



News & Trending

PUBLICATIONS & ALERTS

REMINDER: JANUARY 31, 2014 DEADLINE FOR EMPLOYERS TO REPORT 2013 ISO EXERCISES AND ESPP TRANSFERS

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Although the IRS first began requiring employers to report incentive stock option (ISO) exercises and certain employee stock purchase plan (ESPP) transfers under Section 6039 of the Internal Revenue Code (the “Code”) in 2010, these annual reporting obligations still catch many employers off guard. With the recent uptick in ESPPs, we are seeing many employers having to issue Form 3922 (for ESPP shares) for the first time this year. This alert is provided as a reminder of the fast-approaching reporting deadlines for ISO exercises as well as certain ESPP transfers during 2013.

Code Section 6039 imposes two reporting obligations on employers with employees (or former employees) exercising ISOs. First, an employer must provide individuals with an employee information statement for each ISO exercise by January 31 of the following calendar year (i.e., by **January 31, 2014** for ISOs exercised at any point in 2013). Second, an employer must report each ISO exercise to the IRS on Form 3921. The deadline for filing Form 3921 with the IRS for ISO exercises in 2013 is **February 28, 2014** for employers filing paper copies. For those required to file Form 3921 electronically—generally required of all employers reporting 250 or more ISO transactions in a single year—the filing deadline is **March 31, 2014**. Under the applicable IRS rules, each ISO exercise is considered a separate transaction for IRS reporting purposes and must be reported to the IRS on a separate Form 3921. (Note: exercises of nonqualified stock options (“NSOs”) are not required to be reported on Form 3921 but should have the proceeds reported on the participant’s Form W-2.)

Employers who sponsor a tax-qualified ESPP permitting employees to purchase shares at a discount (or at a purchase price not fixed and determinable on the grant date) are subject to similar employee information statement and IRS reporting requirements under Code Section 6039. In particular, employers sponsoring ESPPs are required to report the transfer of legal title to ESPP shares on Form 3922. The deadline for filing Form 3922 with the IRS for ESPP shares to which legal title was first transferred in 2013 is **February 28, 2014**. Employers are also required to provide employee information statements for ESPP purchases to participants by **January 31, 2014**.

The employee information statement requirements may be satisfied by providing individuals with “Copy B” of each Form 3921 (ISO exercises) or Form 3922 (ESPP purchases). Alternatively, employers may satisfy the information statement requirement by use of a substitute form that complies with the general format and content requirements detailed in IRS Publication 1179. Links to copies of [Form 3921](#), [Form 3922](#), [Instructions to Forms 3921 & 3922](#), and [IRS Publication 1179](#) (included in Rev. Proc. 2012-38) are available on the IRS website. (Note: sample copies of the forms on the website are for informational purposes only. Official forms for filing may be ordered from the website or by calling 1-800-TAX-FORM.)

Employers who fail to timely file Form 3921 or Form 3922 may be subject to penalties up to \$100 per return (with a maximum aggregate penalty of \$1,500,000 per calendar year). Failure to timely provide complete employee information statements may also result in up to a \$100 penalty for each failure (with a maximum aggregate penalty of \$1,500,000 per calendar year).

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