

# Reminder to Perform Annual ISO/ESPP Reporting in January 2023

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As discussed in our December 16, 2010 [blog article](#), the IRS issued final regulations in 2009 under Section 6039 of the Internal Revenue Code (the “Code”) that require employers to annually furnish each employee who exercised incentive stock options (“ISOs”) or sold or otherwise transferred shares acquired under an employee stock purchase plan (“ESPP”) during a year with a detailed information statement by January 31 of the following year. In addition, employers must generally file an information return with the IRS by February 28 of the following year, or by March 31 for employers filing electronically. These due dates are delayed until the next business day if they otherwise fall on a weekend.

## Information Statements to Employees for 2022 ISO/ESPP Transactions

If in 2022 an employee exercised an ISO (i.e. a stock option described in Section 422 of the Code), the Employer must provide the employee with a written information statement by January 31, 2023. Form 3921 should be used for this purpose (click on these two IRS links for additional information [Form 3921](#) [About Form 3921](#)). However, a qualifying substitute form may also be used so long as it contains the required information. Only one transaction can be reported on a Form 3921. In other words, an employee will receive more than one Form 3921 from his/her employer for a calendar year if the employee effected more than one ISO exercise in such year.

If in 2022 legal title to stock purchased under an ESPP (i.e. a plan described in Section 423 of the Code) was transferred from the employee to a third party, and such transfer was the ***first*** transfer of such shares, the employer must provide the employee with a written information statement by January 31, 2023. Form 3922 or a qualifying substitute form may be used (click on these two IRS links for additional information [Form 3922](#) [About Form 3922](#)). Only one transaction can be reported on a Form 3922 or in other words, an employee may receive more than one Form 3922 from his/her employer for a calendar year.

## Information Reporting to the IRS

In addition, employers must file an information return with the IRS by February 28, 2023 (or by March 31, 2023 for employers filing electronically). Companies filing 250 or more information statements in a year (determined separately with respect to Form 3921 and Form 3922 and not aggregated between

them for purposes of this 250 threshold) must file these forms electronically. The information returns must be filed on Form 3921 for ISO transactions and Form 3922 for ESPP transfers. In other words, unlike for the employee information statements, no substitute form can be used for the information returns filed with the IRS.

## Other Information

Please note that the Forms 3921/3922 that are filed with the IRS must be scannable. Employers can order the official IRS forms from the IRS, either by calling 1-800-TAX-FORM (1-800-829-3676) or via [online](#) and the IRS will mail the employers the scannable forms and other products.

The failure to timely furnish the information statements, or timely file the information returns, can result in penalties to the employer including fines for each deficient statement or return.

Keep in mind that other reporting obligations may arise upon the disposition of stock acquired under an ISO or an ESPP, such as including the employee's income from the disposition of stock on Form W-2.

Employers should review their administration of any 2022 ISO and ESPP transactions in order to ensure that they will be able to timely prepare and file the requisite reports.

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