

Notice 2008-8

Information Reporting Requirements Under Internal Revenue Code § 6039

SECTION 1. PURPOSE

This notice provides interim guidance with respect to the information returns required by § 6039 of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 403 of the Tax Relief and Health Care Act of 2006 (Act) amended the information reporting requirements of § 6039. Prior to its amendment, § 6039 required corporations to furnish a written statement to each employee, in a manner prescribed by the Secretary in regulations, regarding: (i) the corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in § 422(b); and (ii) transfers of stock by the employee where the stock was acquired pursuant to the exercise of an option described § 423(c). Corporations must furnish the statements required by § 6039 on or before January 31 of the year following the year for which the statement is required.

As amended by the Act, § 6039 requires corporations to make an information return with the IRS, in addition to providing employees with an information statement, following a stock transfer. The time and manner for making a return with the IRS, as well as the information to be contained in the return and furnished to employees, is to be set forth in regulations. Section 6039, as amended by the Act, applies to stock transfers occurring on or after January 1, 2007.

Prior to the amendment made by the Act, the Treasury Department and the IRS issued regulation § 1.6039-1 effective on August 3, 2004. Section 1.6039-1(a) enumerates the information that must be furnished to employees with respect to stock transfers relating to the employee's exercise of an incentive stock option. It provides that the statement the corporation furnishes to the employee must include the following information --

- (1) The name, address, and employer identification number of the corporation transferring the stock;
- (2) The name, address, and identifying number of the person to whom the share or shares of stock were transferred;
- (3) The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);
- (4) The date the option was granted;
- (5) The date the shares were transferred to the person exercising the option;
- (6) The fair market value of the stock at the time the option was exercised;
- (7) The number of shares of stock transferred pursuant to the option;
- (8) The type of option under which the transferred shares were acquired; and
- (9) The total cost of all the shares.

Section 1.6039-1(b) lists the information that must be furnished to employees who transfer stock acquired pursuant to an option granted under an employee stock purchase plan. It provides that the statement the corporation furnishes to the employee must include the following information --

- (1) The name and address of the corporation whose stock is being transferred;
- (2) The name, address, and identifying number of the transferor;
- (3) The date such stock was transferred to the transferor;
- (4) The number of shares to which title is being transferred; and
- (5) The type of option under which the transferred shares were acquired.

SECTION 3. ISSUANCE OF REGULATIONS AND INTERIM REPORTING

The Treasury Department and the IRS intend to issue regulations that prescribe rules relating to the information return requirements contained in § 6039, as amended by the Act. The Treasury Department and the IRS expect that the forthcoming regulations generally will retain the existing rules contained in § 1.6039-1, relating to the information statements to be provided to employees, and generally require that the same information be included in the information returns made with the IRS. The Treasury Department and the IRS also expect that the new § 6039 regulations will be effective retroactively to January 1, 2007.

Because regulations under § 6039 have not yet been issued, the IRS is waiving the obligation to make an information return for 2007 stock transfers governed by § 6039. However, corporations should continue to furnish to employees the information required by, and in accordance with, existing § 1.6039-1, with respect to such stock transfers.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Tom Scholz of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Mr. Scholz at (202) 622-6030 (not a toll-free call).