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[Time for Corporations to Get Ready to Issue Annual ISO/ESPP Information Statements and File New Information Returns with IRS; IRS Releases New Forms and Instructions](#)

In January 2011, Employers must furnish each employee who exercised incentive stock options ("ISOs") or sold or otherwise transferred shares acquired under an employee stock purchase plan ("ESPP") during 2010 with a detailed information statement by January 31, 2011, and must also file an information return with the Internal Revenue Service (the "IRS") by February 28, 2011 (March 15, 2011 for corporations filing electronically).

As discussed in our January 11, 2010 [blog article](#) and November 19, 2009 [blog article](#), the IRS issued new final regulations in 2009 regarding the information return and information statement requirements under Section 6039 of the Internal Revenue Code. Although the final regulations apply as of January 1, 2007, employers were not required to file an information return with the IRS for stock transfers that occurred during 2007, 2008 or 2009 (although employers were required to provide an information statement to employees with respect to stock transfers that occurred during those years). Additionally, employers had the option of continuing to rely on the prior 2004 final regulations or the 2008 proposed regulations, as opposed to following the new 2009 final regulations. The current year 2010 represents the first year during which employers must comply with the new 2009 final regulations and must file an information return with the IRS, in addition to providing an information statement to employees.

The IRS recently issued two new forms ([Form 3921](#) for ISO transactions and [Form 3922](#) for ESPP transfers), which must be used to satisfy the information return requirement and can be used to satisfy the information statement requirement (a substitute form can be used for the information statement only). The instructions to the new forms also reference the IRS [General Instructions for Certain Information Returns](#), which includes additional information, such as when an employer must file electronically and when an account number is required for a recipient.

The failure to timely file a required information return can subject an employer to a penalty of up to \$50 per information return, up to a maximum of \$250,000 per year (subject to certain exceptions); while the penalty for the failure to timely furnish a required information statement is equal to \$50 per return, up to a maximum of \$100,000 per year.

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