

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-103146-08]

RIN 1545-BH69

**Information Reporting Requirements
Under Internal Revenue Code Section
6039****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the return and information statement requirements under section 6039 of the Internal Revenue Code (Code). These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006. These proposed regulations affect corporations that issue statutory stock options and provide guidance to assist corporations in complying with the return and information statement requirements under section 6039.

DATES: Written or electronic comments and requests for a public hearing must be received by October 15, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103146-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-103146-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-103146-08).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Thomas Scholz at (202) 622-6030 (not a toll-free number); concerning submissions of comments and/or to request a hearing, Richard Hurst at Richard.A.Hurst@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and

Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by September 15, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in § 1.6039-1 and § 1.6039-2. Section 6039 requires corporations to file an information return with the IRS and 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 section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). The information on the statements required to be provided by the corporation will be used by employees to complete their income tax returns in the year of the disposition of the stock acquired pursuant to the statutory stock option. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 25,000 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 403 of the Tax Relief and Health Care Act of 2006 (Act) amended the information reporting requirements of section 6039. Prior to its amendment, section 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 section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). Corporations must furnish employees with the information statements required by section 6039 on or before January 31 of the year following the year for which the statement is required. Prior to the amendment of section 6039 made by the Act, the regulations under section 6039 were last updated in 2004. See TD 9144 (69 FR 46401).

As amended by the Act, section 6039 requires corporations to file an information return with the IRS, in addition to providing employees with an information statement, following a stock transfer. The time and manner for filing a return with the IRS, as well as the information to be contained in the return and furnished to employees, is addressed in these proposed regulations. Section 6039, as amended by the Act, applies to stock transfers occurring on or after January 1, 2007. However, in Notice 2008-8, 2008-3 IRB 276 (December 19, 2007) (see § 601.601(d)(2)(ii)(b)), the IRS waived the obligation to file an information return for 2007 stock transfers governed by section 6039.

Explanation of Provisions

These proposed regulations describe the information that would be required in the return filed with the IRS and the information statement furnished to employees pursuant to section 6039. There are two sections under these proposed regulations: § 1.6039-1, Returns required in connection with certain options; and § 1.6039-2, Statements to persons with respect to whom information is reported. In crafting these proposed regulations, one

principal objective was to require corporations to furnish employees with sufficient information to enable them to calculate their tax obligations upon disposition of the shares acquired by the exercise of a statutory option. Under these proposed regulations, essentially the same information would be reported with respect to the transfer of stock pursuant to the exercise of an incentive stock option and the transfer of stock acquired pursuant to an employee stock purchase plan.

With respect to a transfer of stock upon the exercise of an incentive stock option, the information required to be furnished to employees pursuant to the existing regulations under § 1.6039-1 is sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Therefore, the information that would be required in the information return and the statement furnished to employees under these proposed regulations is generally the same information that is included in the statement furnished to employees pursuant to the existing regulations under § 1.6039-1. With respect to an employee's transfer of stock acquired under an employee stock purchase plan, the information required to be furnished to employees pursuant to the existing regulations under § 1.6039-1 is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, these proposed regulations would require that additional information be included in the information return and the statement furnished to employees.

As discussed further in the preamble, the IRS will issue two forms with instructions that corporations must use to satisfy the return and information statement requirements under section 6039.

1. Returns Required With Respect to Incentive Stock Options

Section 1.6039-1(a) of these proposed regulations would require every corporation that transfers stock pursuant to an employee's exercise of an incentive stock option described in section 422(b) to file a return with respect to each transfer made during a particular year. This return would include the following information:

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in (i), the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to

whom the share or shares of stock were transferred pursuant to the exercise of the option;

- (iv) The date the option was granted to the person;
- (v) The exercise price per share;
- (vi) The date the option was exercised by the person;
- (vii) The fair market value of a share of stock on the date the option was exercised by the person; and
- (viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

The information required to be included on the information return pursuant to these proposed regulations is generally the same information that is required to be furnished to employees pursuant to the existing regulations. However, while the existing regulations require that the corporation report the total cost of all shares acquired, these proposed regulations would require instead that the corporation report the exercise price per share. The exercise price per share, rather than the total cost of all shares acquired, is more readily useable by the employee in calculating the tax obligation when the employee later disposes of some or all of the shares.

Returns required by § 1.6039-1(a) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3921 later this year.

2. Returns Required With Respect to Stock Purchased Under an Employee Stock Purchase Plan

Section 1.6039-1(b) of these proposed regulations would require every corporation which records a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c) to file a return with respect to each transfer made during a particular year. This return would include the following information:

- (i) The name, address, and identifying number of the transferor;
- (ii) The name, address and employer identification number of the corporation whose stock is being transferred;
- (iii) The date the option was granted to the transferor;
- (iv) The fair market value of the stock on the date the option was granted;
- (v) The exercise price per share;

(vi) The date the option was exercised by the transferor;

(vii) The fair market value of the stock on the date the option was exercised by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

These proposed regulations would require that all of the information required pursuant to the existing regulations be included on the information statement furnished to employees. However, the information required to be furnished to employees pursuant to the existing regulations is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, items (iii), (iv), (v), (vi) and (vii) in the list in the preceding paragraph would request new information that is not required to be reported under the existing regulations. This additional information, along with the information required under the existing regulations, will enable the employee to determine his or her tax obligations upon the disposition of shares.

Returns required by § 1.6039-1(b) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3922 later this year.

3. Information Statements Required With Respect to Incentive Stock Options

Section 1.6039-2(a) of these proposed regulations would require every corporation filing a return under § 1.6039-1(a) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made to such employee during such year. Each information statement required by § 1.6039-2(a) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under § 1.6039-1(a) is made. Such information statements must be furnished to employees on Form 3921 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under § 1.6039-

1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3921 (or its designated successor).

4. Information Statements Required With Respect to Stock Purchased Under an Employee Stock Purchase Plan

Section 1.6039-2(b) of these proposed regulations would require every corporation filing a return under § 1.6039-1(b) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made by the employee during such year. Each information statement required by § 1.6039-2(b) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under § 1.6039-1(b) is made. Such information statements must be furnished to employees on Form 3922 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under § 1.6039-1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3922 (or its designated successor).

Proposed Effective Date

These regulations under section 6039 are proposed to apply to any stock transfer occurring on or after January 1, 2007. However, corporations are not required to comply with the return requirements of § 1.6039-1(a) and (b) for stock transfers that occur during the 2007 and 2008 calendar years. Notwithstanding the waiver of the return requirements for 2007 and 2008 stock transfers, corporations must furnish information statements to employees for such 2007 and 2008 stock transfers. For purposes of furnishing information statements for 2007 and 2008 stock transfers, corporations may rely on § 1.6039-1 of the 2004 final regulations (TD 9144) or § 1.6039-2 of these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the filing of a return with the IRS and the provision of employee statements required under these proposed regulations will impose a minimal administrative burden on small

entities. It is estimated that it will take approximately 30 minutes to prepare and provide the information required by these regulations. Further, the information to be provided is readily available. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Thomas Scholz, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6039-1 is revised to read as follows:

§ 1.6039-1 Returns required in connection with certain options.

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which

in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar year, file a return with respect each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor pursuant to the transferor's exercise of an option granted under an employee stock purchase plan and described in section 423(c) (relating to the special rule where the option price is between 85 percent and 100 percent of value of the stock), shall, for such calendar year, file a return with respect each transfer made during such year. This return must include the following information—

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The exercise price per share;

(vi) The date the option was exercised by the transferor;

(vii) The fair market value of the stock on the date the option was exercised by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to file a return relating to the transfer of record title to the broker or financial institution. Similarly, a return is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, the return required by this paragraph shall be filed with respect to the first transfer of the title to such stock by the optionee.

(4) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for filing returns—(1) In general.* Each return required by this section for a calendar year must be filed on or before January 31 of the year following the year for which the return is required.

(2) *Extension of time.* An extension of time to file returns required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty provided for failure to file a return under this section, see section 6721.

(e) *Effective/applicability date*—(1) *In general*. Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Transition period*. Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this section for stock transfers that occur during the 2007 and 2008 calendar years.

Par. 3. A new § 1.6039-2 is added to read as follows:

§ 1.6039-2 Statements to persons with respect to whom information is reported.

(a) *Requirement of statement with respect to incentive stock options under section 6039(b)*. (1) Every corporation filing a return under § 1.6039-1(a) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made to such person during such year. This statement must include the information described in § 1.6039-1(a)(1).

(2) Each statement required by this paragraph (a) to be furnished to any person must be furnished to such person on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2)*. (1) Every corporation filing a return under § 1.6039-1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in § 1.6039-1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such

corporation on behalf of such corporation.

(c) *Time for furnishing statements*—(1) *In general*. Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time*. An extension of time to furnish statements required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty*. For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(e) *Effective/applicability date*—(1) *In general*. Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Reliance and transition period*. For stock transfers that are subject to the return requirements under § 1.6039-1(a) and (b), and occur during the 2007 and 2008 calendar years, taxpayers may comply with § 1.6039-1 of the 2004 final regulations (69 FR 46401) or this section.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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