

## ISOs and ESPPs – Annual Notice Deadline Approaching

Companies that grant incentive stock options (ISOs) are required to provide information to any current or former employee who exercised an ISO during the preceding calendar year. The deadline for 2008 exercises is January 31, 2009.

A similar notice, with the same deadline, must be given to employees or former employees who transfer title to stock (for example, into a brokerage account, or to a purchaser) acquired, with minor exceptions, under an employee stock purchase plan qualifying under Code § 423 (an ESPP). The ESPP notice requirement applies only to the first transfer, does not apply in the unusual case where the strike price cannot be lower than the fair market value of the stock on the date the purchase right is granted, and may be satisfied on behalf of the company by its transfer agent or other person charged with maintaining the company's stock ownership records.

The IRS in July 2008 issued a set of proposed regulations that will change these information requirements, but for 2008 exercises/transfers employers still may rely on the existing rules (outlined below). (Compliance with the new requirements for 2008 is optional but will require the use of new IRS forms that have not yet been issued, although the IRS has indicated that they may be issued in time for the January 31 deadline.)

For ISO exercises, under existing rules, the notice must include the following information (there is no prescribed form):

1. Name, address, and employer identification number (EIN) of the corporation transferring the stock.
2. Name and address of the corporation whose stock was transferred (if different).
3. Name, address, and social security number (SSN) of the person to whom the stock was transferred (upon exercise).
4. Date the ISO was granted.
5. Date the ISO was exercised (date of the transfer of the stock).
6. Number of shares transferred upon exercise.
7. Total fair market value (at time of exercise) of the acquired stock.
8. Type of option exercised (i.e., the option should be identified as an ISO).
9. Total exercise price paid for the stock

For ESPP stock transfers, the notice given by the company (or its transfer agent) must include the following information (again, there is no prescribed form):

1. Name and address of the corporation whose stock was transferred.
2. Name, address, and SSN of the transferor (the participant).

3. Date the stock was acquired by the participant.
4. Number of shares transferred.
5. Type of option (i.e., the purchase right should be identified as one under an ESPP).

In each case, the notice may be sent electronically if the employee consents to electronic delivery.

A company that is unable to comply with the January 31 notice deadline may apply by January 31 for an extension of up to 30 days by contacting:

Director  
Martinsburg Computing Center  
250 Murrall Drive  
Kearneysville, WV 25430

Requests will be granted only for good cause, and an application must include a full statement of the reasons for the request.

For additional information, please feel free to contact any member of Ropes & Gray's [Tax & Benefits Department](#).

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