

Statutory and Nonstatutory Stock Option Comparison

Issue	Statutory Stock Options (ISO)	Nonstatutory Stock Options (Assumes no readily ascertainable FMV)	Nonstatutory Stock Options (Assumes readily ascertainable FMV)
Governing Code section	§421, §422	§83	§83

Taxation of Employee

At time of grant	No taxable event.	No taxable event (assumes that options do not have a readily ascertainable fair market value - i.e. not actively traded on an established market.	<p>The spread between the fair market value at the date of grant and the amount paid for the option is taxable income.</p> <p>Basis is equal to the amount paid for the option plus the income recognized.</p> <p>Holding period for option begins on date of grant.</p>
Lapse of option	No taxable event.	No taxable event.	Deemed to be a sale or exchange with amount realized being zero. Capital loss rules would apply.

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At time of exercise	<p>No impact on regular tax provided all qualifications are met.</p> <p>For AMT purposes, the spread between the fair market value at the date of exercise and the exercise price is an AMT adjustment.</p> <p>Basis is equal to the amount paid (usually -0-).</p>	<p>The spread between the fair market value at the date of exercise and the exercise price is taxable income.</p> <p>No AMT adjustments.</p> <p>Basis is equal to the amount paid plus the income recognized (fair market value).</p> <p>Holding period begins on the date of exercise.</p>	<p>No taxable event.</p> <p>Basis in stock is equal to the basis in the option exercised plus any amount paid to exercise.</p> <p>Holding period of stock begins on the date of exercise. Holding period of option does not tack on.</p>
Required holding period before disposition	<p>ISO stock must be held for the later of two years from the date of grant, or one year from the date of exercise. Failure to comply with this rule results in a disqualifying disposition.</p>	<p>None.</p>	<p>None.</p>

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Dispositions of stock	<p>If after required holding period, capital gain or loss to the extent of the spread between the amount received and the adjusted basis.</p> <p>If a disqualifying disposition, compensation to the extent the fair market value at the date of exercise exceeds the exercise price. The difference between the amount received and the new basis (exercise price plus additional compensation recognized on the disqualifying disposition) is capital gain. The amount of compensation cannot exceed the total amount realized on the disposition.</p>	<p>Capital gain or loss to the extent of the spread between the amount received and the adjusted basis.</p>	<p>Capital gain or loss to the extent of the spread between the amount received and the adjusted basis.</p>

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<u>Taxation of Employer</u>			
At time of grant	No taxable event.	No taxable event.	Compensation deduction is allowed in the same amount as the income reported by the employee. The deduction is allowed in the tax year in which the employee's tax year ends. Other normal compensation deduction limitations are applicable (i.e. reasonable compensation).
At time of exercise	No taxable event. Amount received (if any) as the exercise price is considered received in transfer of the ISO stock.	Compensation deduction is allowed in the same amount as the income reported by the employee. The deduction is allowed in the tax year in which the employee's tax year ends. Other normal compensation deduction limitations are applicable (i.e. reasonable compensation).	No taxable event.
Dispositions of stock	No taxable event upon a qualified disposition. Upon a disqualifying disposition, the employer may deduct in the year of the disqualifying disposition as compensation the amount the employee recognizes as compensation income due to the disqualifying disposition.	No impact on employer.	No impact on employer.

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Informational reporting requirements	Upon disqualifying dispositions, the compensation is reported in an employee's W-2. Non-employees receive a 1099-MISC.	Employees receive additional compensation in their W-2, non-employees (e.g. directors) receive a 1099-MISC.	Employees receive additional compensation in their W-2, non-employees (e.g. directors) receive a 1099-MISC.
Withholding requirements	No withholding requirements, even for the compensation as a result of a disqualifying disposition. Compensation is not considered wages for purposes of FICA or FUTA.	Employment taxes (FICA, FUTA, and income tax) are required to be withheld on the additional compensation to employees. For non-employer-employee relationships, no withholding is required.	Employment taxes (FICA, FUTA, and income tax) are required to be withheld on the additional compensation to employees. For non-employer-employee relationships, no withholding is required.

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