
LEGAL UPDATES AND NEWS

Employee Benefits Alert: Reporting Obligations for Exercising Incentive Stock Options and Employee Stock Purchase Plan Options

January 31, 2012 is the deadline for employers to deliver a completed copy of IRS Form 3921 or 3922 to employees, setting forth the details of the employee's 2011 exercise of incentive stock options ("ISOs") or employee stock purchase plan ("ESPP") options, respectively. Shortly thereafter, the employer must also file the Forms with the IRS. These rules do not apply to the exercise of nonqualified stock options ("NSOs").

Last year a new system of delivering the Forms to employees and filing the Forms with the IRS was required, with respect to 2010 ISO or ESPP exercises. Previously, employers were only required to provide an information statement to employees who exercised ISOs or received shares pursuant to the exercise of an ESPP option without having to file anything with the IRS. ISO or ESPP exercises which occurred during 2011 would have to be reported under the new reporting system.

Each Form 3921 or 3922 may only report one transaction. As a result, employers may need to prepare several forms for one employee if the employee exercised ISOs or ESPP options more than once during 2011. Preparing multiple forms may take significant time to coordinate, since different data must be reported for each exercise.

I. Reporting Requirements

Form 3921 and Form 3922 require disclosure of the following information:

- The employer's name and identification number.
- The employee's name and social security number.
- The date the ISO or ESPP option was granted to the employee.
- The date the ISO or ESPP option was exercised by the employee.
- The exercise price per share.
- The fair market value of a share of stock on the date the ISO or ESPP option was exercised.
- The number of shares of stock transferred pursuant to the exercise of the ISO or ESPP option.

II. Filing Deadlines

The filing deadlines (for the 2011 calendar year) for the Form 3921 and Form 3922 are as follows:

January 31, 2012: Forms 3921 and Forms 3922 must be provided to the employees.

February 29, 2012: Deadline for paper filers to file the Forms 3921 and Forms 3922 with the IRS.

March 31, 2012: Deadline to electronically file the Forms 3921 and Forms 3922 with the IRS.

III. Penalties for Late Filings

Failure to timely file a Form 3921 or a Form 3922 with the IRS may result in the following penalties:

- \$30 per form if you file within 30 days of the deadline (maximum of \$250,000 per year).
- \$60 per form if you file by August 1 (maximum of \$500,000 per year).
- \$100 per form if you file after August 1 or never complete the filing (maximum of \$1,500,000 per year).
- At least \$250 per form if the late filing or failure to file is due to intentional disregard (no annual maximum).

The failure to distribute these forms to employees could result in similar penalties as those provided above.

For further details regarding this newsletter or if you have any executive compensation or employee benefits questions, please contact any of the persons listed below.

Beverly J. White	■	(202) 274-2005
Norma Sharara	■	(202) 274-2035
Max Seltzer	■	(202) 274-2038
Jeff Cardone	■	(202) 274-2033