

**TREASURY ISSUES PROPOSED REGULATIONS RELATING TO
INCENTIVE STOCK OPTION AND EMPLOYEE STOCK PURCHASE PLAN
INFORMATION REPORTING**

The U.S. Department of Treasury recently published proposed regulations under Section 6039 of the Internal Revenue Code (the “Code”) that revise and clarify the information reporting requirements triggered by the exercise of incentive stock options (within the meaning of Section 422 of the Code) and the transfer of stock acquired pursuant to an employee stock purchase plan (within the meaning of Section 423 of the Code). Section 6039 of the Code requires a corporation to provide a written information statement to an employee and to file a return with the IRS whenever the corporation has either (i) transferred stock to such employee in connection with the employee’s exercise of an incentive stock option or (ii) recorded (or recorded by its agent) the transfer of stock acquired by such employee under an employee stock purchase plan.

Regulations existing prior to the issuance of the new proposed regulations set forth only the employee information statement requirements and do not provide taxpayers with the information requirements of the IRS filing. As such the IRS has heretofore waived the filing requirement. See our previous client memorandum for more information (http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2534/IRS_Waives_Certain_Filing_Obligations.pdf). The revised list of information required to be provided to employees under the new proposed regulations also constitutes the information required to be filed with the IRS.

Information Required to Be Provided to the IRS and the Employee

The following table sets forth the information that must be provided to both the IRS and the employee on new Forms 3921 and 3922, which will be issued by the IRS later this year:

Exercise of an Incentive Stock Option IRS Form 3921	Transfers of Shares Acquired Under an ESPP IRS Form 3922
<ul style="list-style-type: none"> • The name, address, and employer identification number of the corporation transferring the stock; • If other than the corporation transferring the stock, the name, address, and employer identification number of the corporation whose stock is being transferred; • The name, address, and identifying number of the person to whom the stock was transferred; • The date the option was granted; • The exercise price per share; • The date the option was exercised; • The fair market value of a share of stock on the date the option was exercised; and • The number of shares of stock transferred. 	<ul style="list-style-type: none"> • The name, address, and identifying number of the transferor; • The name, address, and employer identification number of the corporation whose stock is being transferred; • The date the option was granted; • The fair market value of the stock on the date the option was granted; • The exercise price per share; • The date the option was exercised by the transferor; • The fair market value of the stock on the date the option was exercised; • The date the legal title of the shares was transferred by the transferor; and • The number of shares to which legal title was transferred by the transferor.

The applicable form must be filed with the IRS and provided to the employee on or before January 31 of the year following the calendar year in which the transfer of stock subject to Section 6039 occurs. The proposed regulations permit a corporation to comply with the information statement requirements relating to transfers of shares acquired under an employee stock purchase plan by having the corporation's authorized transfer agent provide such statement to the employee.

Transition Period and Proposed Effective Date

Although the IRS return requirements have been waived for stock transfers occurring during the 2007 and 2008 calendar years, corporations must nevertheless furnish the required information statements to employees. Additionally, with respect to stock transfers occurring during such years, corporations may continue to rely on the current regulations under Section 6039 in lieu of the new proposed regulations. Compliance with these proposed regulations, should they become final, will be mandatory with respect to applicable stock transfers during and after 2009.

Penalties for Failure to Comply

An employee 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), Jason R. Ertel (212-728-8120, jertel@willkie.com), or the Willkie attorney with whom you regularly work.

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IRS Circular 230 disclosure:

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