Cooley

Year-End Reporting for ISO Exercises and ESPP Stock Transfers

January 12, 2026

This alert serves as a reminder of certain year-end reporting requirements imposed under Section 6039 of the Internal Revenue Code (IRC) of 1986, as amended, with respect to:

- Incentive stock option (ISO) exercises by current and former employees
- Transfers of stock acquired by current and former employees under a tax-qualified employee stock purchase plan (ESPP)

For each ISO exercise and ESPP stock transfer that occurred in 2025, a corporation must furnish an information statement to the current or former employee regarding such transactions **no later than February 2, 2026.** It must also file an information return with the Internal Revenue Service (IRS) regarding such transactions **no later than March 2, 2026, if filing by paper,** and **no later than March 31, 2026, if filing electronically.** These reporting requirements are intended to provide current and former employees with sufficient information to calculate their tax obligations.

Form 3921 ISO exercise – Employee information statement

Every corporation that, in 2025, issued stock upon the exercise of an ISO – meaning a stock option as described in Section 422 of the IRC – must, **on or before February 2, 2026,** furnish to the current or former employee who exercised the option a written statement containing the information on Form 3921. Copy A of Form 3921 is filed with the IRS, Copy B is furnished to the current or former employee, and Copy C is retained by the corporation for its records.

The reporting deadlines, noted above and below, may be extended for taxpayers eligible for IRS-announced disaster relief. A full list of these extensions can be found on the IRS website.

Form 3921 is available on the IRS website, but Copy A downloaded from the IRS website should not be filed. The official printed version of this IRS form is scannable; the online version printed from the IRS website is not. The official form may be ordered from the IRS website.

Corporations should also note:

- A penalty of $340 per information return may be imposed for failing to file a correct form by the due date.
- The penalty is lowered to $60 if corrected within 30 days (by April 1, 2026, if the due date is March 2, 2026) and to $130 if corrected by August 1, 2026, up to an aggregate annual limit of $4,098,500, or $1,366,000 for small businesses.
- Penalties will not apply to any failure that the corporation can show was due to reasonable cause and not willful neglect.

Form 3922 ESPP first transfer – Employee information statement

Every corporation that, in 2025, recorded by its transfer agent a "first transfer"[1] by a current or former employee of stock acquired by such employee under an ESPP – meaning a plan established under Section 423 of the IRC – must, on or before February 2, 2026, furnish to the current or former employee who is transferring the stock a written statement containing the information on Form 3922 when the purchase price is either:

- Less than 100% of the value of the stock on the grant date.
- Not fixed or determinable on the grant date.

Form 3922 is available on the IRS website. Copy A of Form 3922 is filed with the IRS, Copy B is furnished to the current or former employee, and Copy C is retained by the corporation for its records. As explained above, Copy A filed with the IRS needs to be scannable.

Requirements applicable to both forms of employee information statement

The employee information statement must either be:

- Contained on the appropriate form (i.e., Form 3921 for ISO exercises or Form 3922 for ESPP stock transfers).
- Contained on a substitute form that meets the format and content requirements in Publication 1179.

A separate form must be filed for each transaction. If an employee has more than one transaction during the year, each form must contain a unique account number, such as a number provided by equity tracking software. However, if a substitute form is used, the company may aggregate transactions, providing a single form to each employee.

Delivery of employee information statement

Employee information statements, either Copy B of the applicable form or an acceptable substitute, may be mailed or delivered to the current or former employee's last known address or sent electronically, provided that the person has consented to receive the statement electronically and the corporation meets certain other specified requirements.

IRS information return

In addition to providing information statements to employees, a corporation is required to file an information return with the IRS. For exercises and transfers that occurred in 2025, the information returns must be filed **no later than March 2, 2026, if filing by paper**, and **no later than March 31, 2026, if filing electronically** (subject to extensions in certain declared disaster zones as noted above).

Companies filing 10 or more copies of Form 3921 or Form 3922 in a year (determined separately and not aggregated between them for purposes of this 10-form threshold) must file their information returns electronically. This limit is significantly reduced from the 250-form limit applicable in recent years.

The information returns must contain the same information required by the Section 6039 regulations with respect to employee information statements. Information returns for ISO exercises must be made on Form 3921, and information returns for ESPP stock transfers must be made on Form 3922.

It is possible to file Form 8809 to receive an automatic 30-day extension to the due date for filing information returns. Form 8809 is available on the IRS website. Please note that the extension only applies to filing returns with the IRS, not the due date for furnishing statements to recipients.

Information requirements

As explained above, the information that corporations must provide to a current or former employee in an information statement is the same information that corporations must report to the IRS in an information return. When reporting this information, corporations should use the applicable form for both the information statement and the information return. Copy A of the applicable form is filed with the IRS, Copy B is provided to the current or former employee, and Copy C is retained for the corporation's records.

Form 3921 for ISO exercises must contain:

- The name, address and employer identification number of the corporation transferring the shares.
- The name, address and taxpayer identification number of the current or former employee to whom the shares were transferred pursuant to the exercise of the ISO.
- The grant date, the exercise price per share, the date of exercise, the fair market value per share on the date of exercise and the number of shares transferred pursuant to the exercise of the ISO.

Form 3922 for ESPP stock transfers must contain:

- The name, address and employer identification number of the corporation whose shares were transferred.
- The name, address and taxpayer identification number of the current or former employee who transferred the shares.
- The date the purchase right was granted to the current or former employee and the fair market value per share on the grant date.
- The purchase date, the fair market value per share on the purchase date and the purchase price paid per share on the purchase date.
- The number of shares to which legal title was transferred by the current or former employee, the date the legal title was first transferred by the current or former employee and – if the purchase price was not fixed or determinable on the grant date – the purchase price per share determined as if the shares were purchased on the grant date.

If you have any questions about the information contained in this alert, please contact a member of the Cooley compensation and benefits group.

Note

1. The “first transfer” of ESPP stock from the employee/original owner includes a transfer to a brokerage account. This means, generally speaking, that the tax reporting obligation is triggered when the stock is deposited into the employee’s brokerage account. No transfer will be deemed to have occurred if the stock is issued directly to the employee (or held in book-entry form by the company or a transfer agent). Instead, the reporting requirement will generally be triggered by the subsequent sale or transfer of the stock (including to a brokerage account).

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