

New Incentive Stock Option and Employee Stock Purchase Plan Filing Requirements

December 11, 2007

Under new filing requirements, employers are required to furnish information returns to the Internal Revenue Service (IRS) regarding the exercise of incentive stock options (ISOs) and the transfer of shares acquired under an Employee Stock Purchase Plan (ESPP) that occur on or after January 1, 2007.

The IRS has not yet provided guidance as to the exact information required, the format in which the required information is to be provided, or the due date of the information returns. Unless the IRS decides to postpone the effective date, we anticipate that the deadline for filing the returns will be February 28, 2008.

We anticipate that the information required to be reported will be the same as, or substantially similar to, the information already required to be furnished to employees who exercise an ISO or acquire shares under an ESPP. Companies that have ISOs or an ESPP should make sure that their systems will gather the following information in early 2008:

- With respect to each ISO that was exercised in 2007:
 - Name, address, and tax identification number of the employer and the corporation of the stock subject to the option
 - Name, address, and tax identification number of the optionee
 - Date upon which the option was granted
 - Date upon which the option was exercised
 - Number of shares acquired upon exercise
 - Type of option exercised
 - Total cost of the shares (aggregate exercise price paid for the shares)
 - Fair market value of the shares at the time of exercise
- With respect to each transfer of stock acquired pursuant to an ESPP in 2007:
 - Name and address of the corporation whose stock is transferred
 - Name, address, and tax identification number of employee transferring shares
 - Date upon which the stock was purchased
 - Number of shares transferred
 - Type of option under which the shares were acquired

Even if the filing deadline is postponed, employers are still required to provide the foregoing information to employees who exercise an ISO or acquire shares under an ESPP. This information must be provided to employees by January 31 after the calendar year-end.

The IRS imposes a penalty of \$50 for each employee information statement that is not provided, up to a total amount of \$100,000. However, if the failure to furnish a statement is due to the company's "intentional disregard" of the requirement, then the per-statement penalty for a failure is the greater of \$100 or 10% of the aggregate amount of the items to be required to be reported, and there is no \$100,000 limit.

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