

## **6039: Nifty Ways to Make it Better**

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# Agenda

- Nifty overview
- Meet the SOS 6039 Team / Roles
- Experiences of 2010
- Nifty ways to make it better
  - Consent website
  - Data audit
  - Participant portal
  - Electronic statements
  - Signed, Sealed, Delivered: Mailing Fulfillment
  - IRS e-file
- Questions?

# Nifty 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?

# What is the IRS Section 6039 Regulation?

- The Not So Nifty Regulation:
  - Information reporting to IRS is required in addition to participant information statements
  - Special “Forms” Required for Reporting
    - IRS filing AND
    - Participant Statements
  - Expanded reporting requirements include information for ESPP statements
    - Goal is to provide necessary information for participants to complete tax returns

# Who is impacted by 6039?

- A few more tidbits:
  - Information reporting to IRS started with 2010 transactions
  - For most companies, the triggering event for both the employee statement and the IRS report will be the purchase/exercise
    - 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

# How do I comply with 6039?

- Filing with the IRS:
  - 3921 (ISOs) and 3922 (ESPPs)
  - Forms/instructions available on IRS website
- Instructions: <http://www.irs.gov/pub/irs-pdf/p1220.pdf>
  - If > 250 forms, must e-file with IRS
- Forms must also be used to report the same information to employees

# 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 31st
- General filing information:  
<http://www.irs.gov/pub/irs-pdf/i1099gi.pdf>  
(page 4)



# Meet the SOS 6039 Team

- Roles at SOS
  - Logistics / Operations Management
  - The Nifty Technology
  - Data Solutions – Helping you maintain the data better and maintain better data
  - Fulfillment Solutions – a niftier way to deliver
  - E-Filing 6039, what could be better?

The problem is all  
inside your head  
They said to me  
The answer is easy if  
you  
Take it logically  
We'd like to help you  
in your struggle  
To be free  
There are some  
Nifty Ways

To make it better

# Experiences of 2010

- Data in need of tweaking
  - Duplicate Names / SSN
  - Incomplete / mixed addresses / country missing
  - ISOs treated as NQs
  - Leading zeros on employee data
- Parent company with multiple subsidiaries
- Data coming from multiple sources

# Experiences of 2010

- 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

Nifty ways to make it better!

# Experiences of 2010 – Client Feedback

## SURVEY TOPICS

- Client Experience/ Expectations
- Project Kick-off/ Setting Expectations
- Data Gathering / Review
- Documentation throughout
- Statement Preparation & Resources
- E-Filing Services

What we Asked	Survey Says...	Coming in 2011
How well were your expectations met?	Average Score: 9.05 out of 10	Simplified contracts & partner synergy
How well did the data gathering and review process go?	Average Score: 9.14 out of 10	Pre-execution data audit & improved documentation
How satisfied were you with the creation of the 6039 participant statements?	Average Score: 9.12 out of 10	Sample cover letter and FAQs during sales cycle
How satisfied were you with the SOS mailing / fulfillment services?	Average Score: 9.13 out of 10	Extensive QA performed earlier in the process
How satisfied were you with the SOS 6039 IRS e-filing services?	Average Score: 9.27 out of 10	Updates to the project timeline

# Nifty Ways to Make it Better

## *Consent Website*

They said it's really not our habit to intrude  
Furthermore, we hope the meaning  
Won't be lost or misconstrued  
But we'll repeat again  
At the risk of being crude  
There are some Nifty Ways  
To make it better

# Consent Website

The screenshot shows a web browser window with the title "Stock & Option Solutions". The page has a header with the logo and navigation links for "Administrator", "Help", and "Log Out". A sidebar on the left contains a "Home" link and sub-links for "Tax Information" and "Transaction". The main content area has a "Home" tab and displays the following text:

Welcome to the 6039 Consent collection website!

Your current consent status is: Yes

If you want to change your consent please select the option below and hit "Submit"

Yes

No

Submit

There is also an "Administrator Message of the Day" box with the text: "This section contains any important message that the website administrator wants to display on participants' home page."

- 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
.....
```

# Nifty Ways to Make it Better

## *Data Audit*

Just check out the back.....MAC

Get with the plan.....man

# Nifty Ways to Make it Better

- Data Audit
  - Multiple sources
  - Duplicate entries
  - Impact of rehires
  - Impact of incomplete or mixed address
  - ISO treated as NQ
  - ESPP



# Nifty Ways to Make it Better

- Data Audit

- Participant data

- Missing or incomplete elements
- Field length
- SSN – check for same name but different SSNs and different names same SSN

- 3921 & 3922 Audits

- Check for missing or incomplete fields

*Don't need to be coy, Roy,  
Just get yourself free*

# Nifty Ways to Make it Better

- Data Audits (continued)
  - 3921
    - Grant date is later than exercise date
    - Exercise date is not in the current tax year
    - Exercise is underwater
      - (Exercise Date FMV < Option Price)
    - Shares exercised is 0
    - Shares exercised are fractional

# Nifty Ways to Make it Better

- Data Audits (continued)
  - 3922
    - Purchase price not less than purchase date FMV
    - Purchase date not in current tax year
    - Incorrect enrollment date
    - Total purchased shares over limit
    - Purchased shares is 0
    - Purchased shares are fractional

# Nifty Ways to Make it Better

## *Participant Portal*

Send it to us, Gus!  
You don't need to discuss much  
Just drop off the data keys  
And get yourself free

# Participant Portal

- Year-end documentation
  - 3921
  - 3922
  - Tax statements (ESPP, Withholdings, etc.)
- Transactions
  - Exercises
  - Releases
  - Purchases
- Special Events
  - Tender Offers / Exchanges
  - Acquisition Statements

# Participant Portal

The screenshot displays the 'Stock & Option Solutions' Participant Portal. The main content area shows 'Tax Documents for Year 2011' with links to Form 3921, Form 3922, Tax Withholding Statement, Year End Purchase Tax Statement, and Year End Tax Statement. A table titled 'Latest Taxable Transactions' is visible, showing a 'Tax Withholding' document with Grant Number 00010001 and Transaction Date 07/11/2011. A detailed view of a document is shown, containing the following information:

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

Exercise of an Incentive Stock Option  
 Under Section 422(b)  
 Tax Year : 2010  
 Form 3921  
 OMB No. 1545-2129  
 Copy B

ORIGINAL

TRANSFEROR'S federal identification number : 123123123

EMPLOYEE'S identification number : 111-11-1111

Date option granted	Date option exercised	Exercise price per share	Fair market value per share on exercise date	No. of shares transferred	If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred
(Box 1)	(Box 2)	(Box 3)	(Box 4)	(Box 5)	(Box 6)
1/1/2007	1/7/2009	\$0.0	\$9.9	50.0	
1/1/2007	1/7/2009	\$0.0	\$9.9	50.0	
1/1/2007	1/7/2009	\$0.0	\$9.9	50.0	
1/1/2000	12/31/2009	\$0.0	\$9.9	1000.0	
1/1/2000	12/31/2009	\$0.0	\$9.9	1000.0	
1/1/2000	12/31/2009	\$0.0	\$9.9	1000.0	

# Nifty Ways to Make it Better

## *Electronic Statements*

They said it grieves me so  
To see you in such pain

We wish there was something we could do  
To make you smile again

# Participant Delivery

- Electronic delivery
  - Must comply with all requirements applicable to issuing Forms W-2 electronically
    - Must obtain participants' consent, with ability to revoke at any time
    - Obtain consent in a manner which demonstrates they can access the statements electronically
    - Scope and duration of consent must be disclosed
    - Provide means of obtaining paper statement, if desired



# More Nifty Technology

Configuration

Email Settings

View Logs

Clear

Process Form 3921

Process Form 3922

Process Corrections

### Help on Buttons:

Configuration - To Set Company Details, Path to the Data File and Email Settings

Email Settings - To Set Email Subject, Memo, Sender Email ID and BCC ID

View Logs - View logs on Emails sent to Employees since the last clear.

Clear Logs - To Delete the Email History.

## Form 3921

Retrieve ISO Exercise Data

Audit ISO Exercise Data

Create Form 3921

Form Type

- Original
- Void
- Statement Correction

Employee ID

To perform a task for an Employee or multiple Employees, separate the filter data (Employee ID) by a comma (,)

IRS e-file     Employee Statements PDF     Employee Statements E-mail

Test e-file

All

Test e-mail

E-file

Non-Consent Only

Send e-mail

All

Consent Only

Restart e-mail

Start

Close

# Nifty Ways to Make it Better

*Signed, Sealed, Delivered:  
Mailing the old fashioned way*

I said I appreciate that  
And would you please *explain*  
About the Nifty Ways

# Participant Delivery

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

# Nifty Ways to Make it Better

## *Signed, Sealed, Delivered IRS e-File*

They said why don't we both  
Just sleep on it tonight  
And I believe in the morning  
You'll begin to see the light

And then they filed it!

And I realized they probably were  
right!

There are such Nifty Ways  
To make it better!

# IRS Filing

- Requirements:
  - Types of records
    - Original
    - Corrected
    - Void
  - Files in standard ASCII code
    - Fixed width
  - Do not send paper AND e-file
    - Duplication = Penalties
  - Test files allowed
    - Generally accepted late in year preceding filing year
  - Files larger than 10,000 records should be compressed
    - WinZip & Pkzip only acceptable formats

# IRS Filing

- Electronic filing:
  - Updates and changes to Publication 1220, Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically (revised 7-2009)
  - List of vendors who do e-filing:  
<http://www.irs.gov/pub/irs-pdf/p1582.pdf>
  - May already file some forms electronically, so will not have to “apply”
    - If not, apply to e-file via form 4419 to obtain Transfer Control Code (TCC)
  - Filing Information Returns Electronically (FIRE):  
<https://fire.irs.gov/>

# IRS Filing

## File Format

Each record must be 750 positions.

*Nifty Ways to make it better*

### T Record

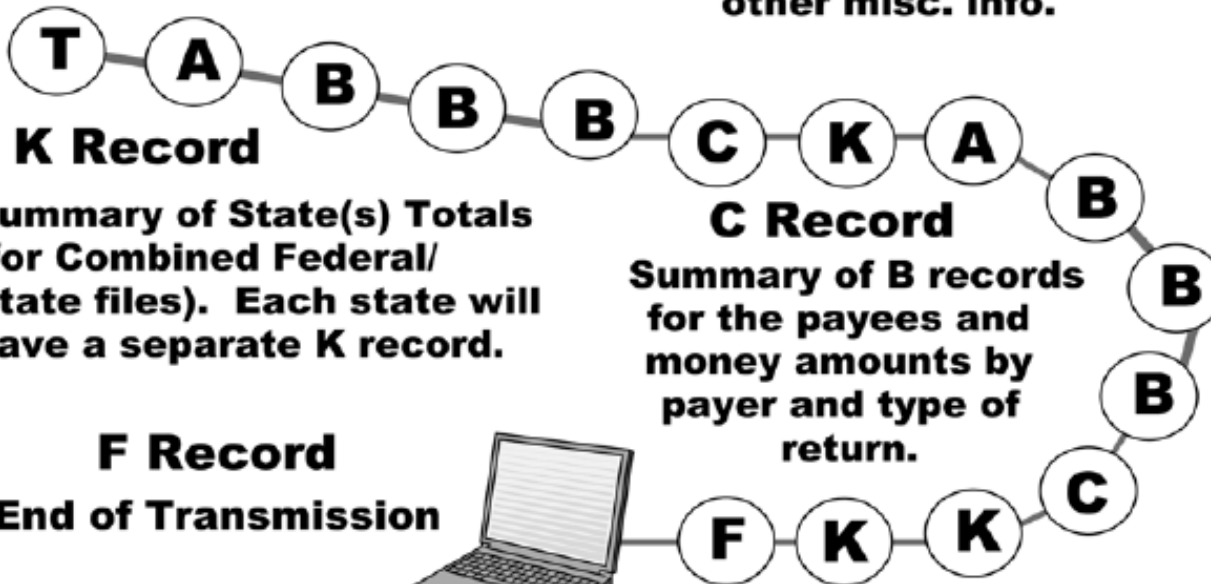
Identifies the Transmitter of electronic file

### A Record

Identifies the Payer (the institution or person making payments) the type of document being reported, & other misc. info.

### B Record

Identifies the Payee, the specific payment amounts and info pertinent to that form.



### K Record

Summary of State(s) Totals (for Combined Federal/ State files). Each state will have a separate K record.

### C Record

Summary of B records for the payees and money amounts by payer and type of return.

### F Record

End of Transmission

# IRS Filing

- Penalties for late filings:
  - \$15 per form if within 30 days of the deadline (max \$75k/yr)
  - \$30 per form if filed by August 1 (max \$150k/yr)
  - \$50 per form if filed after August 1 or never complete the filing (max \$250k/yr)
  - At least \$100 per form if due to intentional disregard (no max)
  - Failure to distribute the employee statements or intentional disregard:
    - Can be subject to additional penalty of \$50 per statement (max \$100k/yr)
    - Intentionally disregard both filing the return and distributing the employee statement, then minimum penalty is \$200 per transaction with no maximum



# 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](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**

# IRS Filing

- Corrections
  - Filing mistakes
    - Corrected by re-filing the form with all of the same /corrected information
    - Select the "Corrected" checkbox on the form
    - Same process used to correct errors on Form 1099
    - Same for void transactions
  - Corrections subject to same deadline and penalties for late filings

# 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

**ORIGINAL**

TRANSFEROR'S federal  
identification number : 12-3456789

Srinivas K'alakoti  
896 S Gombdenvine'Cir  
Trx'Wbbdmznds, 77687 USA

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	\$10.22	5.82	4/20/2010	\$7.65
1/4/2009	4/30/2010	\$9.00	\$10.50				
1/4/2009	5/28/2010	\$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.

# Practical Tips

Nifty Ways to make it better!

- Get Started Now!
  - Get consent early!!
  - Learn the rules / requirements
  - Understand your choices
  - Discuss with internal partners
  - What is the budget?
  - Plan to get data to your provider(s) early

# And More Nifty Technology

The screenshot shows the 'Demo Email Xpress Tool' interface. At the top left is the logo for 'Stock & Option Solutions' with the contact email 'sales@sos-team.com' and version '06/28/2011'. The main area contains a row of five buttons: 'Configuration', 'Email Settings', 'View Logs', 'Clear Logs', and 'Export Logs'. Below this is a vertical stack of twelve buttons for sending various emails: 'Send Personnel Status Emails', 'Send ESPP Personnel Status Emails', 'Send Confirmation of Exercise Emails', 'Send Year End Tax Statement Emails', 'Send ESPP Year End Tax Statement Emails', 'Send New Award Grant Notification Emails', 'Send New Option Grant Notification Emails', 'Send Confirmation of Release Emails', 'Send Confirmation of Purchase Emails', 'Send RSU Future Vesting Emails', 'Send Generic Email 1', and 'Send Generic Email 2'. The 'Send Confirmation of Release Emails' button is highlighted with a dashed border.

- Automated emails at one click
- Customized email format
- Multiple equity events

# Processes towards a Nifty 6039 Season

- SOS Can Do :
  - Gather consent
  - Data audit
  - Creating the file
  - Generate the statements
  - Audit of statements
  - Printing, stuffing, mailing of statements
  - Electronic delivery of statements
  - Collecting / distributing peripheral materials
  - IRS e-File

*Nifty Ways to make it better!*

# 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



# Questions?



# Contact Info



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