

P, adopts a plan under which incentive stock options for S stock will be granted to S employees. Under the proposed regulations, the stockholders of S must approve the plan within 12 months before or after the adoption of the plan. If P later completely disposes of its interest in S, outstanding S options and new grants of S options under the plan are treated as options granted under a plan that meets the stockholder approval requirement of § 1.422-2(b)(2) of these proposed regulations without regard to whether S seeks approval of the plan from the stockholders of S after the spin-off. Assuming all other applicable requirements are met, the outstanding S options and new options granted by S pursuant to the plan with respect to S stock will be treated as incentive stock options.

These proposed regulations also would provide additional guidance with respect to when a change to an option constitutes a modification. Under these proposed regulations, as under the 1984 proposed regulations, both a provision under an option that provides that the optionee may receive an additional benefit at the future discretion of the granting corporation and the exercise of that discretion are considered modifications of the option. However, under these proposed regulations, it is not a modification for the granting corporation to exercise discretion related to the payment of a bonus at the time of the exercise of the option, the availability of a loan at exercise, or the right to tender previously-owned stock for the stock purchasable under the option. A change to an option adding such discretion, however, would be a modification.

In addition, these proposed regulations address more clearly changes related to an option, including changes not only to the option or the option plan, but also changes to any other related agreements. In the case of a change to the stock on which the option is granted that affects the value of the stock, there would be a modification unless a new option is substituted for the old option by reason of the change in the terms of the stock in accordance with the requirements of § 1.424-1(a) of these proposed regulations.

Section 6039

These proposed regulations also would provide guidance on the statements required under section 6039 of the Code. Under these proposed regulations, § 1.6039-1 of the final regulations would be deleted, and § 1.6039-2 would be re-designated as § 1.6039-1. These proposed regulations

take the same approach toward providing notice as that taken in the 1984 proposed regulations.

Section 1.6039-1(f) of these proposed regulations states that the matter of furnishing statements in electronic form is reserved. Temporary and proposed regulations have been issued under sections 6041 and 6051 (relating to voluntary electronic furnishing of payee statements on Form W-2) and section 6050S (relating to voluntary electronic furnishing of statements to individuals for whom Forms 1098-T, "Tuition Payments Statement," and 1098-E, "Student Loan Interest Statement" are filed). See 66 FR 10191 and 10247 (Feb. 14, 2001). The preamble to those temporary and proposed regulations requested comments regarding, among other things, the extent to which the proposed method of electronic filing is appropriate for information statements required under other sections of the Code. In addition, section 401 of the Job Creation and Worker Assistance Act of 2002 authorized all statements required by sections 6041 through 6050T of the Code to be furnished electronically under certain conditions. The issue of electronic statements in general is under review, and comments are requested.

Proposed Effective Date

The regulations under sections 421, 422, and 424 are proposed to apply as of the date that is 180 days after publication of final regulations in the **Federal Register** and apply to any statutory option that is granted on or after that date. The regulations under section 6039 are proposed to apply to transfers on or after the date that is 180 days after publication of final regulations in the **Federal Register** of stock acquired pursuant to a statutory option. The 1984 proposed regulations are withdrawn. Taxpayers may rely on these proposed regulations for the treatment of any statutory option granted after June 9, 2003.

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. Section 1.6039-1 of these proposed regulations provides for the collection of information. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the provision of employee statements provided under these proposed regulations will impose a minimal

paperwork burden on most small entities (see the discussion under the heading "Paperwork Reduction Act" earlier in this preamble). Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking is being submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 2, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Erinn Madden, 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 Parts 1 and 14a

Income taxes, Reporting and recordkeeping requirements.