

ELECTRONIC DELIVERY OF SECTION 6039 PARTICIPANT STATEMENTS

Section 6039 Participant Statements

Section 6039-1 requires companies that grant ISOs or provide 423-qualified ESPP plans to send a statement to participants that engaged in an ISO exercise or ESPP share transfer during the calendar year by January 31 of the following year. Though the IRS has released proposed regulations modifying parts of these regulations, the basic requirement for participant statements has not changed (though a specific format may be required once the regulations are finalized).

Based on a recent market research survey performed by SOS, most companies are still fulfilling this requirement via distribution of a paper form. Nearly 96% of companies that responded to the surveys were sending out paper surveys for ESPP, either at the time of the transfer, or later, at year end. And for ISOs, nearly 80% of respondents were sending paper participant statements for ISO exercises.

And why haven't companies begun sending these forms electronically? Well, until now, the IRS requirements for sending participant tax statements or forms electronically have *seemed* daunting. However, sending these statement electronically is actually much, much easier to manage and can take the burden of paper statements off your already hectic stock plan processes.

Electronic Delivery of Participant Statements

The most laborious of the requirements¹ for electronic delivery is the requirement to obtain participants' consent to deliver the forms electronically (negative consent is not acceptable). Further, the consents must be obtained in a manner that demonstrates the participant can access the statements electronically. In short-hand this means that you must use the same method to obtain consent that will be used to deliver the statement. For example, if the statement will be delivered via a website, the consent should also be collected via a website.

At SOS we believe that the easiest way to deliver statements electronically is via email. To make the email delivery compliant with the IRS requirements, simply send the request for consent out via email. (The email soliciting consent should also contain a number of required disclosures about the duration of consent, termination of consent, etc.) The participant could email consent to the stock plan group by replying to the email or print a form attached to the email and submit the consent via paper.

We have discussed this approach with a number of equity compensation professionals and legal experts and all felt that this complied with the IRS requirements.

A few additional requirements worth mentioning:

- When the form is emailed the subject line of the e-mail must contain: IMPORTANT TAX RETURN DOCUMENT AVAILABLE
- You must have a system for dealing with undelivered emails and a replacement paper document must be delivered within 30 days after undelivered email
- Corrected statements
 - If the original statement were furnished electronically, the corrected statement must also be furnished electronically
 - Corrected statement must be furnished by mail or in person if electronic notice of original statement were returned as undeliverable; and Recipient had not provided a new e-mail address

¹ http://www.irs.gov/irb/2004-11_IRB/ar10.html



Despite these requirements, emailing out 6039 statements is an easy way to alleviate a significant burden on your stock plan team, save money, save trees, and reduce the risk of error inherent in any manual process.

If you have questions regarding the electronic delivery of Section 6039 participant statements or would like more information, please contact SOS at 408.979-8700, 888.SOS-0199, or info@sos-team.com.

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