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## CLIENT ALERT

Corporate Update

January 5, 2017

### **January 31, 2017 Deadline For Notices to Employees Who Purchased Stock in 2016 Through Stock Options or Employee Stock Purchase Plans**

This is a reminder for corporations that issue stock options of deadlines for various tax notices and IRS filings that are due beginning January 31, 2017.

**INCENTIVE STOCK OPTION NOTICES AND IRS INFORMATION RETURNS** – A corporation must notify employees and former employees who exercised an incentive stock option, or ISO, in 2016 of certain details of the exercise, including the exercise price and the fair market value of the shares at the time of exercise. The notice must be given using IRS Form 3921 (employee copy B) by January 31, 2017. Although an optionee does not have income for purposes of regular income tax on exercise of an ISO, the spread between the fair market value and the exercise price of the stock is an item of income for computing the optionee's alternative minimum taxable income, or AMTI. The information is needed by the optionee to determine whether any additional tax on AMTI is due on his or her 2016 income tax return.

A separate notice is required for each exercise. For example, if an employee exercised ISOs at two different dates in 2016, two Forms 3921 would be required.

In addition to notifying employees, the corporation must file the Forms 3921 with the IRS. The deadline for filing the Forms is February 28, 2017, or March 31, 2017 if filed electronically. Electronic filing is required if 250 or more Forms must be filed. Filing with the IRS requires the use of the appropriate transmittal form.

**EMPLOYEE STOCK PURCHASE PLAN NOTICES** – The same type of notice must be given to employees who purchased stock at a discount from an employee stock purchase plan, or ESPP, in 2016. This notice is also due January 31, 2017, and is given with IRS Form 3922 (employee copy B), with copies to the IRS by February 28, 2017, or March 31, 2017 if filed electronically. Electronic filing with the IRS is required if 250 or more Forms must be filed. Filing with the IRS requires the use of the appropriate transmittal form.

**PENALTIES** – Failure to give the required notices for ISOs or ESPPs could result in a penalty for the corporation of up to \$100 per notice. The amount of the penalty varies depending upon the length of time that the notices were late. The penalties may be waived by the IRS if the filer can give reasonable cause for the late filing.

**FORMS** – Forms can be ordered by calling 1-800-TAX-FORM (1-800-829-3676) or by going to the IRS website ([www.irs.gov](http://www.irs.gov)) and the section called “Order Information Returns and Employer Returns Online”. These forms must be ordered because the information returns are scanned by the IRS, which does not accept copies of forms downloaded from the internet.

**NONSTATUTORY STOCK OPTION REPORTING** – Exercise of a nonstatutory stock option in 2016 usually results in income that must be reported on Form W-2 for an employee, and on Form 1099-MISC for a consultant or director. The due date for providing the Form W-2 to an employee is January 31, 2017, and the due date for providing the applicable form to the IRS is February 28, 2017. For employees, the amount of income (generally the spread between the fair market value and the exercise price) must be included in Boxes 1, 3, and 5 of the Form W-2, and also included separately in Box 12 and designated with a “V”.

For consultants and directors, the spread is included in the “Nonemployee Compensation” Box 7 of Form 1099-MISC if total compensation from the company for the individual is \$600 or more. The Form 1099-MISC must be provided to the non-employee and filed with the IRS by January 31, 2017.

If you have any questions, feel free to call (919-781-4000) or e-mail your Wyrick Robbins contact or one of the following members of our Employee Benefits & Executive Compensation group: **Gray Hutchison** ([ghutchison@wyrick.com](mailto:ghutchison@wyrick.com)) or **Richard Rogers** ([rrogers@wyrick.com](mailto:rrogers@wyrick.com)).

NOTICE: This Client Alert provides merely an overview and summary information regarding the requirements for these notices and filings. Please note that not all potential details and nuances have been addressed, and this Client Alert does not involve analysis of specific facts concerning your company or reach any conclusion with respect to any material federal tax issues for any specific taxpayer.