

DATES: Written and electronically submitted comments and requests to speak, with outlines of topics to be discussed at the public hearing scheduled for September 2, 2003, must be received by August 12, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG-122917-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG-122917-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site www.irs.gov/regs. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Erinn Madden at (202) 622-6030 (not a toll-free number). To be placed on the attendance list for the hearing, please contact Guy Traynor at (202) 622-7180.

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, W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by August 8, 2003. 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 (*see below*);

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 this proposed regulation is in 1.6039-1. Section 6039 of the Code requires all corporations that transfer stock to any person pursuant to the exercise of a statutory option to furnish that person with a written statement describing the transfer. Additionally, the corporation may be required to furnish the person a second written statement when the stock originally transferred pursuant to the exercise of the statutory option is subsequently disposed of by the person. The information on the statements required to be provided by the corporation will be used by recipients to complete their income tax returns in the year of the disposition of the statutory option stock. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 16,650 hours.

Estimated average annual burden hours per respondent: 20 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

This document contains proposed amendments to 26 CFR part 1 under sections 421, 422, and, 424 of the Internal Revenue Code (Code). Changes to the applicable tax law concerning section 421 were made by sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-508 (104 Stat. 1388). Changes to the applicable tax law concerning section 424 were made by section 1003 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100-647 (102 Stat. 3581), sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101-508 (104 Stat. 1388), which included re-designating section 425 as section 424 of

the Code, and section 1702(h) of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755). Changes concerning section 422 were made by section 251 of the Economic Recovery Tax Act of 1981 (95 Stat. 172), which added section 422A to the Code. Related changes to section 422A were made by section 102(j) of the Technical Corrections Act of 1982, Public Law 97-448, section 321(a) of Tax Reform Act of 1986 (96 Stat. 2365), Public Law 99-514 (100 Stat. 2807), section 1003(d) of TAMRA, and sections 11801 and 11821 of OBRA 89, which included re-designating section 422A as section 422 of the Code.

Regulations under section 421 governing the requirements for restricted stock options and qualified stock options, as well as options granted under an employee stock purchase plan, were published in the **Federal Register** on December 9, 1957 (TD 6276), November 26, 1960 (TD 6500), January 18, 1961 (TD 6527), January 20, 1961 (TD 6540), December 12, 1963 (TD 6696), June 23, 1966 (TD 6887), July 24, 1978 (TD 7554), and November 3, 1980 (TD 7728). Temporary regulations under section 422A providing guidance and transitional rules related to incentive stock options were published in the **Federal Register** on December 17, 1981 (TD 7799) and September 18, 1992 (TD 8435). Final regulations under section 422 related to stockholder approval were published in the **Federal Register** on December 1, 1988 (TD 8235) and November 29, 1991 (TD 8374). Regulations under section 425 were published in the **Federal Register** on June 23, 1966 (TD 6887).

Proposed changes to the final regulations under sections 421, 424, and 6039 and proposed regulations under section 422A were previously published in the **Federal Register** at 49 FR 4504 on February 7, 1984 (the 1984 proposed regulations). With the exception of certain stockholder approval rules that were published in the **Federal Register** on June 23, 1966 (TD 6887) and amended by TD 7728 on October 31, 1980, the 1984 proposed regulations provided a comprehensive set of rules under section 422 of the Code. The 1984 proposed regulations are withdrawn.

In general, the income tax treatment of the grant of an option to purchase stock in connection with the performance of services and of the transfer of stock pursuant to the exercise of such option is determined under section 83 of the Code and the regulations thereunder. However, section 421 of the Code provides special rules for determining the income tax treatment of the transfer of shares of