

# **SOS Educational Webcast: Stock Admin Prep for Year-End and Some Things In-Between**

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# Disclaimer

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# Materials

[http://www.sos-team.com/pdfs/stock\\_admin.pdf](http://www.sos-team.com/pdfs/stock_admin.pdf)

# Agenda

- Options
- Awards
- Transfer agents & how to interact
- SEC Reporting (Form Filings For Insiders)
- Year-end and what to expect
- Year-end employee forms and how to decipher
- Q & A

# OPTIONS

# Options

- **Reviewing the basics could help with your processes and participant's year-end questions!**
- ISO (Incentive Stock Option)
  - What is the ISO \$100K Limit Rule?  
A limit set by IRS Code 422 for value of shares vesting(exercisable) in a twelve month period.
  - How does an early exercise effect this rule?  
The 100k limit applies to shares when they become exercisable, so the 100k limit would apply to the full value of the grant on grant date. The remaining amount is treated as a non-qualified stock option.

# Options Continued...

- Can a 83(b) election be filed on an ISO grant and how does that effect taxes?

83(b) elections can be filed on a early exercised ISO. However, the election has to be filed within 30 days prior to the exercise date.

- What is the difference between a qualified and disqualified disposition?

If the shares are held two years after the grant date and one year after the exercise date then the disposition is considered a qualifying one.

- How are ISOs taxed?

Disqualified Disposition (DD) – the spread (Fair market value minus strike price) amount is reported on the W-2

Qualified Dispositions – May see AMT, recommended to consult with a tax advisor as it varies due to each participant's unique tax situation.

# Options Continued...

- NQSO(Non-Qualified Stock Option)
  - When is an employee taxed for a NQSO transaction?  
Employees will recognize ordinary income on the spread amount of the exercise.
  - How does an employee calculate cost basis to avoid double taxation?  
A participant's cost basis is the FMV amount of the stock on the day it was acquired, unless 83(b) was filed.
  - How does a same day sell effect capital gains?  
Same day sells will recognize \$0 capital gains. This is due to the shares being sold at their cost basis.



# NQSO and the W-2

## EXAMPLE: W-2: NQSO reporting

**EXAMPLE: W-2: NQSO reporting**

22222		a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation	2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages	4 Social security tax withheld	
			5 Medicare wages and tips	6 Medicare tax withheld	
			7 Social security tips	8 Allocated tips	
d Control number			9 Advance EIC payment	10 Dependent care benefits	
e Employee's first name and initial		Last name		11 Nonqualified plans	
				12a See instructions for box 12 V NQSO spread	
				12b	
				12c	
				12d	
f Employee's address and ZIP code					
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax
					20 Locality name

Form **W-2** Wage and Tax Statement

Department of the Treasury—Internal Revenue Service  
For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Cat. No. 101340

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# AWARDS

# Restricted Stock Unit (RSU)

- What is an RSU?
  - Restricted Stock Units are full value awards typically granted at no cost to the participant.
- Who can receive RSUs?
  - If the plan allows, anyone can be granted a RSU awards.
- What type of taxes are applied on release date?
  - Companies are required to withhold Federal, Medicare, Social Security, and any type of State tax at vest for all of their employees. Typically Non-employees don't have taxes withheld and the income is reported on a 1099. The tax calculation is similar to NQ options as the spread is taxed as ordinary income, except the strike price is usually \$0.
  - A few different methods can be used to withhold taxes for RSU releases like net settlement (trade), sell to cover, and sell all to name a few. The plan generally indicates which method(s) are allowed to collect this tax.

# RSU Continued...

- Can you file an 83(b) election for RSUs?
  - No, 83(b) can't be filed on a RSU grant
- When can an employee begin to collect dividends on long shares?
  - Employees may receive dividend equivalents, if the plan allows. Most companies that pay dividend equivalents do so in either cash to the participant when the shares vest, or they put the amount towards the participant's tax obligation at vesting.

# Restricted Stock Award (RSA)

- Who can receive RSAs?
  - Like RSUs, RSAs can be granted at no cost
- How do RSAs differ from RSUs?
  - RSA shares are issued at grant and placed in escrow until the vesting conditions are met. The participant will have rights to these shares for purposes of voting and dividend payouts.
  - RSA awards allow 83(b) elections if made within 30 days after the date of grant.
  - Tax deferral cannot be utilized with RSAs, but RSUs can have a tax deferral. This isn't common to see since you expose yourself to risk of a 409A deferred tax asset that could lead to large penalties.

# RSA Continued...

- How does an 83(b)-election effect RSAs?
  - It locks in your cost basis on date when early exercise occurs, if valid election is made within 30 days of grant date. Resulting in the participant only recognizing capital gains as the stock vests.
  - If the grant is canceled, participants won't receive a refund for taxes paid to the IRS for those unvested shares.

# Where can I find a Form 83(b)?

## Section 83(b) Election

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

TAXPAYER'S NAME: \_\_\_\_\_  
TAXPAYER'S SOCIAL SECURITY NUMBER: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
TAXABLE YEAR: Calendar Year 20\_\_

2. The property which is the subject of this election is \_\_\_\_\_ shares of common stock of \_\_\_\_\_.
3. The property was transferred to the undersigned on **[DATE]**.
4. The property is subject to the following restrictions: **[Describe applicable restrictions here.]**
5. The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: \$ \_\_\_\_\_ per share x \_\_\_\_\_ shares = \$ \_\_\_\_\_.
6. For the property transferred, the undersigned paid \$ \_\_\_\_\_ per share x \_\_\_\_\_ shares = \$ \_\_\_\_\_.
7. The amount to include in gross income is \$ \_\_\_\_\_. **[The result of the amount reported in Item 5 minus the amount reported in Item 6.]**

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated: \_\_\_\_\_ Taxpayer



# TRANSFER AGENTS



# Transfer Agents

- Who are they?
  - A 3<sup>rd</sup> party entity that manages the transfer and holding of a company's stock
- Why are they important?
  - Effective median for communicating/executing proxy voting or dividend payouts with direct shareholders tracked within the system or indirect shareholders where brokers hold shares in street name for participants.
  - Vital for companies that are required to register shares with the SEC.
  - How companies manage/track increases to their share pool due to company buybacks, evergreen plans, plan increase or any other type of company share movement to or from the treasury or plan(s).
- Do private companies need transfer agents?
  - Typically, no. Some private companies do need them when they are required to register shares.
  - Most cap table management and shareholder tracking is done on an equity software platform or at a law firm in the early stages of private companies.

# Transfer Agents Continued...

- When a transaction occurs what is needed?
  - DWAC(Deposit Withdrawal At Custodian) Number
  - Total number of shares
  - Destination via DTC(Depository Trust Company) number E\*TRADE - 0385, Morgan Stanley - 0015, Fidelity – 0226, etc.
  - Settlement date, T+2 – Trade date plus two market days to settle trades at broker

PDF of all DTC numbers can be found at:

<http://www.dtcc.com/client-center/dtc-directories>

# INSIDER FORM FILINGS

# Insider Form Filings

- Why are forms important?
  - Data reported will go hand-in-hand with year-end proxy reporting
  - Avoiding punitive measures from the SEC
- Three types of forms
  - Form 3 – For first time filers
    - Deadline – 10 days of becoming an affiliate
  - Form 4 – Transactions (i.e. releases, exercises, sale of long shares)
    - Deadline – 2 business days from the transaction or **broker notification**
  - Form 5 – Late form 4 filings or deferred transactions (small gifts)
    - Deadline – 45 days from the end of the company's FY End

# Insider Form Filings Continued...

- Who is subject to Form Filings?
  - Senior Officers, Directors and anyone who beneficially owns 10% of the company's voting shares
- I have a first time filer what do I need?
  - CIK (Central Index Key)
  - CCC (CIK Confirmation Code)
- How does an insider obtain CIK (Central Index Key) and CCC (CIK Confirmation Code) codes?

# Insider Form Filings Continued...

U.S. Securities and Exchange Commission Washington, DC 20549	<b>OMB APPROVAL</b> OMB Number: 3235-0328 Expires: May 31, 2019 Estimated average burden hours per response: 0.15
<b>FORM ID</b> <b>UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR</b>	
<b>PART I—APPLICATION FOR ACCESS CODES TO FILE ON EDGAR</b>	
Name of applicant (Applicant's name as specified in its charter, except, if individual, last name, first name, middle name, suffix [e.g., "Jr."]) _____	
Mailing Address or Post Office Box No. _____	
City _____ State or Country _____ Zip _____	
Telephone number (include Area and, if Foreign, Country Code) _____	
<input type="checkbox"/> Access codes will be used to submit draft registration or draft offering statement.	
Applicant is (see definitions in the General Instructions):	
<input type="checkbox"/> Individual (if you check this box, you must also check another box that appropriately describes you)	
<input type="checkbox"/> Clearing Agency	
<input type="checkbox"/> Filer	
<input type="checkbox"/> Filing Agent	
<input type="checkbox"/> Institutional Investment Manager (Form 13F Filer)	
<input type="checkbox"/> Investment Company, Business Development Company or Insurance Company Separate Account	
<input type="checkbox"/> Large Trader	
<input type="checkbox"/> Municipal Advisor	
<input type="checkbox"/> Municipal Securities Dealer	
<input type="checkbox"/> Nationally Recognized Statistical Rating Organization	
<input type="checkbox"/> Non-Investment Company Applicant under the Investment Company Act of 1940	
<input type="checkbox"/> Security-Based Swap Data Repository	
<input type="checkbox"/> Security-Based Swap Dealer and Major Security-Based Swap Participant	
<input type="checkbox"/> Security-Based Swap Execution Facility	
<input type="checkbox"/> Training Agent	
<input type="checkbox"/> Transfer Agent	
<b>PART II—FILER INFORMATION (To be completed only by filers that are not individuals)</b>	
Filer's Tax or Federal Identification Number (do not enter Social Security Number) _____	
Doing Business As _____	
Foreign Name (if Foreign Issuer Filer and applicable) _____	
Primary Business Address or Post Office Box No. (if different from mailing address) _____	
City _____ State or Country _____ Zip _____	
State of Incorporation _____ Fiscal Year End (mm/yy) _____	
Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a current valid OMB control number.	
SEC 2084 (01-13)	

# Insider Form Filings Continued...

- A copy of the Form ID can be found [here](#)
- SEC provided two page document with additional pages of instructions
- Form must be signed (manually) and notarized

# Insider Form Filings Continued...

- Things to think about prior to filing
  - Transaction Codes – The SEC (Securities Exchange Commission) has a list you can download for reference. **\*\*SEC Transaction Codes**
  - Tracking Insider Holdings – This can be done offline and will save trouble during the filing process and when proxy reports are due.
  - Should you be tracking indirect shares? **YES!**



# YEAR END & WHAT TO EXPECT

# Year-end & Expectations

- How to get ahead of Year-end?
  - **Database Reconciliation**
    - Terminations input
    - Transactions reconciled in house & with transfer agent
    - Payroll data provided to HR partners consistently
    - Participant Data clean up
  - **Cap Table Management**
    - All series of stock entered
    - Transactions reconciled
    - Payroll data provided to HR partners

# YE Continued...

- 3921 & 3922 (6039 Reporting)
  - Who receives a 3921?
    - Employees who exercise an ISO grant
  - Who receives a 3922?
    - Employees who purchase ESPP shares
  - Are there deadlines to submit/provide this documentation to employees and the IRS?
    - YES

# YE Continued...

- 6039 Filing Deadlines
  - January 31<sup>st</sup> – Statements must be distributed to employees
  - February 28<sup>th</sup> – If submitting the 3921 & 3922's by paper to the IRS
  - March 31<sup>st</sup> – If submitting to the IRS electronically, this is the last day!
- **Penalties for late filings can be substantial**

# YE Continued...

- **What are the 6039 Reporting Penalties?**
  - Within 30 Days
    - Per Failure: \$50
    - Cap: \$500,000
  - By August 1<sup>st</sup>
    - Per Failure: \$100
    - Cap: \$1,500,000
  - After August 1<sup>st</sup> or Never
    - Per Failure: \$250
    - Cap: \$3,000,000
  - With Intentional disregard, regardless of timing
    - Per Failure: \$500
    - Cap: None

# YE Continued...

- Form 3921

2525		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		
TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129  <b>Form 3921</b>  (Rev. October 2017)	<b>Exercise of an Incentive Stock Option Under Section 422(b)</b>  <b>Copy A</b> <b>For Internal Revenue Service Center</b>  <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>current version of the General Instructions for Certain Information Returns.</b>
		2 Date option exercised		
TRANSFEROR'S TIN	EMPLOYEE'S TIN	3 Exercise price per share	4 Fair market value per share on exercise date	
EMPLOYEE'S name		\$	\$	
Street address (including apt. no.)		5 No. of shares transferred		
City or town, state or province, country, and ZIP or foreign postal code		6 If other than TRANSFEROR, name, address, and TIN of corporation whose stock is being transferred		
Account number (see instructions)				

Form **3921** (Rev. October 2017)      Cat. No. 411790      [www.irs.gov/Form3921](http://www.irs.gov/Form3921)      Department of the Treasury - Internal Revenue Service

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# YE Continued...

- Form 3922

2626       VOID       CORRECTED

CORPORATION'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129  <b>Form 3922</b>  (Rev. September 2016)	<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</b>  <b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>current version of the General Instructions for Certain Information Returns.</b>
		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		\$	\$	
		5 Exercise price paid per share	6 No. of shares transferred	
		\$		
Street address (including apt. no.)		7 Date legal title transferred		
City or town, state or province, country, and ZIP or foreign postal code				
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. 9-2016)      Cat. No. 41180P      [www.irs.gov/form3922](http://www.irs.gov/form3922)      Department of the Treasury - Internal Revenue Service

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**QUESTIONS?**



# Contact Information



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