

## Proposed Regulations on IRC Section 6039

For companies who grant ISOs or have section 423-qualified ESPP plans, on July 17, 2008 the IRS released a notice of proposed rulemaking relating to Information Reporting Requirements of Section 6039.

This proposed guidance clarifies (and expands!) the new reporting requirement of Section 6039 (mandated by the Tax Relief and Healthcare Act of 2006.) Issuing firms have been required to report the effect of ISO exercises and ESPP transfers to participant under these requirements for years, but will need to begin reporting to the IRS beginning with transactions that occur in 2009. These proposed rules not only define the information that will need to be provided to the IRS and the timing of the reporting, they also expand the existing Section 6039 participant reporting requirements for ESPPs to include all of the information necessary for participants to compute their income tax (new elements include items such as market value on enrollment date).

The proposed rulemaking notice does exempt transactions for the calendar years 2007 and 2008, so reporting will not begin for some time. However, the following bullets summarize the contents of the release:

- Transactions occurring in 2007 and 2008 are exempt from the revised requirements
- ESPP disclosures have been expanded to include:
  - Enrollment date (“date the option was granted”)
  - Enrollment date market value (“fair market value of the stock on the date the option was granted”)
  - Purchase price (“exercise price per share”)
  - Purchase date (“date the option was exercised”)
  - Purchase date market value (“fair market value of the stock on the date the option was exercised by the transferor”)
- Returns must be filed with the IRS on Forms 3921 (for ISOs) and 3922 (for ESPPs)
- For transactions after January 1, 2009, these forms must also be used to report the information to employees
- Reporting must be completed by January 31 in the year following the calendar year in which the transaction occurred
- Comments on the proposed requirements are due to the IRS by October 15, 2008.

If you have questions on any portion of this article, please e-mail us at: [xtra@sos-team.com](mailto:xtra@sos-team.com).

**About Stock & Option Solutions**

Stock & Option Solutions is a leading provider of top-tier stock plan management and consulting services for companies offering equity compensation and benefit programs to its employees. For ten years, hundreds of organizations, from private start-ups to Fortune 500 companies, have relied on Stock & Option Solutions' expertise for strategic planning, methodologies and skilled resources to build and support the most effective stock plan programs possible.

For more information about our products or services, please contact us at:

[sales@sos-team.com](mailto:sales@sos-team.com)

888 SOS-0199 (888 767-0199)