



**Private Company Pain  
- IRC 6039 -  
Another Regulation? What?!**

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**Disclaimer**

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Anyone viewing this presentation should not act upon this information without seeking professional counsel and/or input from their advisors.

## Agenda

Overview of Section 6039 Requirements  
Painless Practices to include:



- 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
- Hall of Injustice
- SOS Services

3

## IRS Section 6039 Overview

What is 6039?

Who is impacted by this regulation?

- Company
- Stock Plan Administrator
- Employees

How do we comply with 6039?

When are the filings due?

4

## What is the IRS Section 6039 Regulation?

### The Not So Painless Regulation:

- Information reporting to IRS is required IN ADDITION to participant information statements
- Special Forms (Form 3921) and Formats for Reporting
- Goal is to provide necessary information for participants to complete tax returns

5

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## Who is impacted by 6039?

### A few more tidbits:

- Information reporting to IRS started with 2010 transactions
- Public AND Private companies are required to comply
- The triggering event for both the employee statement and the IRS report is an Incentive Stock Option exercise
- Substitute forms for employee statements are allowed
  - Pursuant to instructions in IRS Publication 1179

6

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## When are the filings due?

*Participant reporting:* due January 31st

- In year following the calendar year in which transaction occurred (next due date is 1/31/12)

*IRS paper forms filing:* due February 28th

*IRS e-filing:* due March 31<sup>st</sup> (since this falls on a Saturday in 2012, due date is 4/2/12)

General filing information: <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf> (page 4)

## Form 3921 – ISO Reporting

|   |                                  |  |  |   |   |
|---|----------------------------------|--|--|---|---|
| 2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED |                                  | OMB No. 1545-2120  |  | <b>Form 3921</b><br>(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><br>For Internal Revenue Service Center File with Form 1099. 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   |   |

**Do Not Cut or Separate Forms on This Page – Do Not Cut or Separate Forms on This Page**

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

## Substitute Forms 3921



### Publication 1179

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

9

## Substitute Forms 3921

### 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

10

## Sample Substitute Aggregate Form - 3921

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 3921  
OMB No. 1545-2129  
Copy B

**ORIGINAL**

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

TRANSFEROR'S federal  
identification number: 12-3456789

EMPLOYEE'S  
identification number: 123456789



| Date option granted<br>(Box 1) | Date option exercised<br>(Box 2) | Fair market value per share on grant date<br>(Box 3) | Fair market value per share on exercise date<br>(Box 4) | Exercise price paid per share<br>(Box 5) | No. of shares transferred<br>(Box 6) | Date legal title transferred<br>(Box 7) | Exercise price per share determined as if the option was exercised on the date shown in box 1<br>(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   |  |                                      |   |  |
| 1/4/2009                       | 4/30/2010                        | \$9.00   | \$10.50   |  |                                      |   |  |
| 1/4/2009                       | 5/18/2010                        | \$9.00   | \$10.50   |  |                                      |   |  |
| 1/4/2009                       | 6/30/2010                        | \$9.00   | \$10.50   |  |                                      |   |  |

**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.

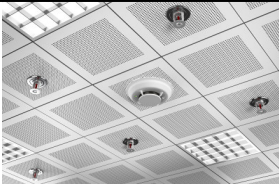
11




## Form 3921 - IRS Filing

**Electronic filing:**

- Filing Information Returns Electronically (FIRE): <https://fire.irs.gov/>
- TCC required. 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)
  - SOS will use our TCC if we are transmitter
- FIRE system will be down from 6 p.m. ET Dec. 16, 2011, through Jan. 03, 2012 for yearly updates.
- Publication 1220 - Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically (revised 9-2011)



12





## 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**

15

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## 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)
    - 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

16

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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!

17

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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



18

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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 |  | OMB No. 1545-2129  |   | <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  | <b>Form 3921</b><br>(Rev. October 2010)   |   |
| TRANSFEROR'S federal identification number                            |  | 2 Date option exercised  | <b>Copy A</b><br>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 identification number                                      |  | 3 Exercise price per share   |   |   |
| 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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## 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>



21

## 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)



22

## Extensions



### 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>

### 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>

<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

### Return addresses

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

## “Important Tax Return Document Enclosed”

Is this text required on the envelope?

- No! unless...including other financial statements
- “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**

25

## Fractional Shares & Prices



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.”

26

## 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 and early exercises



27

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## Injustice League

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



28

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## Processes towards a Painless 6039 Season

How SOS can ease the pain:

- SOS 6039 Outsourcing
- SOS 6039 Xpress application installed at your location
- Participant Fulfillment
  - Printing, stuffing, mailing of participant 3921 statements
- Gather electronic consent
- Electronic delivery of participant statements
- Collecting/distributing additional employee communications

29

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## SOS 6039 Outsourcing

SOS 6039 Outsourcing Service Features:

- Client manager assigned to each client to coordinate from start to finish
- Secure and easy file transfer of your sensitive data
- Data audit and review applied to data *before* loading for participant statement and e-file generation
- 3921 substitute participant statements allow you to aggregate transactions and send fewer pages saving time and money and reducing participant confusion
- SOS can transmit the IRS e-file to the IRS on your behalf (eliminating the need for you to obtain a TCC from the IRS)

30

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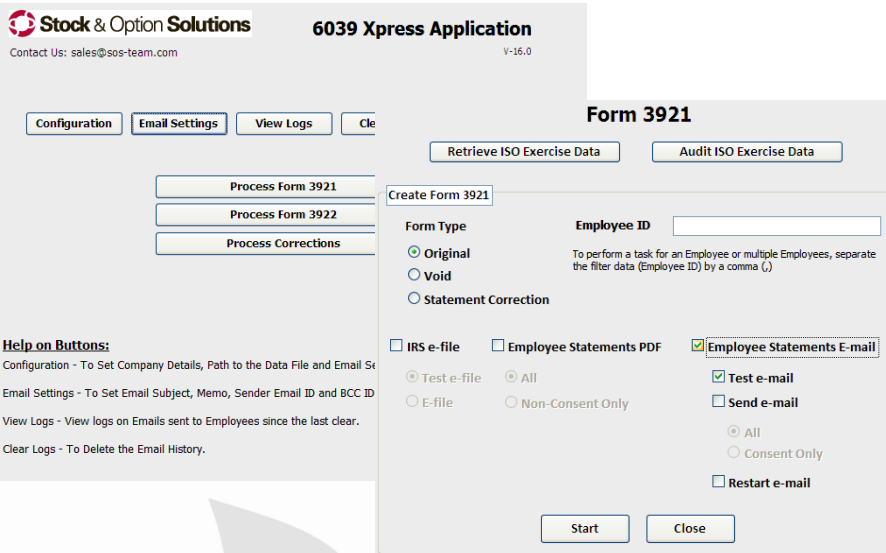
## SOS 6039 Xpress Application

MS Access-based application that can be installed at your site to allow you to create participant statements and the IRS e-file:

- Point-and-click user interface makes the form creation process quick and easy
- Can use data from in-house software, spreadsheets, or data downloaded from an offsite SaaS system or outsourcing provider
- Creates a PDF file for 3921 substitute participant statements, allowing you to review the output and make necessary corrections before sending statements to the printer
- Creates IRS e-file to IRS specifications of Publication 1220 that can be submitted via the IRS FIRE website with your company's Transmitter Control Code (TCC)
- Supports original and corrected transaction types
- Email delivery is an optional feature
  - Statements can be emailed to all participants or just those from whom you have received consent

31

## SOS 6039 Xpress Application



The screenshot displays the 'Form 3921' configuration window within the SOS 6039 Xpress Application. The window title is 'Form 3921' and it includes a 'Create Form 3921' button. The interface is divided into several sections:

- Form Type:** Radio buttons for 'Original' (selected), 'Void', and 'Statement Correction'.
- Employee ID:** A text input field with a placeholder for an Employee ID. Below it, a note states: 'To perform a task for an Employee or multiple Employees, separate the filter data (Employee ID) by a comma (,)'.
- Output Options:** Checkboxes for 'IRS e-file', 'Employee Statements PDF', and 'Employee Statements E-mail' (checked).
- Filtering:** Radio buttons for 'Test e-file', 'E-file', 'All', and 'Non-Consent Only'.
- Consent:** Radio buttons for 'All' (selected) and 'Consent Only'.
- Buttons:** 'Start' and 'Close' buttons at the bottom.

On the left side of the window, there are navigation buttons: 'Configuration', 'Email Settings', 'View Logs', and 'Clear Logs'. Below these are three buttons: 'Process Form 3921', 'Process Form 3922', and 'Process Corrections'. A 'Help on Buttons:' section provides instructions for each of these buttons.

32

## SOS Fulfillment

3921 employee statement mailings

- Must be **postmarked** on or before January 31
- Mailing considerations
  - Valid addresses (current and terminated employees)
    - Non-US mailing address
  - Bulk printing and mailing process, under tight deadlines
  - Printer, materials and supplies
  - Time and labor to fold, stuff and affix postage

Additional employee mailings

33



## Consent Website

Customized colors, fonts,  
and logo  
Email notification, reminders  
and confirmation  
Consent data extract

From: webdev@sos-team.com [mailto:webdev@sos-team.com]  
Sent: Tuesday, November 16, 2010 11:34 AM  
To: SOS-Website Development  
Subject: Confirmation of Election  
Date: 11/16/2010 11:34:28 AM PT  
Dear Generic Admin,  
You give us your consent to receive electronic email confirmation for  
.....

34



## Participant Portal

### Year-end documentation

- 3921
- Tax statements

### Transactions

- Exercises
- Releases

### Special Events

- Tender Offers / Exchanges
- Acquisition Statements

## Participant Portal

The screenshot displays the 'Tax Documents Overview' page in the participant portal. It shows a table of 'Latest Taxable Transactions' and a detailed view of a specific transaction: 'Exercise of an Incentive Stock Option Under Section 422(B)'. The document is for the year 2010, Form 3921, and includes the participant's name, address, and identification numbers. Below the document details is a table of option grants and exercises.

| Date option granted<br>(Box 1) | Date option exercised<br>(Box 2) | Exercise price per share<br>(Box 3) | Fair market value per share on exercise date<br>(Box 4) | No. of shares transferred<br>(Box 5) | If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred<br>(Box 6) |
|--------------------------------|----------------------------------|-------------------------------------|---|--------------------------------------|---|
| 1/1/2007                       | 1/7/2009                         | 00.0                                | 09.9  | 50.0                                 |   |
| 1/1/2007                       | 1/7/2009                         | 00.0                                | 09.9  | 50.0                                 |   |
| 1/1/2007                       | 1/7/2009                         | 00.0                                | 09.9  | 50.0                                 |   |
| 1/1/2009                       | 12/31/2009                       | 00.0                                | 09.9  | 1000.0                               |   |
| 1/1/2009                       | 12/31/2009                       | 00.0                                | 09.9  | 1000.0                               |   |
| 1/1/2009                       | 12/31/2009                       | 00.0                                | 09.9  | 1000.0                               |   |

## Contact Info



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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

### Publication 1220

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



## SOS Suite of Solutions

### Projects/Consulting

- Best Practice Assessment / Implementation
- Equity Accounting Assistance
- Custom Reporting
- Software Upgrades
- Stock Plan Training
- Participant Education & Communication

### Transactions

- Mergers & Acquisitions
- Option Exchanges / Re-pricings
- Vendor Analysis & RFP
- Vendor or System Conversions
- IPO (pre and post)

### Applications

- SOS Email Xpress
- SOS Xchange –data exchange
- SOS 6039 Xpress
- Tender Offer Website
- Online Grant Agreements
- Plan Participant Websites/Intranets

### SOS People/Staffing

#### **Tactical to senior experienced consultants**

- Day-to-day assistance
- Coverage for vacancies
- Vacation, medical, maternity leaves
- Project assistance
- Backing during high-volume
- Throughout United States

#### **Flexible lengths of assignments**

- Full or part-time assistance
- On-site or remote
- Temp to perm Services

#### **Dedicated call centers**

- Tender offers
- New plan implementations
- High-activity periods

### SOS Outsourcing

- A new kind of outsourcing
- Manage some or all aspects of your stock plans
- Financial, Accounting & Tax Reporting
- Special Projects and Onsite Needs

