

Frederic W. Cook & Co., Inc.

New York • Chicago • Los Angeles

July 1, 2002

**Treasury Department and IRS Extend Moratorium
Related to the Imposition of Employment Taxes and Withholding Obligations
On Employee Stock Purchase Plans and Incentive Stock Options**

After months of public opposition to the imposition of employment (i.e., FICA and FUTA) taxes and tax withholding on employee stock purchase plans and incentive stock options, the Treasury Department and Internal Revenue Service, in Notice 2002-47, have indefinitely postponed the original January 1, 2003 effective date for the imposition of such taxes. The postponement gives the IRS time to further review the issue and the comments that it received. This comes after the IRS had previously extended the public comment period¹ for its proposed regulations (REG-142686-01²), and accompanying two notices (Notice 2001-72¹ and Notice 2001-73¹), which impose such employment taxes and provide guidance on easing the related administrative burden.

As a result of Notice 2002-47, incentive stock option exercises and purchases under employee stock purchase plans, as well as related share sales will not be subject to FICA or FUTA taxes or federal income tax withholding until a review of all public comments is completed and future guidance is issued. Disqualifying dispositions, however, will still be taxed as ordinary income, and companies will have continued reporting obligations in these cases. The notice also states that employers will not be required to implement the changes to their programs for more than two years after any regulations have been issued in final form (i.e., January 1 of the year beginning two years after final rules are issued).

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Specific questions concerning this topic should be addressed to corporate counsel. General questions may be addressed to Michael Chavira or Beverly Aisenbrey in our New York office at (212) 986-6330. Copies of this letter and other published material are available on our website at www.fwcook.com.

¹ See our January 28, 2002 letter, [IRS Extends Comment Period for Proposed Regulations on the Taxation of ESPP and ISOs](#).

² See our January 11, 2002 letter, [IRS Issues Proposed Regulations on the Taxation of Employee Stock Purchase Plans and Incentive Stock Options](#).