

ISO and ESPP Reporting and Disclosure Requirements for Employers

This is a reminder to all corporations whose employees or former employees exercised an incentive stock option or made a purchase under the corporation's employee stock purchase plan (ESPP) in 2016. Section 6039 of the Internal Revenue Code requires the corporation to furnish a written statement to any such employee or former employee who either

- (a) exercised an incentive stock option within the meaning of Section 422 of the Internal Revenue Code (ISO) during 2016, or
- (b) first transferred legal title to shares acquired under the corporation's ESPP within the meaning of Section 423 of the Internal Revenue Code during 2016 and
 - (i) the purchase price of the shares was less than the fair market value of the shares of stock on the date of grant, or
 - (ii) the purchase price of the shares was not fixed or determinable on the date of grant.

Deadlines

You must furnish an information statement on Form 3921 (ISO) or Form 3922 (ESPP), as applicable, to each employee (or former employee) by January 31, 2017; you must also file information returns with the Internal Revenue Service (IRS) by February 28, 2017, if filing on paper, or March 31, 2017, if filing electronically.

Who must file electronically?

If you are required to file 250 or more information returns on either Form 3921 (ISO) or Form 3922 (ESPP), you must file the forms with the IRS electronically, unless you apply for and receive a hardship waiver from the IRS. To illustrate, if you are required to file 300 Forms 3921 (ISO) and 100 Forms 3922 (ESPP), then you must file Forms 3921 electronically, but are not required to file Forms 3922 electronically. The IRS encourages you to file electronically even if you are filing fewer than 250 returns.

Information Returns for ISOs

Information Returns for ISOs must be submitted to the IRS on Form 3921. You may order Form 3921 by calling the IRS at



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1-800-829-3676 or through the IRS website. For informational purposes only, Form 3921 is available at <https://www.irs.gov/form3921>. The instructions for Form 3921 are available at <https://www.irs.gov/pub/irs-pdf/i3921.pdf>. You are NOT permitted to print the form from the link and file it with the IRS; the IRS will only accept the official forms ordered from the IRS. Information reported to employees may be presented on the IRS form or in another format, provided that all of the information on the IRS Form is reported to the employees.

Information Returns for ESPP

Information Returns for ESPP transactions must be submitted to the IRS on Form 3922. You may order Form 3922 by calling the IRS at 1-800-829-3676 or through the IRS website. For informational purposes only, Form 3922 is available at <https://www.irs.gov/form3922>, and the instructions for Form 3922 are available at <https://www.irs.gov/pub/irs-pdf/i3921.pdf>. You are NOT permitted to print the form from the link and file it with the IRS; the IRS will only accept the official forms ordered from the IRS. Information reported to employees may be presented on the IRS form or in another format, provided that all of the information on the IRS Form is reported to the employees.

Penalties

Timely filing and furnishing of Forms 3921 and 3922 is important. Penalties may apply if Form 3921 or Form 3922 are not timely filed with the IRS. A \$50 penalty per return may apply for a filing that occurs on or before 30 days after the filing deadline, increasing to \$100 if the filing occurs after 30 days but on or before August 1, 2017. Thereafter, a \$260 penalty may be assessed for each delinquent filing, subject to a maximum penalty of \$3,193,000 per year or \$1,064,000 for small businesses.

Filing Extensions

You can get a 30-day extension to file by completing Form 8809. However, you must file Form 8809 by the due date of the returns in order to get the 30-day extension. Under certain hardship conditions you may apply for an additional 30-day extension. Please refer to the instructions for Form 8809 for further details.

Exception

You are not required to file a return with respect to, or provide an information statement to, an employee who is a nonresident alien (as defined in section 7701(b) of the Internal Revenue Code) and to whom you are not required to provide a Form W-2 for any calendar year beginning with the first day of the calendar year that the ISO or the ESPP purchase right was granted and the last day of the calendar year that the ISO was exercised or the ESPP stock transfer occurred.

For more information, please contact:

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