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LEGAL UPDATE AND NEWS

Reporting Obligations for Incentive Stock Option Exercises and Employee Stock Purchase Plan Purchases in 2025

Banks that allow employees to purchase employer stock through incentive stock options ("ISOs") or an employee stock purchase plan ("ESPP") should be aware of the upcoming February 2, 2026 deadline for employers to deliver a completed Form 3921 or 3922 to employees, setting forth the details of the employee's 2025 exercise of ISOs or purchase of shares through an ESPP, respectively. Shortly thereafter, the employer must also file the IRS Form 3921 or 3922 with the Internal Revenue Service (the "IRS"). These rules do not apply to the exercise of nonqualified stock options or to the exercise of an ISO if the optionee does not retain the share received on the option exercise or to shares purchased through an "unqualified" ESPP that is not designed in accordance with Section 423 of the Internal Revenue Code.

Each Form 3921 or 3922 may only report one transaction. As a result, employers will need to prepare several forms for any employee who exercised ISOs or ESPP purchases more than once during 2025. 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 taxpayer identification number.
- The employee's name and social security number.
- The date the ISO or ESPP option was granted to the employee.
- The date of the ISO exercise or ESPP purchase.
- The exercise price per share.
- The fair market value of a share of stock on the date the ISO exercised or ESPP purchase.
- The number of shares of stock transferred pursuant to the exercise of the ISO or ESPP purchase.

The employee information statement requirement may be satisfied by providing individuals with "Copy B" of Form 3921 (ISO exercises) or Form 3922 (ESPP purchases). "Copy A" of the same form is filed with the IRS and "Copy C" is retained by the employer for its records. Employers who are required to file ten or more Forms 3921, Forms 3922 or other types of information returns, in the aggregate, must file them electronically.

II. Filing Deadlines

The filing deadlines (for 2025 calendar year ISO exercises and ESPP purchases) for the Form 3921 and Form 3922 are as follows:

February 2, 2026: Forms 3921 and Forms 3922 must be provided to the employees.

March 2, 2026: Paper filers must file the Forms 3921 and Forms 3922 with the IRS.

March 31, 2026: Electronic filers must file the Forms 3921 and Forms 3922 electronically 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:

- $60 per form if correctly filed within 30 days after the due date (maximum of $683,000 per year or $239,000 for a small business).
- $130 per form if correctly filed more than 30 days after the due date but by August 1 (maximum of $2,049,000 per year or $683,000 for a small business).
- $340 per form if filed after August 1 or do not complete the required filings (maximum of $4,098,500 per year or $1,366,000 for a small business).
- For these purposes, a small business is one that has average annual gross receipts for the three most recent tax years of $5 million or less.

Penalties may not apply if an employer can show the late filing was due to reasonable cause and not willful neglect.

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