



**Private Company Pain  
- IRC 6039 -  
Yes, Another IRS Regulation to  
Comply With!**

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## 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

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## 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?

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## 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

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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

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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> (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 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	
<b>Do Not Cut or Separate Forms on This Page – Do Not Cut or Separate Forms on This Page</b>					

<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

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## 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

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## Sample Substitute Aggregate Form - 3921

Stock & Option Solutions, Inc.  
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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**

TRANSFEROR'S federal  
identification number: 12-3456789

EMPLOYEE'S  
identification number: 123456789

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



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				
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.

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## 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)



## 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**

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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

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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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## 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		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> (Rev. October 2010)	
TRANSFEROR'S federal identification number		2 Date option exercised	3 Exercise price per share	<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 identification number		4 Fair market value per share on exercise date	\$	
EMPLOYEE'S name		5 No. of shares transferred	\$	
Street address (including apt. no.)		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred		
City, state, and ZIP code				
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**

## 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



### 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

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## 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?

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## “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**

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## 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.”

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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 and early exercises



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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



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## 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>



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## SOS 6039 Solutions

### SOS 6039 Outsourcing

- Full service solution to eliminate the burden
- Secure and easy file transfer of your sensitive data
- Data audit and review applied before loading for participant statement and e-file generation
- Substitute statements allow you to aggregate transactions and send fewer pages saving money and reducing participant confusion
- SOS can transmit the e-file to the IRS on your behalf

### SOS 6039 Xpress

- MS Access-based application that can be installed at your site
- Point-and-click user interface makes the form creation process quick and easy
- Can be configured to work with any equity system
- Creates PDF file for participant statements
- Creates e-file for client to upload to the IRS FIRE website
- Supports original and corrected transaction types
- Email delivery is an optional feature

### SOS 6039 Fulfillment

- SOS can perform printing and mailing of participant statements on client's behalf
- One page cover letter included (customizable template provided)
- Optional additional statement mailings for comprehensive year-end package

### SOS Custom Websites

- 6039 Consent website to obtain electronic consent from employees for electronic deliver of 3921 statements
- Participant Portal website to display all year-end tax information to employees (including form 3921)

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## 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

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