



**Section 6039 Jeopardy!
Your Top Questions Answered!**

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Webcast Materials

<http://www.sos-team.com/PDFS/6039a.pdf>

URL is case-sensitive.

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Agenda

Overview of Section 6039 regulation changes

Question Categories

- General
- Participant Statements
- IRS Paper Filing
- IRS E-filing
- Special Cases

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Section 6039 Regulation Changes

Information reporting to IRS is now required in addition to participant information statements

Forms 3921 and 3922 required for participant statements and IRS reporting

Expanded reporting requirements include new information for ESPP statements

- “Goal” is to provide necessary information for participants to complete tax returns

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Section 6039 Regulation Changes

Information reporting to IRS only required for transactions occurring in 2010 and later years

- Employee statements still due 1/31 of the year following the triggering event, even before 2010

For most companies, triggering event will be the purchase/exercise

- For both employee statement and IRS report
- Assumes ESPP shares are deposited into brokerage account on behalf of employee upon purchase

Substitute forms for employee statements are allowed

- Pursuant to instructions in IRS Publication 1179

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Section 6039 Regulation Changes

Participant Reporting

- must be completed by January 31st
- In year following the calendar year in which transaction occurred (first due date is 1/31/11)

IRS Reporting

- IRS paper forms filing: due February 28th
- IRS e-filing: due March 31st

Final instructions

- <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf> (pages 4 & 10)

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Form 3921 – ISO Reporting

2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-2129		Form 3921 (Rev. October 2010)	Exercise of an Incentive Stock Option Under Section 422(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	Copy A 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

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>



Form 3922 – ESPP Reporting

2525 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-2129		Form 3922 (Rev. October 2010)	Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)
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	Copy A 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>



General for 100

A sensitive piece of employee data required by both the IRS filing and on the participant statement.

May be shown only once on a composite participant statement.

Be sure it doesn't show through the window on the envelope.

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Answer: General for 100

What is Social Security Number?

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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)

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General for 200

A corporate tax year reporting requirement for employees in the year of ESPP disposition and ISO disqualifying disposition.

Not replaced or changed by the revised 6039 reporting requirements.

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Answer: General for 200

What are W-2 reporting requirements?

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W-2 Reporting Requirements

ESPP

- At Disqualifying or Qualifying Disposition (always SOME "ordinary income")

ISO

- At Disqualifying Disposition

Reporting

- Box 1
 - Wages, tips, and other compensation
- Box 16
 - State wages, tips, etc., if applicable
- Box 18
 - Local wages, tips, etc., if applicable

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General for 300

A transaction-specific field that is required if you have more than one ISO exercise or more than one ESPP “transfer” (usually purchase) for an employee.

Used to match transactions when/if a correction is filed.

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Answer: General for 300

What is Account
Number?

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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	Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) Copy A 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.
CORPORATION'S name, street address, city, state, and ZIP code		2 Date option exercised		Form 3922 (Rev. October 2010)	
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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Other General Issues

Are forms required for Same-day Sale Exercises of ISOs?

- Yes
- Our reading of the regulations and IRS guidance can find no exemptions for same-day sale transactions.
- Some have suggested since all necessary information for calculating tax is available via other forms (if gain is calculated based on sales price), forms 3921 and 3922 should not be required.

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Participant Statements for 100

A form other than the official IRS form that is used to furnish statements to participants.

Rules for forms specified by IRS Publication 1179.

More than one “transaction” may be included on each statement.

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Answer: Participant Statements for 100

What is a Substitute Statement?

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Substitute Forms 3921 & 3922

“Substitute statements. If you are not using the official IRS form to furnish statements to recipients, see Pub. 1179 for specific rules about providing “substitute” statements to recipients. Generally, a substitute is any statement other than Copy B of the official form.

You may develop them yourself or buy them from a private printer. However, the **substitutes must comply with the format and content requirements specified in Pub. 1179** that is available on the website at www.irs.gov.”

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

- Page 10
- Updated to include 3921 & 3922

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Sample Substitute Aggregate Form - Top

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			
ORIGINAL							
TRANSFEROR'S federal identification number 770514839			EMPLOYEE'S identification number : 12345678				
Priyendu Bhardwaj 79 Grassb v'nomms Sqgzz mzn'd, aX 77579							
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)
1/1/2009	1/29/2010	\$9.00	\$10.50	\$10.03	100	1/29/2010	\$7.65
1/1/2009	2/26/2010	\$9.00	\$10.50	\$9.89	15	2/26/2010	\$7.65
1/1/2009	1/29/2010	\$9.00	\$10.50	\$10.03	100	1/29/2010	\$7.65
1/1/2009	3/31/2010	\$9.00	\$10.50	\$10.32	15	3/31/2010	\$7.65

Sample Substitute Aggregate Form - Bottom

<p>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.</p> <p>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.</p> <p>Account number. May show an account or other unique number your employer or transfer agent assigned to distinguish your account.</p>	<p>Box 2. Shows the date you exercised the option to purchase the stock.</p> <p>Box 3. Shows the fair market value (FMV) per share on the date the option to purchase the stock was granted to you.</p> <p>Box 4. Shows the FMV per share on the date you exercised the option to purchase the stock.</p> <p>Box 5. Shows the price paid per share on the date you exercised the option to purchase the stock.</p> <p>Box 6. Shows the number of shares to which legal title was transferred by you.</p> <p>Box 7. Shows the date legal title of the shares was first transferred by you.</p> <p>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.</p>
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.	

Participant Statements for 200

Materials included along with the mailing of forms 3921 and 3922.

May include additional materials, a cover letter, other statements that were distributed in previous years.

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Answer: Participant Statements for 200

What are Additional Enclosures?

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Participant Statements: 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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Participant Statements for 300

A form of electronic delivery, other than website delivery, that is acceptable to the IRS as long as the same form of electronic delivery is involved in the mandatory collection of consent for electronic delivery.

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Answer: Participant Statements for 300

What is email delivery?

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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\(1\)\(i\)](#) (refers to W-2, but applies generally)

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IRS Paper Filing for 100

Number of forms 3922 you can file on paper if you are filing 249 forms 3921 on paper.

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Answer: Participant Statements for 100

What is 249?

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IRS Paper Filing: Limits

Form types are NOT aggregated to determine the limit.

You can file up to 249 forms 3921 and 249 forms 3922 on paper with the IRS.

You can file 10,000 forms 3922 (via FIRE) and 249 paper 3921 forms with the IRS.

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IRS Paper Filing for 200

The tearing strength, average, each direction not less than-grams required for paper used to file paper SUBSTITUTE forms with the IRS.

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Answer: Participant Statements for 200

What is 40?

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IRS Paper Filing

Requirements for paper forms with the IRS are very complex.

Requirements around font, ink, paper strength, data position, etc.

If you are planning to send paper forms to the IRS, PURCHASE your forms.

1-800-TAX-FORMS

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IRS Paper Filing for 300

The website location where you can fill out an electronic version of form 8809 to get an automatic extension of time to file forms 3921 and/or 3922 with the IRS.

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Answer: Participant Statements for 300

What is
<http://fire.irs.gov>?

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IRS Electronic Filing: Extensions

If request is filed online, it is automatically approved.

If request is mailed in, you will receive an approval or denial letter.

Online form DOES request a TCC, but your provider should be able to request an extension for you.

<http://www.irs.gov/pub/irs-pdf/f8809.pdf>

(See bottom of the form for methods of filing and details)

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IRS FIRE Filing for 100

Identifying number used to indicate the sender of the file (not the issuing firm or “payer”) when a file is submitted using the IRS FIRE website.

A three-letter initialism/acronym.

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Answer: IRS FIRE Filing for 100

What is a TCC?

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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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IRS Paper Filing for 200

The most painful aspect of creating the IRS FIRE file per the specifications of publication 1220.

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Answer: Participant Statements for 200

What is the fixed width format of the FIRE file?

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IRS FIRE Filing for 300

The latest date by which you can submit the FIRE file without a penalty.

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Answer: FIRE Filing for 300

What is April 30th?

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IRS FIRE Filing: Latest Date

FIRE Submissions due on 3/31

+ 30 day automatic extension via submission of
online Form 8809 =

April 30th

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Special Cases for 100

The tax document that triggers a requirement to
perform information reporting for a non-
resident alien that transferred ESPP shares
or exercised an ISO.

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Answer: Special Cases for 100

What is a W-2?

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Special Cases: Non-Resident Alien Exemption

Non-resident aliens are exempt from reporting unless they received a W-2 in any tax year between grant and exercise/transfer.

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Special Cases for 200

Maximum penalty that may be charged an issuing firm for failure to comply with Section 6039 information reporting requirements.

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Answer: Special Cases for 200

What is \$3MM?

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Special Cases: Transition Rules for ESPP

Penalties just 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 (section 2102)

Failure to file with IRS

- Due: March 31 (if electronic)
 - Late by 30 days or less:
 - Was \$15 per form, \$75,000 max
 - **Now \$30 per form; \$250,000 max**
 - Late by >30 days but filed by August 1:
 - Was \$30 per form, \$150,000 max
 - **Now \$60 per form; \$500,000 max**
 - Filed after August 1 or not at all:
 - Was \$50 per form, \$250,000 max
 - **\$100 per form; \$1,500,000 max**

NOW DOUBLE THAT for PARTICIPANT FILING

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Special Cases for 300

The company responsible for 6039 reporting after a merger transaction.

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Answer: Special Cases for 300

Who is the acquired company OR who assumed responsibility?

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Special Cases: Mergers

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>
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