

**IRS WAIVES CERTAIN FILING OBLIGATIONS FOR 2007 STOCK TRANSFERS
RELATING TO INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK
PURCHASE PLANS**

The Internal Revenue Service (the “IRS”) recently issued Notice 2008-8, which provides interim guidance regarding an employer’s obligation to file an information return with the IRS with respect to stock transfers covered under Section 6039 of the Internal Revenue Code of 1986, as amended (the “Code”).

Section 6039 of the Code requires a corporation to provide a written information statement to an employee where the corporation has either (i) transferred stock to such employee in connection with the employee’s exercise of an “incentive stock option” (within the meaning of Section 422 of the Code) or (ii) recorded (or has by its agent recorded) the transfer of stock acquired by such employee under an employee stock purchase plan meeting the requirements of Section 423 of the Code (an “ESPP”). As amended by the Tax Relief and Health Care Act of 2006, Section 6039 of the Code also requires a corporation to file an information return with the IRS with respect to any such transfers occurring on or after January 1, 2007. Regulations have not yet been released regarding the information to be provided in the return or the time and manner for filing.

With Notice 2008-8, the IRS has temporarily waived the obligation of a corporation to file an information return with the IRS for 2007 stock transfers covered under Section 6039. Employers, however, are instructed to continue to provide the required information statement to employees with respect to such transfers, which must be furnished no later than January 31, 2008, and must contain the following information:

Exercise of an Incentive Stock Option	Transfers of Shares Acquired Under an ESPP
<ul style="list-style-type: none"> • The name, address, and EIN of the corporation transferring the stock upon exercise; • The name, address, and identifying number of the person to whom the stock is transferred; • The name and address of the corporation the stock of which was subject to the option (if different from the transferring corporation); • The date of grant of the relevant option; • The date of exercise; • The fair market value of the stock at the time of exercise; • The number of shares transferred; • The type of option under which the shares were transferred (<u>i.e.</u>, an incentive stock option); and • The aggregate exercise price of the options exercised. 	<ul style="list-style-type: none"> • The name and address of the corporation whose stock is being transferred; • The name, address, and identifying number of the transferor-employee; • The date such stock was initially transferred to such employee pursuant to the ESPP; • The number of shares to which title is being transferred; and • The type of option under which the transferred shares were acquired (<u>i.e.</u>, an option described in Section 423 of the Code).

The information statement must be delivered in person or mailed to the employee's last known address (and may be delivered electronically if the employee consents to such electronic delivery). Generally, failure to furnish such information statements to employees in a timely manner (where such failure is not due to the corporation's intentional disregard of the requirements) will result in a \$50 penalty per failure, up to a maximum of \$100,000 per calendar year. Intentional disregard of these requirements may result in higher penalties.

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If you have any questions concerning the foregoing or would like additional information, please contact David E. Rubinsky (212-728-8635, drubinsky@willkie.com) or the attorney with whom you regularly work.

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IRS Circular 230 disclosure:

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