

Instructions for Forms 3921 and 3922



Department of the Treasury
Internal Revenue Service

(Rev. October 2010)

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

Forms 3921 and 3922. Forms 3921 and 3922 are required to be filed for certain stock transfers occurring after 2009. The filing of these information returns is required by section 6039, as amended by the Tax Relief and Health Care Act of 2006 (Public Law 109-432).

- Use Form 3921 to report a corporation's transfer of stock pursuant to an employee's exercise of an incentive stock option described in section 422(b).
- Use Form 3922 to report a transfer of stock by an employee where the stock was acquired pursuant to the exercise of an option described in section 423(c).

Reminder

In addition to these specific instructions, you should also use the most current version of the General Instructions for Certain Information Returns. Those general instructions include information about the following topics.

- Backup withholding.
- Electronic reporting requirements.
- Penalties.
- Who must file (nominee/middleman).
- When and where to file.
- Taxpayer identification numbers.
- Statements to recipients.
- Corrected and void returns.
- Other general topics.

You can get the general instructions from IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions for Form 3921

Who Must File

Every corporation which in any calendar year transfers to any employee a share of stock pursuant to that employee's exercise of an incentive stock option described in section 422(b) must, for that calendar year, file Form 3921 for each transfer made during that year.

Exception. A Form 3921 is not required for the exercise of an incentive stock option by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2, Wage and Tax Statement, for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee exercised the option.

For this purpose, the term "corporation" is defined in section 7701(a) and includes, but is not limited to:

- The corporation issuing the stock,
- A related corporation of the corporation,
- Any agent of the corporation,
- Any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and
- Any party in control of the payment of remuneration for employment to the employee.

Statements to Employees

If you are required to file Form 3921, you must provide a statement to the employee. For more information, see part M in

the most current version of the General Instructions for Certain Information Returns.

Account Number

The account number is required if you have multiple accounts for an employee for whom you are filing more than one Form 3921. Additionally, the IRS encourages you to designate an account number for all Forms 3921 that you file. See part L in the most current version of the General Instructions for Certain Information Returns.

Box 1. Date option granted

Enter the date the option was granted to the employee.

Box 2. Date option exercised

Enter the date the employee exercised the option and purchased the stock.

Box 3. Exercise price per share

Enter the exercise price per share of stock.

Box 4. Fair market value per share on exercise date

Enter the fair market value (FMV) per share of stock on the date the option was exercised.

Box 5. Number of shares transferred

Enter the number of shares of stock transferred to the employee pursuant to the exercise of the option.

Box 6. If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred

Enter the name, address, and EIN of the corporation whose stock is being transferred to the employee pursuant to the exercise of the option. Enter this information only if the corporation is not the entity shown in the TRANSFEROR boxes in the upper left corner of Form 3921.

Specific Instructions for Form 3922

Who Must File

Every corporation, which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the employee pursuant to the employee's exercise of an option granted under an employee stock purchase plan and described in section 423(c) (where the exercise price is less than 100% of the value of the stock on the date of grant, or is not fixed or determinable on the date of grant), must, for that calendar year, file Form 3922 for each transfer made during that year.

A return is required by reason of a transfer described in section 6039(a)(2) only for the first transfer of legal title of the shares by the employee, including the first transfer of legal title to a recognized broker or financial institution. If a contractual agreement exists or is entered into with a recognized broker or financial institution pursuant to which shares acquired upon exercise of the option will be immediately deposited into a brokerage account established on behalf of the employee, then the deposit of shares by the employee into the brokerage account following the exercise of the option is the first transfer of legal title of the shares acquired by the employee, and the corporation is only required to file a return relating to that transfer of legal title.

Shares of stock transferred as a result of the exercise of an option described above must be identified by a special serial number or color for accurate reporting of the transfer of legal title.

Exception. A Form 3922 is not required for the first transfer of legal title of a share of stock by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2, Wage and Tax Statement, for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee first transferred legal title to shares acquired under the option.

For this purpose, the term “corporation” is defined in section 7701(a) and includes, but is not limited to:

- The corporation issuing the stock,
- A related corporation of the corporation,
- Any agent of the corporation,
- Any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and
- Any party in control of the payment of remuneration for employment to the employee.

Statements to Employees

If you are required to file Form 3922, you must provide a statement to the employee. For more information, see part M in the most current version of the General Instructions for Certain Information Returns.

Account Number

The account number is required if you have multiple accounts for an employee for whom you are filing more than one Form 3922. Additionally, the IRS encourages you to designate an account number for all Forms 3922 that you file. See part L in the most current version of the General Instructions for Certain Information Returns.

Box 1. Date option granted

Enter the date the option to purchase the stock was granted to the employee.

Box 2. Date option exercised

Enter the date the option to purchase the stock was exercised by the employee.

Box 3. Fair market value per share on grant date

Enter the fair market value (FMV) per share of stock on the date the option to purchase the stock was granted to the employee.

Box 4. Fair market value per share on exercise date

Enter the FMV per share of stock on the date the option to purchase the stock was exercised by the employee.

Box 5. Exercise price paid per share.

Enter the price paid per share on the date the option was exercised.

Box 6. Number of shares transferred

Enter the number of shares to which legal title was transferred by the employee.

Box 7. Date legal title transferred

Enter the date legal title of the shares was first transferred by the employee.

Box 8. Exercise price per share determined as if the option was exercised on the date shown in box 1

If the exercise price per share was not fixed or determinable on the date of grant entered in Box 1, enter the exercise price per share determined as if the option was exercised on the date of grant entered in Box 1. If the exercise price per share is fixed or determinable on the date of grant entered in Box 1, then leave Box 8 blank.