



**Stock & Option Solutions**

**Best in Show: Pedigreed Practices  
for 6039 Compliance**

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## Webcast Materials

<http://www.sos-team.com/PDFS/bestinshow.pdf>



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## Agenda

### Overview of Section 6039 Requirements

#### Pedigreed Practices

- Non-US employees
- SSNs
- Gain based on Sales Price for SDS
- Mergers
- Account Number
- Cover letters
- Email
- Filing Extensions
- Subsidiaries
- Returned mail
- "Important Tax Return Document"
- Fractional Shares
- TCC
- Grab bag
- Boneyard

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## Section 6039 Regulation Review

### Requirements

- Participant statements by 1/31
  - Substitute forms allowed – Pub 1179 rules apply
- IRS reporting
  - By 2/28 if paper (only for under 250 transactions)
  - By 4/2 if electronic (available to all, required if 250 or more transactions)
  - No substitute statements
- Transactions that trigger reporting
  - ISO exercises
  - 423-Qualified ESPP “First Transfer”
    - In most cases the purchase of shares will trigger reporting, if deposited into a brokerage account

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## Section 6039 Regulation References

### Final instructions

- <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf>
- <http://www.irs.gov/instructions/i1099gi/ar01.html>

### Publication 1179

- <http://www.irs.gov/pub/irs-pdf/p1179.pdf>
- Does not yet refer to 3921/3922

### Publication 1220

- <http://www.irs.gov/pub/irs-pdf/p1220.pdf>



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## Form 3921 – ISO Reporting

2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-2129		<b>Form 3921</b> (Rev. October 2010)	<b>Exercise of an Incentive Stock Option Under Section 422(b)</b>
TRANSFEROR'S name, street address, city, state, and ZIP code		1 Date option granted	2 Date option exercised		
TRANSFEROR'S federal identification number	EMPLOYEE'S identification number	3 Exercise price per share	4 Fair market value per share on exercise date	<b>Copy A</b> For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the most current version of the General Instructions for Certain Information Returns.	
EMPLOYEE'S name		\$	\$		
Street address (including apt. no.)		5 No. of shares transferred			
City, state, and ZIP code		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred			
Account number (see instructions)					

Form 3921 (Rev. October 2010) Cat. No. 411790 Department of the Treasury - Internal Revenue Service

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<http://www.irs.gov/pub/irs-pdf/f3921.pdf>

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## Form 3922 – ESPP Reporting

2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-2129		<b>Form 3922</b> (Rev. October 2010)	<b>Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)</b>
CORPORATION'S name, street address, city, state, and ZIP code		1 Date option granted	2 Date option exercised		
CORPORATION'S federal identification number	EMPLOYEE'S identification number	3 Fair market value per share on grant date	4 Fair market value per share on exercise date	<b>Copy A</b> For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the most current version of the General Instructions for Certain Information Returns.	
EMPLOYEE'S name		\$	\$		
Street address (including apt. no.)		5 Exercise price paid per share	6 No. of shares transferred		
City, state, and ZIP code		7 Date legal title transferred			
Account number (see instructions)		8 Exercise price per share determined as if the option was exercised on the date shown in box 1.			

Form 3922 (Rev. October 2010) Cat. No. 41180P Department of the Treasury - Internal Revenue Service

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<http://www.irs.gov/pub/irs-pdf/f3922.pdf>

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## Substitute Forms 3921 & 3922

### Publication 1179

- <http://www.irs.gov/pub/irs-pdf/p1179.pdf>
- Still does not refer to 3921 or 3922
  - Last updated in August 2008
  - But general instructions for 3921/3922 refer to 1179 for substitute details

### Requirements - format at discretion of filer except for:

- Must contain all applicable form recipient instructions provided on the front and back of official IRS form
- Tax year, form number, form name
- OMB Number "OMB No. 1545-2129"
- "Copy B"
- "All applicable money amounts and information, including box numbers, required to be reported to the form recipient must be titled on the form recipient statement in **substantially the same manner as those on the official IRS form.**" Pg. 21 of Pub 1179

## Substitute Forms 3921 & 3922

### Requirements (continued):

- "This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported."
- Box **numbers**
- Filer's and form recipient's identifying info
- Composite statement?
  - Any information required by the official IRS forms that would otherwise be repeated in each information block is required to be listed only once in the first information block on the composite form

# Sample Substitute Aggregate Form - 3922

Stock & Option Solutions, Inc.  
6399 San Ignacio Ave Suite 100  
San Jose, CA 95119

Transfer of Stock Acquired Through an Employee  
Stock Purchase Plan Under Section 423(c)  
Tax Year : 2010  
Form 3922  
OMB No. 1545-2129  
Copy B

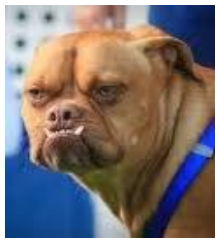
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**ORIGINAL**

Srinivas K'alakoti  
896 S Gomedvine Cir  
Trx Wbdmznds, 77687 USA

TRANSFEROR'S federal  
Identification number : 12-3456789

EMPLOYEE'S  
Identification number : 123456789



Date option granted (Box 1)	Date option exercised (Box 2)	Fair market value per share on grant date (Box 3)	Fair market value per share on exercise date (Box 4)	Exercise price paid per share (Box 5)	No. of shares transferred (Box 6)	Date legal title transferred (Box 7)	Exercise price per share determined as if the option was exercised on the date shown in box 1 (Box 8)
1/4/2009	2/26/2010	\$9.00	\$10.50	\$9.89	6.07	3/26/2010	\$7.65
1/4/2009	3/31/2010	\$9.00	\$10.50	\$10.32	5.82	4/30/2010	\$7.65
1/4/2009	4/30/2010	\$9.00	\$10.50	\$11.64	5.15	5/30/2010	\$7.65
1/4/2009	5/28/2010	\$9.00	\$10.50	\$10.87	5.52	6/28/2010	\$7.65
1/4/2009	6/30/2010	\$9.00	\$10.50	\$10.71	5.60	7/30/2010	\$7.65

**Instructions for Employee**  
You have received this form because (1) your employer (or its transfer agent) has recorded a first transfer of legal title of stock you acquired pursuant to your exercise of an option granted under an employee stock purchase plan and (2) the exercise price was less than 100 percent of the value of the stock on the date shown in box 1 or was not fixed or determinable on that date.

No income is recognized when you exercise an option under an employee stock purchase plan. However, you must recognize (report) gain or loss on your tax return for the year in which you sell or otherwise dispose of the stock. Keep this form and use it to figure the gain or loss. For more information, see Pub. 525, *Taxable and Nontaxable Income*.

Account number. May show an account or other unique number your employer or transfer agent assigned to distinguish your account.

Box 1. Shows the date the option to purchase the stock was granted to you.

Box 2. Shows the date you exercised the option to purchase the stock.

Box 3. Shows the fair market value (FMV) per share on the date the option to purchase the stock was granted to you.

Box 4. Shows the FMV per share on the date you exercised the option to purchase the stock.

Box 5. Shows the price paid per share on the date you exercised the option to purchase the stock.

Box 6. Shows the number of shares to which legal title was transferred by you.

Box 7. Shows the date legal title of the shares was first transferred by you.


Box 8. If the exercise price per share was not fixed or determinable on the date entered in box 1, box 8 shows the exercise price per share determined as if the option was exercised on the date in box 1. If the exercise price per share was fixed or determinable on the date shown in box 1, then box 8 will be blank.

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

# Communication Pedigreed Practices

Stock & Option Solutions, Inc.  
6399 San Ignacio Ave Suite 100  
San Jose, CA 95119

Transfer of Stock Acquired Through an Employee  
Stock Purchase Plan Under Section 423(c)  
Tax Year : 2010  
Form 3922  
OMB No. 1545-2129  
Copy B



Date option granted (Box 1)	Date option exercised (Box 2)	Fair market value per share on grant date (Box 3)	Fair market value per share on exercise date (Box 4)	Exercise price paid per share (Box 5)	No. of shares transferred (Box 6)	Date legal title transferred (Box 7)	Exercise price per share determined as if the option was exercised on the date shown in box 1 (Box 8)
1/4/2009	2/26/2010	\$9.00	\$10.50	\$9.89	6.07	3/26/2010	\$7.65
1/4/2009	3/31/2010	\$9.00	\$10.50	\$10.32	5.82	4/30/2010	\$7.65
1/4/2009	4/30/2010	\$9.00	\$10.50	\$11.64	5.15	5/30/2010	\$7.65
1/4/2009	5/28/2010	\$9.00	\$10.50	\$10.87	5.52	6/28/2010	\$7.65
1/4/2009	6/30/2010	\$9.00	\$10.50	\$10.71	5.60	7/30/2010	\$7.65

## IRS Filing

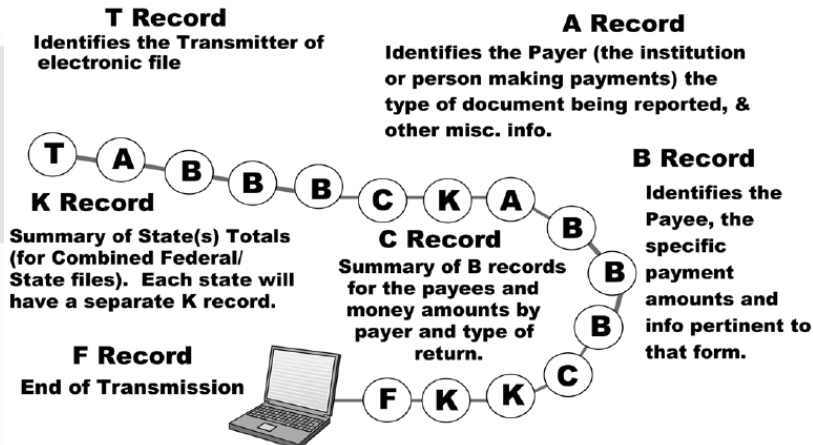
### Electronic filing:

- Filing Information Returns Electronically (FIRE):  
<https://fire.irs.gov/>
- Updates and changes to Publication 1220, Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically (revised 7-2009)
- May already file some forms electronically, so will not have to “apply”
  - If not, apply to e-file via form 4419 to obtain Transmitter Control Code (TCC)
- FIRE system will be down from 6 p.m. ET Dec. 16, 2011, through Jan. 03, 2012 for yearly updates.

## IRS FIRE Filing: Fixed Width Format

### File Format

Each record must be 750 positions.



## Example of FIRE File

## Penalties

Penalties increased with the passage of the **“Small Business Jobs Act of 2010 (H.R. 5297)”**

- [http://www.rules.house.gov/111/LegText/111\\_hr5297\\_snamnd.pdf](http://www.rules.house.gov/111/LegText/111_hr5297_snamnd.pdf) (section 2102)

### Failure to file with IRS

- Due: March 31 (if electronic). Extended to April 2, 2012 due to March 31<sup>st</sup> falling on a weekend.
  - Late by 30 days or less:
    - Now \$30 per form; \$250,000 max
  - Late by >30 days but filed by August 1:
    - Now \$60 per form; \$500,000 max
  - Filed after August 1 or not at all:
    - \$100 per form; \$1,500,000 max
  - The penalty for intentional disregard now starts at \$250 per form with no maximum

**NOW DOUBLE THAT for PARTICIPANT FILING**



## International Employees



Do we have to send to international employees?

- Non-resident alien exception
  - No – if no W-2 received at ANY TIME
  - Yes – if W-2 received for any year between
    - ISOs: Grant & Exercise (can be up to 10 years)
    - ESPP: Enrollment & Purchase (can be up to 5 years)
    - How to eliminate unnecessary participants? Work with payroll.

International addresses wreak havoc with systems that produce forms

- IRS e-file has Foreign Country Indicator, Field Position 247, of the "B" Record to let the IRS know that formatting may be different
- Length on limit of address fields (generally 40)
- What to put in state?
  - Participant statement – states may make sense (Canada)
  - Leave blank for non-US, use 51 position free format instead

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## Social Security Number

Regs require “Identifying number” on Participant Statement

- Social Security Number
  - If the taxpayer has an SSN, it should be used
  - If the taxpayer does not have an SSN, Individual Taxpayer Identification Number (ITIN) or ATIN may be used instead
- Is masking SSN on participant statements permissible?
  - No, not at this time...
  - Permissible to “truncate” on Forms 1098 series, 1099 series, and 5498 series, but not 3921 yet... (page 9 of general instructions)
- Careful with placement on the form!

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## Sales Price to Calculate Gain

If sales price used to calculate gain for same-day sale

- Should sales price or market value appear in “market value” field of form?
- Pedigreed Practice: Sales price
  - Use of sales price allowed because company has deemed it to be market value for these transactions (hopefully in a board resolution, policy or plan)
  - Also makes 3921 consistent with 1099-B from broker
  - Confirm with your counsel
- Confirm which value your system is using and you are importing (or sending to your outsource provider)

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## Mergers

Who’s responsible for filing?

When a company acquires another company

- Acquirer can agree to assume the target's reporting obligations for the year
- If the acquirer doesn't agree to assume the target's obligations, target is still required to:
  - file the returns with the IRS
  - distribute the statements to the employees
- <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf> (page 3)

Can we send forms early?

- Participants - Yes
- IRS paper – Maybe
- IRS e-file – No
  - IRS FIRE system will think file is for 2010
  - Must wait until after 1/1/12 to e-file for 2011 transactions



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## Account Number? Huh?

Not "required" except for...

Instructions say:

"The account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type. ... See Pub. 1220 if you are filing electronically."

for corrections - pub 1220 (e-filing) says:

"a 20-position field for a unique Payer's Account Number for Payee. **If a payee has more than one reporting of the same document type, it is vital that each reporting is assigned a unique account number.** This number will help identify the appropriate incorrect return if more than one return is filed for a particular payee. **Do not enter a TIN in this field.** A payer's account number for the payee may be a checking account number, savings account number, serial number, or any other number assigned to the payee by the payer that will distinguish the specific account. This number should appear on the initial return and on the corrected return in order to identify and process the correction properly."

## Account Number

2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		1 Date option granted		OMB No. 1545-2129	Exercise of an
TRANSFEROR'S name, street address, city, state, and ZIP code					
2626 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		1 Date option granted		OMB No. 1545-2129	<b>Form 3922</b> (Rev. October 2010)  <b>Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)</b>  <b>Copy A</b> <b>For Internal Revenue Service Center File with Form 1095, For Privacy Act and Paperwork Reduction Act Notice, see the most current version of the General Instructions for Certain Information Returns.</b>
CORPORATION'S name, street address, city, state, and ZIP code		2 Date option exercised			
CORPORATION'S federal identification number	EMPLOYEE'S identification number	3 Fair market value per share on grant date	4 Fair market value per share on exercise date		
EMPLOYEE'S name		\$	\$		
Street address (including apt. no.)		5 Exercise price paid per share	6 No. of shares transferred		
City, state, and ZIP code		\$			
Account number (see instructions)		7 Date legal title transferred			
		8 Exercise price per share determined as if the option was exercised on the date shown in box 1.			
		\$			
Form 3922 (Rev. October 2010)		Cat. No. 41190P		Department of the Treasury - Internal Revenue Service	

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## Cover Letters & Additional Enclosures

### General Instructions:

“You may combine the statements with other reports or financial or commercial notices, or expand them to include other information of interest to the recipient.”  
Page 10.

<http://www.irs.gov/pub/irs-pdf/i1099gi.pdf>



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## Email Delivery of Participant Statements

From IRS Office of the General Counsel to SOS:

“Yes they can use e-mail as a delivery method. It is in Example 2 of the regs ([1.401\(a\)-21\(f\) Example 2](#)).”

- Even though reg refers to 401 benefit plans, may be applied more generally to participant statements, per the IRS.

Requirements for electronic delivery are complex and include:

- Consent obtained from participant (in a manner that demonstrates ability to access statement)
- Disclosure re: duration of consent, how to revoke, etc.
- Full list here: IRS Reg §[31.6051\(1\)\(j\)](#) (refers to W-2, but applies generally)

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## Extensions



### Extension for Participant Statements

- Letter, no electronic form
- No automatic extension
- Postmarked by date on which statements are due to recipients. **If** your request for extension approved, generally granted a maximum of 30 extra days
- Section M in the General Instructions:
  - <http://www.irs.gov/instructions/i1099gi/ar02.html#d0e1589>

### Extensions for IRS Filings

- Form 8809<sup>1</sup>
  - Online form = **automatic 30-day extension**
    - Available at FIRE website <https://fire.irs.gov>
    - Online form DOES request TCC, but your provider should be able to request an extension for you
  - Paper form = On paper Form 8809
    - "Requesters will receive an approval or denial letter. You are encouraged to submit your request via the online fill-in form."
    - <http://www.irs.gov/pub/irs-pdf/f8809.pdf>

<sup>1</sup>Information in General Instructions misleading – says automatic extension

## Subsidiaries

### 3921

- What goes in Box 6 on Form 3921 and when?
  - Subsidiary at top of form – “transferor” of stock
  - Parent in Box 6 – Corp whose stock is being transferred

### 3922

- No place to put info for two companies – therefore put parent company info on form

### Return addresses

- What if you are using window envelopes? where you want return mail to come back subsidiary? The parent?



## Returned Mail

If you have a “better” address, you are required to resend

If you don’t have a better address, not required to resend

Pedigreed practice:

- Follow company policy on mailing and retention of returned W-2s



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## “Important Tax Return Document”

Is this text required on the envelope?

- No!
- “Statement mailing requirements for Forms 1099-DIV, 1099-INT, 1099-OID, and 1099-PATR, and forms reporting royalties only.” page 8 of general instructions
- “If you provide Forms 1097, 1098, 1099, 3921, 3922, 5498, or W-2G recipient statements in a “separate mailing” that contains only these statements, Forms W-8 and W-9, and a letter explaining the tax consequences of the information shown on a recipient statement included in the envelope, you are not required to include the legend “Important Tax Return Document Enclosed” on the envelope.”
- **May expose participants to greater risk of identity theft to include this language**

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## Fractional Shares & Prices

Some ESPPs result in purchase of fractional shares



How to submit:

- Participant – fine to include on statement
- IRS e-file will NOT interpret fractional shares correctly
  - You send 100.5 it will “read” 1,005
  - No decimal delimiter in e-file format
  - Round? Or Truncate?
    - Some vendors suggest rounding down is better so as not to over-report
    - Publication 1220 updated for 2012:
      - » “Report whole numbers only, using standard rounding rules as necessary.”

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## IRS FIRE Filing: TCC

Transmitter Control Code

Used by the *transmitter* of the file to identify themselves

- May or may not be the “issuing firm” or “payer company”
- Outsourcing provider may FIRE file on your behalf, if so they will use their own TCC, not yours

Not used for electronic filing of W-2s

IS used for electronic filing of 1099s



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## Grab Bag

- Bulk mail should be okay (nothing prohibiting)
- Official forms and window envelopes – SSN precarious
- Deceased employees
- W-2 Reporting Requirement
- Forms required for ISO Same-day Sales?



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## Boneyard

- Failure to include SSN on participant statements
- Vendor name at top of substitute form instead of issuing firm name
- Vendor logo on the form
- Account number unique to participant, not transaction
- Paper form threshold quoted as 250 instead of 249



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# Contact Info

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