

Instructions for Form 5330

(Rev. December 2023)

Return of Excise Taxes Related to Employee Benefit Plans

Volume 1 of 2



Department of the Treasury
Internal Revenue Service

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

Future Developments

For the latest information about developments related to Form 5330 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form5330](https://www.irs.gov/Form5330).

What's New

Mandatory electronic filing. Under final regulations ([T.D. 9972](#)) issued in February 2023, any employer or individual required to file an excise tax return on Form 5330 must file the excise tax return electronically for tax years ending on or after December 31, 2023, if the filer is required to file at least 10 returns of any type during the calendar year that the Form 5330 is due. See Regulations section 54.6011-3 for more information.

Extension. Effective in 2024, Form 8868, Application for Extension of Time To File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, is used to

request an extension of time to file Form 5330. If approved, you may be granted an extension of up to 6 months after the normal due date of Form 5330. Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, is no longer used for an extension of time to file Form 5330.

General Instructions

Purpose of Form

File Form 5330 to report the tax on:

- A prohibited tax shelter transaction (section 4965(a)(2));
- A minimum funding deficiency (section 4971(a) and (b));
- A failure to pay liquidity shortfall (section 4971(f));

- A failure to comply with a funding improvement or rehabilitation plan (section 4971(g)(2));
- A failure to meet requirements for plans in endangered or critical status (section 4971(g)(3));
- A failure to adopt rehabilitation plan (section 4971(g)(4));
- A failure to adopt funding restoration plan(section 4971(h));
- Nondeductible contributions to qualified plans(section 4972);
- Excess contributions to a section 403(b)(7)(A) custodial account (section 4973(a)(3));
- A prohibited transaction (section 4975);
- A disqualified benefit provided by funded welfare plans (section 4976);

- Excess fringe benefits (section 4977); • Certain employee stock ownership plan (ESOP) dispositions (section 4978);
- Excess contributions to plans with cash or deferred arrangements (section 4979);
- Certain prohibited allocations of qualified securities by an ESOP (section 4979A);
- Reversions of qualified plan assets to employers (section 4980); and
- A failure of an applicable plan reducing future benefit accruals to satisfy notice requirements (section 4980F).

Who Must File

A Form 5330 must be filed by any of the following.

1. A plan entity manager of a tax-exempt entity who approves, or otherwise causes the entity to be party to, a prohibited tax shelter transaction during the tax year and knows or has

reason to know the transaction is a prohibited tax shelter transaction under section 4965(a)(2).

2. An employer liable for the tax under section 4971 for failure to meet the minimum funding standards under section 412.
3. An employer liable for the tax under section 4971(f) for a failure to meet the liquidity requirement of section 430(j) (or section 412(m)(5) as it existed prior to amendment by the Pension Protection Act of 2006 (PPA '06)), for plans with delayed effective dates under PPA '06.
4. An employer with respect to a multiemployer plan liable for the tax under section 4971(g)(2) for failure to comply with a funding improvement or rehabilitation plan under section 432.

5. An employer with respect to a multiemployer plan liable for the tax under section 4971(g)(3) for failure to meet the requirements for plans in endangered or critical status under section 432.
6. A multiemployer plan sponsor liable for the tax under section 4971(g)(4) for failure to adopt a rehabilitation plan within the time required under section 432.
7. A cooperative and small employer charity (CSEC) plan sponsor liable for the tax under section 4971(h) for failure to adopt a funding restoration plan within the time required under section 433(j)(3).
8. An employer liable for the tax under section 4972 for nondeductible contributions to qualified plans.

9. An individual liable for the tax under section 4973(a)(3) because an excess contribution to a section 403(b)(7)(A) custodial account was made for them and that excess has not been eliminated, as specified in sections 4973(c)(2)(A) and (B).
10. A disqualified person liable for the tax under section 4975 for participating in a prohibited transaction (other than a fiduciary acting only as such), or an individual or the individual's beneficiary who engages in a prohibited transaction with respect to the individual's retirement account, unless section 408(e)(2)(A) or section 408(e)(4) applies, for each tax year or part of a tax year in the taxable period applicable to such prohibited transaction.

11. An employer liable for the tax under section 4976 for maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year.
12. An employer who pays excess fringe benefits and has elected to be taxed under section 4977 on such payments.
13. An employer or worker-owned cooperative, as defined in section 1042(c)(2), that maintains an employee stock ownership plan (ESOP) that disposes of the qualified securities, as defined in section 1042(c)(1), within the specified 3-year period (see section 4978).
14. An employer liable for the tax under section 4979 on excess contributions to plans with a cash or deferred arrangement, etc.

15. An employer or worker-owned cooperative that made the written statement described in section 664(g)(1)(E) or 1042(b)(3)(B) and made an allocation prohibited under section 409(n) of qualified securities of an ESOP taxable under section 4979A; or, an employer or worker-owned cooperative who made an allocation of S corporation stock of an ESOP prohibited under section 409(p) taxable under section 4979A.
16. An employer who receives an employer reversion from a deferred compensation plan taxable under section 4980.
17. An employer or multiemployer plan liable for the tax under section 4980F for failure to give notice of a significant reduction in the rate of future benefit accrual.

A Form 5330 and tax payment is required for any of the following.

- Each year any of the following under *Who Must File*, earlier, apply: (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (16).
- Each failure of an employer to make the required contribution to a multiemployer plan, as required by a funding improvement or rehabilitation plan under section 432.
- A reversion of plan assets from a qualified plan taxable under section 4980.
- Each year or part of a year in the taxable period in which a prohibited transaction occurs under section 4975. See the instructions for Schedule C, line 2, columns (d) and (e), for a definition of "taxable period."

When To File

File one Form 5330 to report all excise taxes with the same filing due date. However, if the taxes are from separate plans, file separate forms for each plan.

Generally, filing Form 5330 starts the statute of limitations running only with respect to the particular excise tax(es) reported on that Form 5330. However, statutes of limitations with respect to the prohibited transaction excise tax(es) are based on the filing of the applicable Form 5500, Annual Return/Report of Employee Benefit Plan.

Use Table 1 to determine the due date of Form 5330.

Extension. Effective in 2024, a filer must use Form 8868, Application for Extension of Time To File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, to request for an extension of time to file Form 5330. You may be granted an

extension of up to 6 months after the normal due date of Form 5330 if Form 8868 is filed on or before the normal due date (not including any extensions) of the return. Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, is no longer used for an extension of time to file Form 5330.

You must file a separate Form 8868 for each excise tax that has a different filing due date for the Form 5330. However, you can file one Form 8868 if each excise tax on the Form 5330 has the same filing due date.



Form 8868 does not extend the time to pay your taxes. Any tax due must be paid with this application for an extension of time to file Form 5330. Additionally, interest is charged on taxes not paid by the due date even if an extension of time to file is granted. See the instructions for Form 8868.

How To File

Electronic filing. An employer or an individual required to file an excise tax return related to employee benefit plans can file Form 5330 electronically using the IRS Modernized e-file (MeF) System through an [*IRS Authorized e-filing Provider*](#). All filers are encouraged to file Form 5330 electronically because it is safe, easy to complete, and you have an immediate record that the return was filed.

Mandatory electronic filing. Under Regulations section 54.6011-3, any employer or individual required to file an excise tax return on Form 5330 must file the excise tax return electronically for tax years ending on or after December 31, 2023, if the filer is required to file at least 10 returns of any type during the calendar year that the Form 5330 is due. See [*T.D. 9972*](#) for more information. The failure to file a return electronically when

required is deemed a failure to file the return even if the filer submits a paper return.

“Returns” for purposes of these instructions include information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns (including quarterly Forms 941, Employer's Quarterly Federal Tax Return), and excise tax returns.

On a year-by-year and form-by-form basis, the IRS may waive the requirement to file Form 5330 electronically in cases of undue hardship. In certain circumstances, a filer may be administratively exempt from the requirement to file electronically. If the IRS's systems do not support electronic filing, the filer will not be required to file electronically. The filer should maintain documentation supporting their undue hardship or other applicable reason for not filing electronically in the filer's records. For more information about mandatory electronic filing based on the 10-return threshold, waivers, and

exemptions, see Regulations section 54.6011-3.

Paper forms for filing. Form 5330 can be filed on paper if a filer is not subject to the electronic filing requirement under Regulations section 54.6011-3. The official IRS printed Form 5330 can be found on the IRS website and downloaded to your computer to print and sign before mailing to the address specified in these instructions. See *Where To File* below. You can complete paper Form 5330 by hand with pen or typewriter using only blue or black ink. Entries should not exceed the lines provided on the form. You can find Form 5330 and its instructions by visiting the IRS Internet website at [IRS.gov/FormsPubs](https://www.irs.gov/forms-pubs).

Where To File

File the paper Form 5330 at the following address:



Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201

Note. If an employer or individual required to file the Form 5330 fails to file the return electronically when required to do so, the filer is considered not to have filed the return even if the filer submits a paper return. See Regulations section

301.6651-1 for more information relating to the failure to file a tax return.

Private delivery services (PDSs). You can use certain private delivery services (PDSs) designated by the IRS to meet the “timely mailing as timely filing/paying” rule for tax returns and payments. Go to [IRS.gov/PDS](https://www.irs.gov/PDS) for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to

[IRS.gov/PDSstreetAddresses.](https://www.irs.gov/PDSstreetAddresses)



*Private delivery services cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail **CAUTION** any item to an IRS P.O. box address.*

Table 1. **Excise Tax Due Dates**

| IF the taxes are due under section . . . | THEN file Form 5330 by the . . . |
|---|---|
| 4965 | 15th day of the 5th month following the close of the entity manager's tax year during which the tax-exempt entity becomes a party to the transaction. |
| 4971 | 15th day of the 10th month after the last day of the plan year. |
| 4971(f) | 15th day of the 10th month after the last day of the plan year. |
| 4971(g)(2) | 15th day of the 10th month after the last day of the plan year. |
| 4971(g)(3) | 15th day of the 10th month after the last day of the plan year. |
| 4971(g)(4) | 15th day of the 10th month after the last day of the plan year. |
| 4971(h) | 15th day of the 10th month after the last day of the plan year. |
| 4972 | last day of the 7th month after the end of the tax year of the employer or other person who must file this return. |
| 4973(a)(3) | last day of the 7th month after the end of the tax year of the individual who must file this return. |
| 4975 | last day of the 7th month after the end of the tax year of the employer or other person who must file this return. |
| 4976 | last day of the 7th month after the end of the tax year of the employer or other person who must file this return. |
| 4977 | last day of the 7th month after the end of the calendar year in which the excess fringe benefits were paid to your employees. |
| 4978 | last day of the 7th month after the end of the tax year of the employer or other person who must file this return. |
| 4979 | last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate. |
| 4979A | last day of the 7th month after the end of the tax year of the employer or other person who must file this return. |
| 4980 | last day of the month following the month in which the reversion occurred. |
| 4980F | last day of the month following the month in which the failure occurred. |
| If the filing due date falls on a Saturday, Sunday, or legal holiday, the return may be filed on the next business day. | |

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Interest and Penalties

Interest. We are required by law to charge interest when you do not pay your liability on time. Generally, we calculate interest on any unpaid balance from the due date of your return (regardless of extensions of time to file) until you pay the amount you owe in full, including accrued interest and any penalty charges. Interest on some penalties accrues on any unpaid balance from the date we notify you of the penalty until it is paid in full. Interest on other penalties, such as

failure to file a tax return, starts from the due date or extended due date of the return. Interest rates are variable and may change quarterly. (See section 6601.)

Penalty for late filing of return. If you do not file a return by the due date, including extensions, you may have to pay a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a

maximum of 25% of the unpaid tax. The penalty will not be imposed if you can show that the failure to file on time was due to reasonable cause. If you file late, you may attach a statement to Form 5330 explaining the reasonable cause.

Penalty for late payment of tax. If you do not pay the tax when due, you may have to pay a penalty of $\frac{1}{2}$ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if you can show that the failure to pay on time was due to reasonable cause.

Interest and penalties for late filing and late payment will be billed separately after the return is filed.

Claim for Refund or Credit/Amended Return

File an amended Form 5330 for any of the following.

- To claim a refund of overpaid taxes reportable on Form 5330.
- To receive a credit for overpaid taxes.
- To report additional taxes due within the same tax year of the filer if those taxes have the same due date as those previously reported. Check the box in item H of the Entity Section and report the correct amount of taxes on Schedule A through L, as appropriate, and on Part I, lines 1 through 16. See the instructions for Part II, lines 17 through 19.

If you file an amended return to claim a refund or credit, the claim must state in detail the reasons for claiming the refund. In order for the IRS to promptly consider your claim, you must provide the appropriate supporting

evidence. See Regulations section 301.6402-2 for more details.

Specific Instructions

Filer tax year. Enter the tax year of the employer, entity, or individual on whom the tax is imposed by using the plan year beginning and ending dates entered in Part I of Form 5500 or by using the tax year of the business return filed.

Item A. Name and address of filer. Enter the name and address of the employer, individual, or other entity who is liable for the tax.

Include the suite, room, or other unit number after the street number. If the post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

If the plan has a foreign address, enter the information in the following order: city or town, state or province, country, and ZIP or foreign postal code. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

Item B. Filer's identifying number. Enter the filer's identifying number in the appropriate section. The filer's identifying number is either the filer's employer identification number (EIN) or the filer's social security number (SSN), but not both. The identifying number of an individual, other than a sole proprietor with an EIN, is the individual's SSN. The identifying number for all other filers is their EIN. The EIN is the nine-digit number assigned to the plan sponsor/employer, entity, or individual on whom the tax is imposed.

Item C. Name of plan. Enter the formal name of the plan or enough information to identify the plan.

This should be the same name indicated on the Form 5500 series return/report if that form is required to be filed for the plan.

Item D. Name and address of plan sponsor. The term “plan sponsor” means:

1. The employer, for an employee benefit plan established or maintained by a single employer.
2. The employee organization, in the case of a plan of an employee organization.
3. The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include the suite, room, or other unit number after the street number. If the post office does not deliver mail to the street address

and you have a P.O. box, show the box number instead of the street address.

If the plan has a foreign address, enter the information in the following order: city or town, state or province, and country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

Item E. Plan sponsor's EIN. Enter the nine-digit EIN assigned to the plan sponsor. This should be the same number used to file the Form 5500 series return/report.

Item F. Plan year ending. "Plan year" means the calendar or fiscal year on which the records of the plan are kept. Enter eight digits in month/date/year order. This number assists the IRS in properly identifying the plan and time period for which Form 5330 is being filed. For example, a plan year ending March 31, 2022, should be shown as 03/31/2022.

Item G. Plan number. Enter the three-digit number that the employer or plan administrator assigned to the plan. This three-digit number is used with the EIN entered on item B and is used by the IRS, the Department of Labor, and the Pension Benefit Guaranty Corporation as a unique 12-digit number to identify the plan.



If the plan number is not provided, this will cause a delay in processing your return.

Item H. Amended return. If you are filing an amended Form 5330, check the box on this line, and see the instructions for Part II, lines 17 through 19. Also, see *Claim for Refund or Credit/Amended Return*, earlier.

Filer's signature. To reduce the possibility of correspondence and penalties, please sign and date the form. Also, enter a daytime phone number where you can be reached.

Preparer's signature. Anyone who prepares your return and does not charge you should not sign your return. For example, a regular full-time employee or your business partner who prepares the return should not sign.

Generally, anyone who is paid to prepare the return must sign the return in the space provided and fill in the *Paid Preparer's Use Only* area. See section 7701(a)(36)(B) for exceptions.

In addition to signing and completing the required information, the paid preparer must give a copy of the completed return to the taxpayer.

Note. If Form 5330 is filed on paper, a paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

Part I. Taxes

Line 4. Enter the total amount of the disqualified benefit under section 4976. Section 4976 imposes an excise tax on employers who maintain a funded welfare benefit plan that provides a disqualified benefit during any tax year. The tax is 100% of the disqualified benefit. Generally, a *disqualified benefit* is any of the following.

- Any post-retirement medical benefit or life insurance benefit provided for a key employee unless the benefit is provided from a separate account established for the key employee under section 419A(d).
- Any post-retirement medical benefit or life insurance benefit unless the plan meets the nondiscrimination requirements of section 505(b) for those benefits.
- Any portion of the fund that reverts to the benefit of the employer.

Lines 5a and 5b. Section 4978 imposes an excise tax on the sale or transfer of securities acquired in a sale or qualified gratuitous transfer to which section 1042 or section 664(g) applied, respectively, if the sale or transfer takes place within 3 years after the date of the acquisition of qualified securities, as defined in section 1042(c)(1) or a section 664(g) transfer.

The tax is 10% of the amount realized on the disposition of the qualified securities if an ESOP or eligible worker-owned cooperative, as defined in section 1042(c)(2), disposes of the qualified securities within the 3-year period described above, and either of the following applies.

- The total number of shares held by that plan or cooperative after the disposition is less than the total number of employer securities held immediately after the sale; or

- Except to the extent provided in regulations, the value of qualified securities held by the plan or cooperative after the disposition is less than 30% of the total value of all employer securities as of the disposition (60% of the total value of all employer securities in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied).

See section 4978(b)(2) for the limitation on the amount of tax.

The section 4978 tax must be paid by the employer or the eligible worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) on dispositions that occurred during their tax year.

The section 4978 tax does not apply to a distribution of qualified securities or sale of such securities if any of the following occurs.

- The death of the employee.
- The retirement of the employee after the employee has reached age 59^{1/2}.
- The disability of the employee (within the meaning of section 72(m)(7)).
- The separation of the employee from service for any period that results in a 1-year break in service, as defined in section 411(a)(6)(A).

For purposes of section 4978, an exchange of qualified securities in a reorganization described in section 368(a)(1) for stock of another corporation will not be treated as a disposition.



For section 4978 excise taxes, the amount entered on Part I, line 5a, is the amount realized on the disposition of qualified securities, multiplied by 10%. Also, check the appropriate box on line 5b.

Line 6. Section 4979A imposes a 50% excise tax on allocated amounts involved in any of the following.

1. A prohibited allocation of qualified securities by any ESOP or eligible worker-owned cooperative.
2. A prohibited allocation described in section 664(g)(5)(A). Section 664(g)(5)(A) prohibits any portion of the assets of the ESOP attributable to securities acquired by the plan in a qualified gratuitous transfer to be allocated to the account of:
 - a. Any person related to the decedent within the meaning of section 267(b) or a member of the decedent's family within the meaning of section 2032A(e)(2); or
 - b. Any person who, at the time of the allocation or at any time

during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5% shareholder of the employer maintaining the plan.

3. The accrual or allocation of S corporation shares in an ESOP during a nonallocation year constituting a prohibited allocation under section 409(p).
4. A synthetic equity owned by a disqualified person in any nonallocation year.

Prohibited allocations for ESOP or worker-owned cooperative. For purposes of items 1 and 2 above, a “prohibited allocation of qualified securities by any ESOP or eligible worker-owned cooperative” is any allocation of qualified securities acquired in a nonrecognition-of-gain sale under section 1042, which violates section 409(n), and any

benefit that accrues to any person in violation of section 409(n).

Under section 409(n), an ESOP or worker-owned cooperative cannot allow any portion of assets attributable to employer securities acquired in a section 1042 sale to accrue or be allocated, directly or indirectly, to the taxpayer, or any person related to the taxpayer, involved in the transaction during the nonallocation period. For purposes of section 409(n), “relationship to the taxpayer” is defined under section 267(b).

The nonallocation period is the period beginning on the date the qualified securities are sold and ending on the later of:

- 10 years after the date of sale, or
- The date on which the final payment is made if acquisition indebtedness was incurred at the time of sale.

The employer sponsoring the plan or the eligible worker-owned cooperative is responsible for paying the tax.

For purposes of items 3 and 4, under *Line 6*, earlier, the excise tax on these transactions under section 4979A is 50% of the amount involved. The amount involved includes the following.

1. The value of any synthetic equity owned by a disqualified person in any nonallocation year. "Synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Synthetic equity may also include a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of the stock or appreciation; and nonqualified

deferred compensation as described in Regulations section 1.409(p)-1(f)(2)(iv). The value of a synthetic equity is the value of the shares on which the synthetic equity is based or the present value of the nonqualified deferred compensation.

2. The value of any S corporation shares in an ESOP accruing during a nonallocation year or allocated directly or indirectly under the ESOP or any other plan of the employer qualified under section 401(a) for the benefit of a disqualified person. For additional information, see Regulations section 1.409(p)-1(b)(2).
3. The total value of all deemed-owned shares of all disqualified persons.

For purposes of determining a nonallocation year, the attribution rules of section 318(a) will apply; however, the option rule of section 318(a)(4) will not apply. Additionally, the

attribution rules defining family member are modified to include the individual's:

- Spouse,
- Ancestor or lineal descendant of the individual or the individual's spouse, and
- A brother or sister of the individual or of the individual's spouse and any lineal descendant of the brother or sister.

A spouse of an individual legally separated from an individual under a decree of divorce or separate maintenance is not treated as the individual's spouse.

An individual is a disqualified person if:

- The total number of shares owned by the person and the members of the person's family, as defined in section 409(p)(4)(D), is at least 20% of the deemed-owned shares, as defined in section 409(p)(4)(C), in the S corporation; or

- The person owns at least 10% of the deemed-owned shares, as defined in section 409(p)(4)(C), in the S corporation.



Under section 409(p)(7), the Secretary of the Treasury may, through regulations or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). See Regulations section 1.408(p)-1.

For section 4979A excise taxes, the amount entered on Part I, line 6, is 50% of the amount involved in the prohibited allocations described in items 1 through 4, earlier, under *Line 6*.

Line 10a. Under section 4971(g)(2), each employer who contributes to a multiemployer plan and fails to comply with a funding improvement or rehabilitation plan will be liable for an excise tax for each failure to

make a required contribution within the time frame under such plan. Enter the amount of each contribution the employer failed to make in a timely manner.

A “funding improvement plan” is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment of the following requirements by the plan during the funding improvement period.

1. The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of:
 - a. The percentage as of the beginning of the funding improvement period, plus

- b. 33% of the difference between 100% and the percentage as of the beginning of the funding improvement period (or 20% of the difference if the plan is in seriously endangered status).
- 2. No accumulated funding deficiency for any plan year during the funding improvement period, taking into account any extension of the amortization period under section 431(d).

A “rehabilitation plan” is a plan which consists of actions, including options or a range of options to be proposed to the bargaining parties, formulated to enable the plan to cease to be in critical status by the end of the rehabilitation period.

All or part of this excise tax may be waived under section 4971(g)(5).

Line 16. If a tax-exempt entity manager approves or otherwise causes the entity to be a party to a prohibited tax shelter transaction during the year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, the entity manager must pay an excise tax under section 4965(b)(2). For purposes of section 4965, plan entities are:

- Qualified pension, profit-sharing, and stock bonus plans described in section 401(a);
- Annuity plans described in section 403(a);
- Annuity contracts described in section 403(b);
- Qualified tuition programs described in section 529;
- Retirement plans maintained by a governmental employer described in section 457(b);

- Individual retirement accounts within the meaning of section 408(a);
- Individual retirement annuities within the meaning of section 408(b);
- Archer medical savings accounts (MSAs) within the meaning of section 220(d);
- Coverdell education savings accounts described in section 530; and
- Health savings accounts (HSAs) within the meaning of section 223(d).

An *entity manager* is the person who approves or otherwise causes the entity to be a party to a prohibited tax shelter transaction.

The excise tax under section 4965(a)(2) is \$20,000 for each approval or other act causing the organization to be a party to a prohibited tax shelter transaction.

A “prohibited tax shelter transaction” is any listed transaction and any prohibited reportable transaction, as defined later.

1. A “listed transaction” is a reportable transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury as a tax avoidance transaction for purposes of section 6011.
2. A “prohibited reportable transaction” is:
 - a. Any confidential transaction within the meaning of Regulations section 1.6011-4(b)(3), or
 - b. Any transaction with contractual protection within the meaning of Regulations section 1.6011-4(b)(4).
 - c.

Part II. Tax Due



If you are filing an amended Form 5330 and you paid taxes with your original return and those taxes have the same due date as those previously reported, check the box in item H and enter the tax reported on your original return in the entry space for line 18. If you file Form 5330 for a claim for refund or credit, show the amount of overreported tax in parentheses on line 19. Otherwise, show the amount of additional tax due on line 19 and include the payment with the amended Form 5330.

Lines 17 through 19. If you file Form 5330 on paper, make your check or money order payable to the "United States Treasury" for the full amount due. Attach the payment to your return. Write your name, identifying number, plan number, and "Form 5330, Section ____" on your payment.

File at the address shown under *Where To File*, earlier.

Schedule A. Tax on Nondeductible Employer Contributions to Qualified Employer Plans (Section 4972)

Section 4972. Section 4972 imposes an excise tax on employers who make nondeductible contributions to their qualified plans. The excise tax is equal to 10% of the nondeductible contributions in the plan as of the end of the employer's tax year.

A “qualified employer plan” for purposes of this section means any plan qualified under section 401(a), any annuity plan qualified under section 403(a), and any simplified employee pension plan qualified under section 408(k) or any simple retirement account under section 408(p). The term qualified plan does not include certain governmental plans and certain plans maintained by tax-exempt organizations.

For purposes of section 4972, "nondeductible contributions" for the employer's current tax year are the sum of:

1. The excess (if any) of the employer's contribution for the tax year less the amount allowable as a deduction under section 404 for that year; and
2. The total amount of the employer's contributions for each preceding tax year that was not allowable as a deduction under section 404 for such preceding year, reduced by the sum of:
 - a. The portion of that amount available for return under the applicable qualification rules and actually returned to the employer prior to the close of the current tax year; and
 - b. The portion of such amount that became deductible for a

preceding tax year or for the current tax year.

Although pre-1987 nondeductible contributions are not subject to this excise tax, they are taken into account to determine the extent to which post-1986 contributions are deductible. See section 4972 and Pub. 560, Retirement Plans for Small Business, for details.

Defined benefit plans exception. For purposes of determining the amount of nondeductible contributions subject to the 10% excise tax, the employer may elect not to include any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent those contributions exceed the full-funding limitation (as defined in section 431(c)(6)). This election applies to terminated and ongoing plans. An employer making this election cannot also benefit from the exceptions for terminating plans and for

certain contributions to defined contribution plans under section 4972(c)(6). When determining the amount of nondeductible contributions, the deductible limits under section 404(a)(7) must be applied first to contributions to defined contribution plans and then to contributions to defined benefit plans.

Defined contribution plans exception. In determining the amount of nondeductible contributions subject to the 10% excise tax, do not include any of the following.

- Employer contributions to one or more defined contribution plans that are nondeductible solely because of section 404(a)(7) that do not exceed the matching contributions described in section 401(m)(4)(A).
- Contributions to a SIMPLE 401(k) or a SIMPLE IRA considered nondeductible because they are not made in connection with the employer's trade or business.

However, this provision pertaining to SIMPLEs does not apply to contributions made on behalf of the employer or the employer's family.

For purposes of this exception, the combined plan deduction limits are first applied to contributions to the defined benefit plan and then to the defined contribution plan.

Restorative payments to a defined contribution plan are not considered nondeductible contributions if the payments are made to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for breach of fiduciary duty. Amounts paid in excess of the loss are not considered restorative payments.

For these purposes, multiemployer plans are not taken into consideration in applying the overall limit on deductions where there is a combination of defined benefit and defined contribution plans.

Schedule B. Tax on Excess Contributions to Section 403(b)(7)(A) Custodial Accounts (Section 4973(a)(3))

Section 4973(a) imposes a 6% excise tax on excess contributions to section 403(b)(7)(A) custodial accounts at the close of the tax year. The tax is paid by the individual account holder.

Line 1. Enter total current year contributions, less any rollover contributions described in section 403(b)(8) or 408(d) (3)(A).

Line 2. Enter the amount excludable under section 415(c) (limit on annual additions).



To determine the amount excludable for a specific year, see Pub. 571, Tax-Sheltered Annuity Plans (403(b) Plans), for that year.

The limit on annual additions under section 415(c)(1)(A) is subject to cost-of-living adjustments as described in section 415(d). The dollar limit for a calendar year, as

adjusted annually, is published during the fourth quarter of the prior calendar year in the Internal Revenue Bulletin.

Schedule C. Tax on Prohibited Transactions (Section 4975)

Section 4975. Section 4975 imposes an excise tax on a disqualified person who engages in a prohibited transaction with the plan.

Plan. For purposes of this section, the term “plan” means any of the following.

- A trust described in section 401(a) that forms part of a plan.
- A plan described in section 403(a) that is exempt from tax under section 501(a).
- An individual retirement account described in section 408(a).
- An individual retirement annuity described in section 408(b).

- An Archer MSA described in section 220(d).
- A Coverdell education savings account described in section 530.
- A Health Savings Account (HSA) described in section 223(d).
- A trust described in section 501(c)(22).

Note. For purposes of section 4975, the term “plan” does not include a section 403(b) tax-sheltered annuity plan. See section 4975(e).



If the IRS determined at any time that your plan was a plan as defined above, it will always remain subject to the excise tax on prohibited transactions under section 4975. This also applies to the tax on minimum funding deficiencies under section 4971.

Disqualified person. A “disqualified person” is a person who is any of the following.

1. A fiduciary.
2. A person providing services to the plan.
3. An employer, any of whose employees are covered by the plan.
4. An employee organization, any of whose members are covered by the plan.
5. A direct or indirect owner of 50% or more of:
 - a. The combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation;
 - b. The capital interest or the profits interest of a partnership; or

- c. The beneficial interest of a trust or unincorporated enterprise in (a), (b), or (c), which is an employer or an employee organization described in (3) or (4) above. A limited liability company should be treated as a corporation or a partnership, depending on how the organization is treated for federal tax purposes.
- 6. A member of the family of any individual described in (1), (2), (3), or (5). A “member of a family” is the spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.