



SOS Educational Webcast: Death & Divorce: Don't Let These "Taxing" Events Take Their Toll On You

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Materials Slides

<http://www.sos-team.com/pdfs/death & divorce.pdf>

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Agenda

- Death:
 - Taxation of equity awards
 - Year end reporting
 - Financial reporting issues

- Divorce:
 - Taxation of equity awards
 - Administrative issues
 - Year end reporting
 - Financial reporting issues

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Death

- **Plan:**
 - What does your plan say about death of an employee?
 - 100% vest upon death? Accelerations? All Equity?
 - Do you collect beneficiary forms? Should you?
- **Broker/Plan Provider requirements:**
 - Documentation needed to set up account for estate.
- **Tax:**
 - ISOs:
 - ISOs can't be transferred, can they?
 - If the optionee exercises an ISO before death, tax treatment for estate at sale? Is this a DD?

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Death: (continued)

- **NQs:**
 - If still in the employee's name and exercised in the year of death, income is included on final W-2 and employer required to withhold federal income tax and FICA/FUTA.
 - If bequeathed specifically to a beneficiary, beneficiary has ordinary income at exercise.
 - NQ exercise: FIT withholding not required. FICA to be withheld if exercise happens in year of employee death.
 - Income for estate to be reported on Form 1099-MISC, if FICA withheld, should be reported on employee's W-2.
 - Once NQ becomes part of estate, or exercised the year after employee's death, no withholding required.

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Death: (continued)

- **ESPP:** Is transfer of ESPP shares a disposition?
- **Restricted Stock** (if no 83b election in place and stock vests upon employee's death):
 - Income is included in the year of the employee's death, required to withhold federal income tax and FICA.
 - If shares are released to beneficiary/estate, company is not required to withhold FIT.
- **Option/Award acceleration:** No FICA/FUTA due on this portion.
- **Year End reporting:**
 - Transactions in the year of death: reported on Form W-2
 - Transactions after the year of death: reported on a 1099-MISC made out in the name of the estate.

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Death: (continued)

- **Stock Compensation Expense considerations:**
 - Vest acceleration and impact on financials?
 - Transfer of options? Impact on financials?

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Divorce

- **Plan Design:**
 - Transferable options and awards?
- **Broker requirements:**
 - Do you require non-employee former spouse (NEFS) to use captive broker?
 - Award Acceptance?
- **Administrative Issues:**
 - Information requests from NEFS?
 - Withholding on future vesting, exercises



Divorce (continued)

- **Tax**
 - Are the underlying options/awards retained by employee?
 - Are the underlying options/awards transferred to NEFS?
 - ISO: Tax Court Revenue Ruling 2002-22 in 2005
 - Are proceeds resulting from options/awards sales transferred to NEFS?
 - ESPP: Transfer of shares (once purchased) to NEFS not a disposition. NEFS subject to tracking, must follow disposition rules.
 - Most likely, NEFS will have to go on payroll. But can you put them there?



Divorce (continued)

- Stock Based Compensation Expense
 - Transfer or split awards?
 - If split, make sure to note details of original award prior to cancellation
 - Make sure to tie out expense, post split.
 - Auditors: New awards will appear on expense reports. Be prepared with explanation.

Resources

- Your equity plan and agreements/forms:
 - What does it say regarding vesting at death?
 - Do you accept beneficiary forms?
 - Are options transferable in cases of divorce?
- Internal Revenue Code Sections 421 and 422.
- Internal Revenue Code Section 3121(a)(13) and (14).
- Outside counsel
- Tax advisory firm/accountants
- NASPP.com
- Selected Issues in Equity Compensation, 13th Edition
- The Stock Options Book, 17th Edition

Questions?

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