Code, must be satisfied using recently released IRS Forms 3921 and 3922. In prior years, Section 6039 only required corporations to provide information similar to that contained in the forms to employees; however, no filing with the IRS was required.

Form 3921 is required when a corporation issues shares to an employee who exercises an ISO. Form 3922 is required when a corporation records a transfer of legal title, including to a broker or other financial institution, of shares of stock purchased by an employee at a discount under an ESPP. Form 3922 is only required for the first transfer of legal title of the shares by the employee. For stock transfers that occurred during the 2010 calendar year, the corporation must file with the IRS the appropriate Forms 3921 and 3922 with its Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) by February 28, 2011 (if filing on paper) or March 31, 2011 (if filing electronically).

In addition to filing the appropriate form with the IRS, the corporation must also provide a statement (Copy B of the applicable form) to the employee by January 31 of the year following the year for which the statement is required. For ISO exercises or ESPP stock transfers that occurred during the 2010 calendar year, the statement must be provided to employees by January 31, 2011.

Information Required. Forms 3921 and 3922 require the corporation to provide the following information:

- The name, address and EIN of the corporation; and the name, address and TIN of the employee;
- The option grant date (offering commencement date for ESPPs);
- The option exercise date (purchase date for ESPPs);
- The exercise price per share (purchase price per share for ESPPs);
- The fair market value per share on the exercise date (FMV per share on the purchase date

for ESPPs);

- The number of shares for which the ISO was exercised (number of shares purchased under the ESPP); and
- For Form 3922 only, the fair market value per share of stock on the offering commencement date; the date legal title was transferred; and the purchase price per share determined as if the shares were purchased on the offering commencement date.

Obtaining the Forms and Instructions. The IRS has provided Forms 3921 and 3922 on its website for informational purposes only. A corporation must order the official IRS forms on the IRS website or by calling 1-800-TAX-FORM. For informational purposes, Form 3921 is available [here](#) and Form 3922 is available [here](#). The IRS has issued one set of instructions for both forms, which is available [here](#). The General Instructions for Certain Information Returns, available [here](#), also provide additional instructions generally applicable to information returns, including Forms 3921 and 3922.

Action Items. Corporations should review Forms 3921 and 3922 and determine whether functions within the corporation (i.e., payroll, human resources, finance, etc.) have the information required to complete the forms or whether coordination with outside vendors will be required.

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

For more information on this or other executive compensation matters, contact [R. Scott Kilgore](#), [Amy A. Null](#), [Linda K. Sherman](#) or [Kimberly B. Wethly](#).

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