

IRC 6039

SPS/GZ Professional Solution

SPS GZ

STOCK PLAN SOLUTIONS/GREEN ZAPATO LLC

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This presentation and the views expressed by the individual presenters should not be relied on as legal, accounting, auditing, or tax advice. The outcome of any individual situation depends on the specific facts and circumstances in which the issue arises and on the interpretation of the relevant literature in effect at the time.

People viewing this presentation should not act upon this information without seeking professional counsel and/or input from their advisers.

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Introductions

Rick Zatz (Co-Founder)

Rick is a Certified Equity Professional (CEP) with 16 years of experience in stock plan administration. He managed the stock plan administration department of a global technology company before founding SPS/GZ. Rick is recognized as a leader in the industry and has served on many panels related to best practices in stock plan administration and curriculum for the CEP program.

Mary Pat Wood (Co-Founder)

Mary Pat is a Certified Public Accountant (CPA) and a Certified Equity Professional (CEP) with 19 years of experience in stock plan administration, accounting and financial reporting, SEC compliance, financial forecasting and investor relations. She was formerly an auditor for a “Big Four” accounting firm and served as External Reporting Manager at a global software company and at a national mortgage company

Who we are

- A full-service administration outsourcing and consulting firm
- Staffed by seasoned certified professionals (CEPs and CPAs)
- Privately held company
- Located in Chicago
- Founded in 2001
- Mission: To provide our clients with expertise and guidance from equity compensation professionals with “**real-world experience**” who could address the changing landscape of accounting regulations and multitude of complex issues born out of IPOs, mergers, and the evolving Sarbanes-Oxley environment.



Our Services

Outsourcing

- Complete, reliable outsourcing services for equity compensation programs (Stock Options, Restricted Stock Awards/Units, Stock Appreciation Rights and Employee Stock Purchase Plans)
- Plan implementation and daily administration
- FAS 123(R) valuations and financial reporting
- SEC, IRS and FASB compliance

Consulting

- IRC 6039 mailings and filings
- Database implementation and projects
- FAS 123(R)/Stock Plan accounting consulting
- Customized education presentations to plan participants
- Web-based mobility tracking solution

Section 6039: In the beginning...

Section 6039 of the Internal Revenue Code requires that by January 31 of the following year, each company must provide a written statement to each participant who had legal title of shares of stocks transferred to them in the previous year:

- Through the exercise of an Incentive Stock Option (ISO).
- Through the purchase of shares in an Employee Stock Purchase Plan (ESPP) that is qualified under IRC 423 and deposited in a brokerage account.

Section 6039: Regulation changes

The IRS finalized IRC 6039(a) in November 2009:

- Required issuers to report information for ISO exercises and ESPP purchases to the IRS in a designated format.
- Released instructions for filing (IRS Publication 1220).
- Issuers with 250 or more forms must file electronically (requirement is for each form individually, and not cumulatively), though electronic filing is permitted for fewer than 250.
- Created a specific form for ISO exercises (Form 3921).
- Created a specific form for ESPP purchases (Form 3922).
- Required more “per share” information be sent to participants.
- Allowed companies to send a substitute form to participants, though substitute forms must meet certain criteria (IRS Publication 1179).
- Created new deadlines and penalties for non-compliance.

Summary of IRC 6039 requirements

- Requirement is for any corporation that transfers legal title of stock pursuant to ISO exercises or ESPP purchases under a Sec. 423-qualified plan for plan participants who have earnings and taxes reported to the IRS.
- For private companies, the 6039 requirement is applicable for ISO exercises. For ESPP, it only is triggered if the stock is transferred to a brokerage account (not if a stock certificate is issued to a participant).
- Forms 3921 and 3922 require specific data for each transaction. Thus, these forms must be filed for EACH ISO exercise and eligible ESPP purchase that occurred during the calendar year.

Deadlines coincide with yearly or quarterly audits/reviews for most companies. Before January creeps up on you, plan ahead!

Facts about IRC 6039

Who should file?

Any corporation that issues stock upon ISO exercises, or ESPP purchases through the delivery of shares to a brokerage account.

What to file?

- Form 3921 for ISO exercises.
- Form 3922 for ESPP purchases.

When to file?

- January 31: Statements to be furnished to applicable stock plan participants.
- February 28: Forms to be filed with IRS (for paper forms).
- March 31: Forms to be filed with IRS (for electronic filers).

Draft of Forms 3921 and 3922

Form 3921

2525		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		Form 3921 (Rev. October 2010)		Exercise of an Incentive Stock Option Under Section 422(b)
TRANSFEROR'S name, street address, city, state, and ZIP code		1 Date option granted	OMB No. 1545-2129	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the most current version of the General Instructions for Certain Information Returns.		
TRANSFEROR'S federal identification number	EMPLOYEE'S identification number	2 Date option exercised	3 Exercise price per share			4 Fair market value per share on exercise date
EMPLOYEE'S name		5 No. of shares transferred	6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred	\$	\$	
Street address (including apt. no.)		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred				
City, state, and ZIP code						
Account number (see instructions)						
Form 3921 (Rev. October 2010)		Cat. No. 411790		Department of the Treasury - Internal Revenue Service		
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page						

Project preparation

Careful planning and data preparation can make it easier for you to meet your FILING obligations under IRC 6039:

- Decide if you will do this in-house or outsource. If outsourced, select a service provider no later than the end of November.
- If you decide to file on paper, the IRS estimates it will take 10-12 minutes per transaction to prepare and file.
- Update your software with data extraction updates.
- Update your database with most current mailing addresses.
- Update your database with all transactions through Dec. 31.
- Electronic filing will be done through the FIRE system of the IRS.
- Confirm your company has a Transmitter Control Code (TCC), or obtain one by submitting Form 4419 to the IRS (30 days). If you have questions about TCC, call the IRS at (866) 455-7438.

Project preparation

Careful planning and data preparation can make it easier for you to meet your MAILING obligations under IRC 6039:

- Decide if you will do this in-house or outsource. If outsourced, select a service provide no later than the end of November.
- Communicate to participants before mailing is sent so they know what to expect.
- You may issue substitute statements, but only if all required fields are included, as well as other requirements in IRS Publication 1179.
- You may do electronic delivery if the following requirements are met:
 - ✓ Participant must give electronic consent
 - ✓ Participant must bet told duration of consent period
 - ✓ Paper statements must be an option
 - ✓ Participant must be able to withdraw consent
 - ✓ All details of how, when access will be given are disclosed
 - ✓ Other details may apply, consult IRS documentation

Penalties

The IRS has imposed penalties for late or no filings and mailings:

- Late filing (30 days or less): \$30 per form; \$250,000 max.
- Late filing (30+ days but by Aug. 1): \$60 per form; \$500,000 max.
- Late filing (after Aug. 1 or none): \$100 per form; \$1,500,000 max.
- Intentional disregard: \$250 per form; no max.
- Late or no mailing: Tiered and equal to the filing penalties.

Other important 6039 tips

- Exception: Nonresident aliens if no W-2 is required for any part of calendar year that includes time between the grant and first transfer of legal title.
- No exception: There is NO exception for U.S. citizens working abroad even if no W-2 is issued.
- On mailed forms you must include SSN, which cannot be masked.
- If a company is acquired, it does not relieve the company of filing and mailing requirements, though responsibility may be assumed by acquiring company.
- Filing corrections: Check the “corrected” box and refile with both the original correct information as well as the corrected information. Same deadlines and penalties apply (exception: less than 1% corrected).

SPS/GZ Solution

Stock Plan Solutions/Green Zapato has developed an efficient and cost-effective solution to help your company complete its 6039 filings & mailings accurately and on time, and without incurring penalties if all deadlines are met.

- Certified professionals managing the filings and providing support
- Guidance on data to be extracted from internal systems
- Sample language for your company to send to participants so they are aware of the mailing and understand what to do with it
- Compilation and formatting of data into one Excel template
- Review for missing data
- Preparation of Forms 3921 & 3922
- Mailing of Forms to employees via U.S.P.S. by January 31st
- Electronic transmission of Forms 3921 & 3922 with the IRS
- Confirmation of transmission for all forms
- Archive copy of all forms stored on a disc for optimal record-keeping

Here's how SPS/GZ's solution is different!

Features of IRC 6039 Service	In-House Licensed Software Solution	"Mail-House" Fulfillment Center	SPS/GZ Solution
Software or Platform to Assist with FILING of Forms 3921 & 3922	✓	✓	✓
Mailing of forms handled for company (outsourced)	x	✓	✓
Low cost per form for filings and mailings (without utilizing internal staff)	x	✓	✓
Savings on time and resources of internal staff	x	?	✓
Compilation and formatting of data exported from internal systems	x	x	✓
Fully supported outsourced solution	x	x	✓
Entire process managed by certified professionals (CPAs and CEPs)	x	x	✓

**Call us at (888) 375-3049
or visit our website at
www.spsgz.com**

Thank you!

Mary Pat Wood, CPA, CEP, Principal

Rick Zatz, CEP, Principal