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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ELAINE TINKER
NEW ENGLAND DISTRICT REVENUE AGENT
GROUP 1226

FROM: George J. Blaine, Chief, Branch 1
(Income Tax and Accounting)
CC:DOM:IT&A:01

SUBJECT: Section 6039

This responds to your memorandum dated December 23, 1999, posing five questions about section 6039 of the Internal Revenue Code ("Code").

DISCUSSION

Initially, section 6039(a) of the Code required that every corporation make a return to the Internal Revenue Service ("Service") in connection with the transfer or recordation of transfer of a share of stock acquired by any person pursuant to their exercise of a qualified stock option or a restricted stock option. This return requirement was repealed through an amendment to the Code effected by P.L. 96-167, effective December 31, 1979. In addition to repealing the return requirement, the amendment added a written statement requirement, refined by P.L. 101-508, effective July 22, 1998.

Section 6039(a)(1) Treatment of Incentive Stock Option Plans

Currently, section 6039(a)(1) of the Code requires a corporation to furnish a statement in connection with the transfer of stock acquired by an employee of the corporation pursuant to his or her exercise of a section 422(b) incentive stock option. The corporation must furnish the written statement to the employee upon the transfer of legal title of the stock to the employee. The employee's exercise of his or her option to acquire stock pursuant to the incentive stock option plan does not trigger the section 6039 statement requirement. Rather, the corporation is required to provide the written statement to the employee only when the corporation actually transfers legal title to such stock to the employee.

Section 6039(a)(2) Treatment of Employee Stock Purchase Plans

Currently, section 6039(a)(2) of the Code requires a corporation to furnish a statement in connection with the transfer of stock acquired by an employee of the corporation under a section 423(b) employee stock purchase plan. The corporation must furnish a written statement to the employee upon the transfer of legal title to the stock to such employee. Section 6039(b)(2) clarifies that the written statement is required for the first transfer of legal title to the stock acquired under section 6039(a)(2). For example, in some cases, an employee acquires stock under section 423(b) but does not immediately take legal title to the stock. Rather, a transfer agent of the corporation or a nominee agent holds the stock on behalf of the employee. In those cases where the employee does not take legal title but directs the agent holding the stock to transfer legal title to another party (e.g., a bona fide purchaser), the corporation must furnish a written statement to the employee upon that first transfer of legal title to the stock.

Form Requirements of the Written Statement

Section 6039 requires that the written statement which is to be provided to the employee by the corporation must be furnished in such manner and must set forth such information as the Secretary may by regulations prescribe. The Secretary has prescribed the form and content of the required statement in Treas. Reg. §§ 1.6039-1(a)(1) through (9) and 1.6039-1(b)(2)(i) through (v).

CONCLUSIONS

We address your questions in order.

1. Section 6039(a)(1) pertains to the transfer of legal title of stock acquired by an employee pursuant to his or her exercise of a section 422(b) stock option. Section 6039(a)(2) pertains to the first transfer of legal title of stock acquired by an employee under a section 423(b) employee stock purchase plan.
2. Section 6039 no longer requires that a corporation file an information return in connection with the transfer or recordation of a transfer of a share of stock. However, section 6039 continues to require a corporation to issue a written statement in connection with such transfer or recordation.
3. Private Letter Ruling 9117022 (attached) follows Treas. Reg. § 1.6039-1(b)(3), and is consistent with the statute's written statement requirement. Section 6039(b)(2) of the Code explains that the written statement requirement applies only to the corporation's first transfer of legal title to the stock acquired by an employee under section 423(b). The written statement requirement does not apply to the

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transfer of the stock to the corporation's transfer agent or a nominee agent on behalf of the employee.

4. Forms 3921 and 3922 no longer exist. A statement prepared by the corporation, its transfer agent, or a nominee agent containing the information specified in Treas. Reg. §§ 1.6039-1(a)(1) through (9) and 1.6039-1(b)(2)(i) through (v) is sufficient to meet the written statement requirement.

5. The penalty for the failure to provide a statement under section § 6039 of the Code is found at Treas. Reg. § 301.6678-1. Such penalty is to be paid by the person who fails to furnish the statement. The amount of the penalty is \$10 for each statement not so furnished, with the total amount imposed on the delinquent person for all such failures during a calendar year not to exceed \$25,000. The corporation is subject to the penalty, regardless of whether it transfers legal title to the stock directly or through its transfer agent or a nominee agent.

If you have any questions please do not hesitate to contact Robert A. Desilets, Jr., IRS Badge # 50-14186, at (202) 622-4910.