Instructions for Form 5330

Department of the Treasury
Internal Revenue Service

(Rev. October 2004)

Return of Excise Taxes Related to Employee Benefit Plans

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

General Instructions

What's New

- For securities in an S corporation, section 4979A imposes an excise tax on the allocation or the ownership of the amount involved in (a) any transaction where a disqualified person owns a synthetic equity in any nonallocation year, or (b) any transaction involving employer securities that violates section 409(p) or a nonallocation year.
- 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).
- References to section 4978B have been deleted.
- These instructions have been reorganized to be consistent with the revised Form 5330.

Purpose of Form

File Form 5330 to report the tax on:

- A minimum funding deficiency (section 4971).
- 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 ESOP dispositions (sections 4978 and 4978A).
- 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).
- A failure to pay liquidity shortfall (section 4971(f)).
- A failure of applicable plans reducing future benefit accruals to satisfy notice requirements (section 4980F).

Who Must File

A Form 5330 must be filed by:

1. Any employer who is liable for the tax under section 4971 for failure to meet the minimum funding standards under section 412 (liability for tax in the case of an employer who is a party to a collective bargaining agreement, see section 413(b)(6)).
2. Any employer who is liable for the tax under section 4971(f) for a failure to meet the liquidity requirement of section 412(m)(5).
3. Any employer who is liable for the tax under section 4972 for nondeductible contributions to qualified plans.
4. Any individual who is 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).
5. Any disqualified person who is 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 his or her beneficiary) who engages in a prohibited transaction with respect to his or her individual retirement account for each tax year or part of a tax year in the "taxable period" applicable to such prohibited transaction.
6. Any employer who is liable for the tax under section 4976 for maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year.
7. Any employer who pays excess fringe benefits and has elected to be taxed under section 4977 on such payments.
8. Any employer or worker-owned cooperative (as defined in section 1042(c)(2)) that maintains an ESOP that disposes of the qualified securities (as defined in section 1042(c)(1)) or section 133 securities within the specified 3-year period.
9. Any employer who is liable for the tax under section 4979 on excess contributions to plans with a cash or deferred arrangement, etc.
10. Any 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 any 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.
11. Any employer who receives an employer reversion from a deferred compensation plan that is taxable under section 4980.
12. Any 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 each year that you fail to meet the minimum funding standards under section 412 or contribute an excess amount to your section 403(b)(7)(A) custodial account.
- For each year that any of the items in 2 or 3, or 5 through 10, or 12 above apply.
- For a reversion of plan assets from a qualified plan that is taxable under section 4980.
- For each year (or part of a year) in the "taxable period" applicable to a prohibited transaction. See the instructions for Part IV, line 25b, columns (d) and (e), for a definition of taxable period.

When To File

File one Form 5330 to report excise taxes with the same filing due date. One Form 5330 may be filed to report one or more of these taxes. However, if the taxes are from separate plans, file separate forms for each plan.

Generally, the filing of a 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. Use Table 1 to determine the due date of Form 5330.

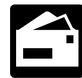
Table 1. Excise Tax Due Dates

If the taxes due are under section . . .	Then file Form 5330 by the last day of the . . .
4972	7th month after the end of the tax year of the employer or other person who must file this return.
4973(a)(3)	7th month after the end of the tax year of the employer or other person who must file this return.
4975	7th month after the end of the tax year of the employer or other person who must file this return.
4976	7th month after the end of the tax year of the employer or other person who must file this return.
4978	7th month after the end of the tax year of the employer or other person who must file this return.
4978A	7th month after the end of the tax year of the employer or other person who must file this return.
4979A	7th month after the end of the tax year of the employer or other person who must file this return.
4971	7th month after the end of the employer's tax year or 8½ months after the last day of the plan year that ends with or within the filer's tax year.
4971(f)	7th month after the end of the employer's tax year or 8½ months after the last day of the plan year that ends with or within the filer's tax year.
4977	7th month after the end of the calendar year in which the excess fringe benefits were paid to your employees.
4979	15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.
4980	month following the month in which the reversion occurred.
4980F	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.	

Extension. File Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, to request an extension of time to file. If approved, you may be granted an extension of up to 6 months.

Caution: Form 5558 does not extend the time to pay your taxes. See the instructions for Form 5558.

Where To File



File Form 5330 with the: Internal Revenue Service Center, Ogden, UT 84201.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The most recent list of designated private delivery services was published by the IRS in September 2002 and includes only the following:
- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

Interest and Penalties

Interest. Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

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 minimum penalty for a return that is more than 60 days late is the smaller of the tax due or $100. 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 must 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 ½ 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;
- For a credit for overpaid taxes; or
- 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 on page 1 of the return and report the correct amount of taxes in Parts II through XI, as appropriate, and on lines 1 through 13a of Part I. See instructions for lines 13a through 13c.

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 to promptly consider your claim, you must explain why you are filing the claim and 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.

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 numbers 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.

Item B. Filer's identifying number. Enter the identifying number of an individual (other than a sole proprietor with an employer identification number (EIN)) is his or her social security number. The identifying number of all others is their EIN.

Item C. Name and address of plan sponsor. The term "plan sponsor" means:

1. The employer, for an employee benefit plan that a single employer established or maintains;
2. The employee organization in the case of a plan of an employee organization; or
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 numbers 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.

Item D. Name of plan. Enter the formal name of the plan, group insurance arrangement, or enough information to identify the plan. This should be the same name indicated on the Form 5500 series return/report filed for the plan.

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 four digits in year-month order. This number assists the IRS in properly identifying the plan and time period for which the Form 5330 is being filed. For example, a plan year ended March 31, 2004, should be shown as 0403.

Item G. Plan number. Enter the three-digit number that the employer or plan administrator assigned to the plan.

Item H. Amended return. If you are filing an amended Form 5330, check the box on this line, and see the instructions for lines 13a through 13c. Also see *Claim for Refund or Credit/ Amended Return*.

Filer's signature. 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 a return must sign it and fill in the *Paid Preparer's Use Only* area.

The paid preparer must complete the required preparer information and—

- Sign the return by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the filer.

Part I — Summary of Taxes Due

Line 3. Section 4976 – Tax on Disqualified Benefits for Funded Welfare Plans. 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; or
- Any portion of the fund that reverts to the benefit of the employer.

Enter on line 3, the total amount of the disqualified benefit.

Line 4a and 4b. Section 4978 and 4978A – Tax on Certain ESOP Dispositions

Section 4978. Section 4978 imposes an excise tax on dispositions of securities acquired in a sale to which section 1042 applied, or in a qualified gratuitous transfer to which section 664(g) applied, if the dispositions take 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).

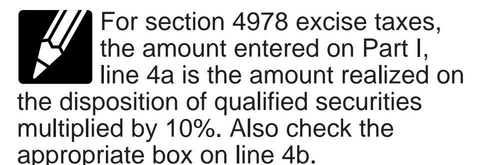
See section 4978(b)(2) for the limitation on the amount of tax.

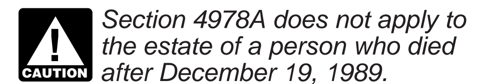
The section 4978 tax must be paid by the employer or the eligible worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) on dispositions that occurred during their tax year.

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 59½;
- The disability of the employee (within the meaning of section 72(m)(7)); or
- 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 4a is the amount realized on the disposition of qualified securities multiplied by 10%. Also check the appropriate box on line 4b.

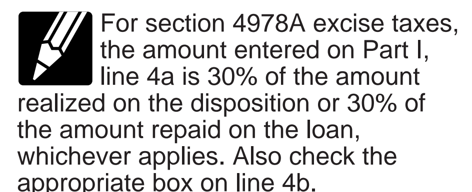


Section 4978A does not apply to the estate of a person who died after December 19, 1989.

Section 4978A. This section imposes a tax on certain transactions involving qualified employer securities. Qualified employer securities for purposes of this tax are defined in section 2057(d) as in effect prior to December 19, 1989.

Section 4978A taxes any disposition of qualified employer securities acquired on or before December 20, 1989, if the disposition of the qualified securities takes place within 3 years after the date the ESOP or eligible worker-owned cooperative acquired the qualified securities.

The section 4978A tax also applies to dispositions of qualified securities that occur after the 3-year period if the qualified securities were not allocated to participants' accounts or the proceeds from the disposition were not allocated to the participants' accounts.


For section 4978A excise taxes, the amount entered on Part I, line 4a is 30% of the amount realized on the disposition or 30% of the amount repaid on the loan, whichever applies. Also check the appropriate box on line 4b.

Line 5. Section 4979A – Tax on Certain Prohibited Allocations of Qualified ESOP Securities. For plan years beginning before January 1, 2005, section 4979A imposes a 50% tax of the allocated amounts involved in:

1. An 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-percent shareholder of the employer maintaining the plan.

2. A prohibited allocation of qualified securities by an ESOP or eligible worker-owned cooperative. A "prohibited allocation" is any allocation of qualified securities acquired in a non-recognition-of-gain sale under section 1042 which violates 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 involved in the transaction (or any person related to the taxpayer) 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 ends 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.

Prohibited allocations of securities in an S corporation.

Generally, the prohibited allocation rules for securities in an S corporation are effective for plan years beginning after December 31, 2004; however, these rules are effective for plan years ending after March 14, 2001, if:

- *The ESOP was established after March 14, 2001, or*
- *The ESOP was established on or before March 14, 2001, and the employer maintaining the plan was* ***not*** *an S corporation.*

For securities in an S corporation, section 4979A imposes a tax on the allocation or the ownership equal to 50% of the amount involved in the following transactions.

1. 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. Synthetic equity also includes nonqualified deferred compensation as described in section 1.409(p)-1T(f)(2)(iv) of the Regulations, disregarding nonqualified deferred compensation that is distributed on or before July 21, 2004. The amount involved is the value of the shares on which the synthetic equity is based or the present value of the nonqualified deferred compensation. For additional information on the treatment of synthetic equity, see section 409(p)(5).

2. Any allocation of employer securities in a nonallocation year violating section 409(p). The amount involved is the amount allocated to the account of any person in violation of section 409(p)(1).

3. In the first nonallocation year the amount involved includes the total value of all the deemed-owned shares of all disqualified persons.

A "nonallocation year" means a plan year where the ESOP, at any time during the year, holds employer securities in an S corporation, and disqualified persons own at least:

- 50 percent of the number of outstanding shares of the S corporation (including deemed-owned ESOP shares), or
- 50 percent of the aggregate number of outstanding shares of stock (including deemed-owned ESOP shares) and synthetic equity in the S corporation.

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 is modified to include the individual's:

- Spouse.
- Ancestor or lineal descendant of the individual or the individual's spouse.
- 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 who is 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 is at least 20% of the deemed-owned of 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). For a description of situations where the definition of nonallocation year was considered, see Revenue Ruling 2004-4, 2004-6 I.R.B. 414.

For section 4979A excise taxes, the amount entered on Part I, line 5 is 50% of the amount involved as described in items 1 through 3, under *Prohibited allocations of securities in an S corporation*, above.

Lines 13a through 13c. If you are filing an amended Form 5330 and you paid tax 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 13b. If you file Form 5330 for a claim for refund or credit, show the amount of overreported tax in parentheses on line 13c. Otherwise, show the amount of additional tax due on line 13c and include the payment with the amended Form 5330.

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, and "Form 5330, Section ____" on your payment.

Part II (Section 4972)

Tax on Nondeductible Employer Contributions to Qualified Plans

Section 4972 imposes an excise tax on employers who make nondeductible contributions to their qualified plans. A "qualified plan" for purposes of this tax 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 408(p). The term "qualified plan" does not include certain governmental plans and certain plans maintained by tax-exempt organizations.

The nondeductible contributions are computed as of the end of the employer's tax year. The current year nondeductible contributions are equal to the amount contributed during the employer's tax year over the amount of contributions allowable as a deduction under section 404. In addition, prior year nondeductible contributions continue to be subject to this tax annually until eliminated by either distributions to the employer of the amount of nondeductible contributions, or a carryforward deduction in years after the nondeductible contributions are made.

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 Publication 560, Retirement Plans for Small Business, for details.

Defined benefit plans exception. Generally, contributions up to the current unfunded liability of a defined benefit plan are deductible, regardless of the number of participants in the plan. In addition, when determining the amount of nondeductible contributions for any tax year, an employer may elect, for that tax year, not to include any contributions to a defined benefit plan except to the extent they exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to section 412(c)(7)(A)(i)(I)). 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. 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).

Defined contribution plans exception. Employer contributions to one or more defined contribution plans that are nondeductible because they exceed the combined plan deduction limits of section 404(a)(7), are not subject to the 10% excise tax to the extent the contributions do not exceed the greater of:

- 6% of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year in which the contributions were made) to beneficiaries under plans, or
- The sum of the amount of contributions described in sections 401(m)(4)(A) and 402(g)(3)(A), or
- Contributions to a SIMPLE 401(k) or a SIMPLE IRA that are considered nondeductible because they are not made in connection with the employer's trade or business.

The combined plan deduction limits are first applied to contributions to the defined benefit plan and then to the defined contribution plan.

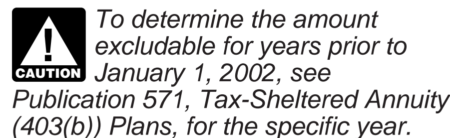
Restorative payments to a defined contribution plan are not considered nondeductible contributions if the payments are made to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for breach of fiduciary duty. Amounts paid in excess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

Part III (Section 4973(a)(3))

Tax on Excess Contributions to Section 403(b)(7)(A) Custodial Accounts

Line 15. Reduce total current year contributions by any rollover contributions described in sections 403(b)(8) or 408(d)(3)(A).

Line 16. The amount you will enter on line 16 is the amount excludable under section 415(c) (limit on annual additions). Figure the amount to enter on line 16 using Table 2.

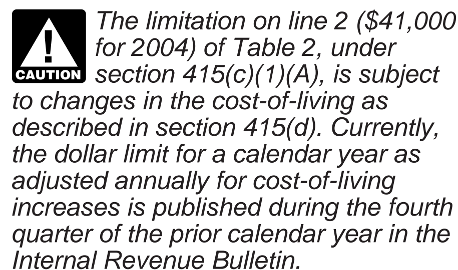


To determine the amount excludable for years prior to January 1, 2002, see Publication 571, Tax-Sheltered Annuity (403(b)) Plans, for the specific year.

Table 2. Limit on Annual Additions

1. Enter your includible compensation for your most recent year of service*	**1.**	______
2. Maximum*	**2.**	$41,000
3. Enter the lesser of line 1 or line 2. This is your limit on annual additions. Enter this amount on line 16, Part III . .	**3.**	______

*For more information, see Publication 571 for the year the excess contribution is being calculated.



The limitation on line 2 ($41,000 for 2004) of Table 2, under section 415(c)(1)(A), is subject to changes in the cost-of-living as described in section 415(d). Currently, the dollar limit for a calendar year as adjusted annually for cost-of-living increases is published during the fourth quarter of the prior calendar year in the Internal Revenue Bulletin.

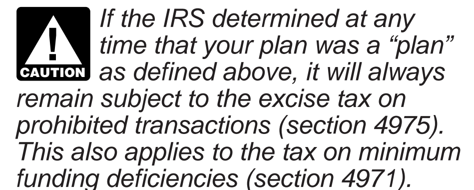
Part IV (Section 4975)

Tax on Prohibited Transactions

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

Plan. For purposes of prohibited transactions (section 4975), 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), and that trust or plan 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 described in section 223(d).
- A trust described in section 501(c)(22).



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 (section 4975). This also applies to the tax on minimum funding deficiencies (section 4971).

Disqualified person. A "disqualified person" is any person who is:

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. Any 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,

   c. The beneficial interest of a trust or unincorporated enterprise, 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. Member of a family is the spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.
7. A corporation, partnership, or trust or estate of which (or in which) any direct or indirect owner holds 50% or more of the interest described in 5a,

5b, or 5c. For purposes of 7, the beneficial interest of the trust or estate is owned directly or indirectly, or held by persons described in 1 through 5.

8. An officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10% or more shareholder or highly compensated employee (earning 10% or more of the yearly wages of an employer) of a person described in 3, 4, 5, or 7.

9. A 10% or more (in capital or profits) partner or joint venturer of a person described in 3, 4, 5, or 7.

10. Any disqualified person, as described in 1 through 9 above, who is a disqualified person with respect to any plan to which a section 501(c)(22) trust applies, is permitted to make payments under section 4223 of ERISA.

Prohibited transaction. A "prohibited transaction" is any direct or indirect:

1. Sale or exchange, or leasing of any property between a plan and a disqualified person; or a transfer of real or personal property by a disqualified person to a plan where the property is subject to a mortgage or similar lien placed on the property by the disqualified person within 10 years prior to the transfer, or the property transferred is subject to a mortgage or similar lien which the plan assumes.
2. Lending of money or other extension of credit between a plan and a disqualified person.
3. Furnishing of goods, services, or facilities between a plan and a disqualified person.
4. Transfer to, or use by or for the benefit of, a disqualified person of income or assets of a plan.
5. Act by a disqualified person who is a fiduciary whereby he or she deals with the income or assets of a plan in his or her own interest or account.
6. Receipt of any consideration for his or her own personal account by any disqualified person who is a fiduciary from any party dealing with the plan connected with a transaction involving the income or assets of the plan.

Exemptions. See sections 4975(d), 4975(f)(6)(B)(ii), and 4975(f)(6)(B)(iii) for specific exemptions to prohibited transactions. Also see section 4975(c)(2) for certain other transactions or classes of transactions that may be exempt.

Line 25a. Check the box that best characterizes the prohibited transaction for which an excise tax is being paid. A prohibited transaction is discrete unless it is of an ongoing nature. Transactions involving the use of money (loans, etc.) or other property (rent, etc.) are of an ongoing nature and will be treated as a new prohibited transaction on the first day of each succeeding tax year or part of a tax year that is within the taxable period.

Line 25b, Column (b). List the date of all prohibited transactions that took place in connection with a particular plan during the current tax year. Also list the date of all prohibited transactions that took place in prior years unless either the transaction was corrected in a prior tax year or the section 4975(a) tax was assessed in the prior tax year. A disqualified person who engages in a prohibited transaction must file a separate Form 5330 to report the excise tax due under section 4975 for each tax year.

Line 25b, Columns (d) and (e). The "amount involved" in a prohibited transaction means the greater of the amount of money and the fair market value (FMV) of the other property given, or the amount of money and the FMV of the other property received. However, for services described in sections 4975(d)(2) and (10), the amount involved only applies to excess compensation. Fair market value must be determined as of the date on which the prohibited transaction occurs. If the use of money or other property is involved, the amount involved is the greater of the amount paid for the use or the FMV of the use for the period for which the money or other property is used. In addition, transactions involving the use of money or other property will be treated as giving rise to a prohibited transaction occurring on the date of the actual transaction plus a new prohibited transaction on the first day of each succeeding tax year or portion of a succeeding tax year which is within the taxable period. The "taxable period" is the period of time beginning with the date of the prohibited transaction and ending with the earliest of:

1. The date correction is completed,
2. The date of the mailing of a notice of deficiency, or
3. The date on which the tax under section 4975(a) is assessed.

See the instruction for *Additional tax for failure to correct the prohibited transaction*, under Part IV for the definition of correction.

Temporary Regulations section 141.4975-13 states that, until final regulations are written under section 4975(f), the definitions of "amount involved" and "correction" found in Regulations section 53.4941(e)-1 will apply.

Column (e). The initial tax on a prohibited transaction is 15% of the amount involved in each prohibited transaction for each year or part of a year in the taxable period. Multiply the amount in column (d) by 15%.

Example. The following example of a prohibited transaction does not cover all types of prohibited transactions. For more examples, see Regulations section 53.4941(e)-1(b)(4).

A disqualified person borrows money from a plan in a prohibited transaction under section 4975. The FMV of the use of the money and the actual interest on the loan is $1,000 per month (the actual interest is paid in this example). The loan was made on July 1, 2003, (date of transaction) and repaid on December 31, 2004 (date of correction). The disqualified person's taxable year is the calendar year. On July 31, 2005, the disqualified person files a delinquent Form 5330 for the 2003 plan year and a timely Form 5330 for the 2004 plan year. No Notice of Deficiency with respect to the tax imposed by section 4975(a) has been mailed to the disqualified person and no assessment of such tax has been made before the time the disqualified person filed the Forms 5330.

When a loan is a prohibited transaction, the loan is treated as giving rise to a prohibited transaction on the date the transaction occurs, and an additional prohibited transaction on the first day of each succeeding taxable year (or portion of a taxable year) within the taxable period that begins on the date the loan occurs. Each prohibited transaction has its own separate taxable period which begins on the date the prohibited transaction occurred or is deemed to occur and ends on the date of the correction. The taxable period that begins on the date the loan occurs runs from July 1, 2003, (date of loan) through December 31, 2004 (date of correction). Therefore, in this example, there are two prohibited transactions, the first occurring on July 1, 2003, and the second occurring on January 1, 2004.

Section 4975(a) imposes a 15% excise tax on the amount involved for each taxable year or part thereof in the taxable period of each prohibited transaction.

The amount involved to be reported on column (d) of Form 5330 filed for 2003 is $6,000 (6 months × $1,000). The amount of tax due is $900 ($6,000 ×15%). (Any interest and penalties imposed for the delinquent filing of the Form 5330 for 2003 will be billed separately to the disqualified person.)

The taxable period for the second prohibited transaction runs from January 1, 2004, through December 31, 2004 (date of correction). Because there are two prohibited transactions with taxable periods running during

Figure 1. 2003 Example

Part IV —Tax on Prohibited Transactions (section 4975)

(a) Transaction number	**(b)** Date of transaction (see page 6 of the instructions)	**(c)** Description of prohibited transaction	**(d)** Amount involved in prohibited transaction (see page 6 of the instructions)		**(e)** Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see page 6 of the instructions))
(i)	7–1–03	Loan	$6,000		$900
(ii)					
(iii)					
25c. Add amounts in column (e). Enter here and on line 6a				▶	$900

Figure 2. 2004 Example

Part IV —Tax on Prohibited Transactions (section 4975)

(a) Transaction number	**(b)** Date of transaction (see page 6 of the instructions)	**(c)** Description of prohibited transaction	**(d)** Amount involved in prohibited transaction (see page 6 of the instructions)		**(e)** Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see page 6 of the instructions))
(i)	7–1–03	Loan	$6,000		$900
(ii)	1–1–04	Loan	$12,000		$1,800
(iii)					
25c. Add amounts in column (e). Enter here and on line 6a				▶	$2,700

2004, the section 4975(a) tax is due for the 2004 taxable year for both prohibited transactions. The excise tax to be reported on the Form 5330 filed for 2004 would include both the prohibited transaction of July 1, 2003, with an amount involved of $6,000, resulting in a tax due of $900 ($6,000 × 15%) and the second prohibited transaction of January 1, 2004, with an amount involved of $12,000 (12 months × $1,000), resulting in a tax due of $1,800 ($12,000 × 15%). Line 25b of the Forms 5330 would be completed as shown in Figures 1 and 2.

TIP *When a loan from a qualified plan that is a prohibited transaction spans successive taxable years, and thus constitutes multiple prohibited transactions, and during those years the first tier prohibited transaction excise tax rate changes, the first tier excise tax liability for each prohibited transaction is the sum of the products resulting from multiplying the amount involved for each year in the taxable period for that prohibited transaction by the excise tax rate in effect at the beginning of that taxable period. For more information see Revenue Ruling 2002-43, 2002-2 I.R.B. 85. Unlike the previous example, the example in Rev. Rul. 2002-43 contains unpaid interest.*

Additional tax for failure to correct the prohibited transaction (Section 4975(b)). To avoid liability for additional taxes and penalties, and in some cases further initial taxes, a correction must be made within the taxable period. The term “correction” is defined as undoing the prohibited transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

If the initial tax is not corrected within the taxable period, an additional tax equal to 100% of the amount involved will be imposed under section 4975(b). Any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such) must pay this tax imposed by section 4975(b). Report the additional tax on line 6b.

Line 26. If the “No” box is checked on line 26, there has not been a correction of all of the prohibited transactions by the end of the tax year for which this Form 5330 is being filed. Attach a statement indicating when correction has been or will be made.

Part V

Schedule of Other Participating Disqualified Persons and Description of Correction

If more than one disqualified person participated in the same prohibited transaction, list on this schedule the name, address, and the social security number or employer identification number of each disqualified person, other than the disqualified person who files this return.

Line 27. For all transactions complete columns (a), (b), and (c). If the transaction has been corrected, complete columns (a) through (e). If additional space is needed you may attach a statement fully explaining the correction and identifying persons involved in the prohibited transaction.

Part VI (Section 4971(a) and (b))

Tax on Failure To Meet Minimum Funding Standards

Section 4971(a) imposes a 10% tax (5% for multiemployer plans) on the amount of the accumulated funding deficiency determined as of the end of the plan year.

If a plan fails to meet the funding requirements of section 412, the employer and all controlled group members will be subject to the excise taxes under sections 4971(a) and (b).

Except in the case of a multiemployer plan, all members of a controlled group are jointly and severally liable for this tax. A “controlled group” in this case means a controlled group of corporations (section 414(b)), a group of trades or businesses under common control (section 414(c)), an affiliated service group (section 414(m)), and any other group treated

as a single employer under section 414(o).

If the IRS determined at any time that your plan was a “plan” as defined in Part IV (Section 4975), it will always remain subject to the excise tax on failure to meet minimum funding standards.

Line 28. If your plan has an accumulated funding deficiency as defined in section 412(a) (section 418B if this is a multiemployer plan in reorganization), complete line 28.

Line 29. Multiply line 28 by the applicable tax rate shown below and enter the result on line 29.

- 10% for plans (other than multiemployer plans), or
- 5% for all multiemployer plans.

Additional tax for failure to correct the accumulated funding deficiency. When an initial tax is imposed by section 4971(a) on an accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period, an additional tax equal to 100% of the accumulated funding deficiency to the extent not corrected is imposed by section 4971(b).

The “taxable period” is the period beginning with the end of the plan year where there is an accumulated funding deficiency and ending on the earlier of:

- The date the notice of deficiency for the section 4971(a) excise tax is mailed, or
- The date the section 4971(a) excise tax is assessed.

Report the tax for failure to correct the accumulated funding deficiency on line 7b.

Part VII (Section 4977)

Tax on Excess Fringe Benefits

If you made an election to be taxed under section 4977 to continue your nontaxable fringe benefit policy that was in existence on or after January 1, 1984, check the “Yes” box on line 30a and complete lines 30b through 30d.

Line 30c. The excess fringe benefits are figured by subtracting 1% of the aggregate compensation paid by you to your employees during the calendar year that was includable in their gross income from the aggregate value of the nontaxable fringe benefits under sections 132(a)(1) and 132(a)(2).

Part VIII (Section 4979)

Tax on Excess Contributions to Certain Plans

Section 4979. Any employer who maintains a plan described in section 401(a), 403(a), 403(b), 408(k), or 501(c)(18) may be subject to an excise tax on the excess aggregate contributions made on behalf of highly compensated employees. The employer may also be subject to an excise tax on the excess contributions to a cash or deferred arrangement connected with the plan.

The tax is on the excess contributions and the excess aggregate contributions made to or on behalf of the highly compensated employees (as defined in section 414(q)).

A highly compensated employee generally is an employee who:

1. Was a 5-percent owner at any time during the year or the preceding year, or,
2. For the preceding year had compensation from the employer in excess of a dollar amount for the year ($90,000 for 2004) and, if the employer so elects, was in the top-paid group for the preceding year.

An employee is in the top-paid group for any year if the employee is in the group consisting of the top 20 percent of the employees of the employer when ranked on the basis of compensation paid. An employee (who is not a 5-percent owner) who has compensation in excess of $90,000 is not a highly compensated employee if the employer elects the top-paid group limitation and the employee is not a member of the top-paid group.

The “excess contributions” subject to the section 4979 excise tax are equal to the amount by which employer contributions actually paid over to the trust exceed the employer contributions that could have been made without violating the special nondiscrimination requirements of section 401(k)(3).

The “excess aggregate contributions” subject to the section 4979 excise tax are equal to the amount by which the aggregate matching contributions of the employer and the employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage under section 401(m)) actually made on behalf of the highly compensated employees for each plan year exceed the maximum amount of the contributions permitted in the contribution percentage computation under section 401(m)(2)(A).

However, there is no excise tax liability if the excess contributions or the excess aggregate contributions and any income earned on the contributions are distributed (or, if forfeitable, forfeited) to the participants for whom the excess contributions were made within 2½ months after the end of the plan year.

Part IX (Section 4980)

Tax on Reversion of Qualified Plan Assets to an Employer

An employer reversion is the amount of cash and the FMV of property received, directly, or indirectly by an employer from a qualified plan. Reversions do not include any amount distributed to or on behalf of any employee (or beneficiaries).

If a defined benefit plan is terminated, and an amount in excess of 25% of the maximum amount otherwise available for reversion is transferred from the terminating defined benefit plan to a defined contribution plan, the amount transferred is not treated as an employer reversion for purposes of section 4980. However, the amount the employer receives is subject to the 20% excise tax. For additional information, see Rev. Rul. 2003-85, 2003-32 I.R.B. 291.

Section 4980. Include on lines 34 and 10 the section 4980 tax on employer reversions from a qualified plan. The reversion excise tax is either 50% or 20%. The excise tax rate is 50% if the employer does not (1) establish or maintain a qualified replacement plan following the plan termination or (2) provides certain pro-rata benefit increases in connection with the plan termination. See section 4980(d)(1)(A) or (B) for more information.

If you owe the section 4980 tax, enter the date of the reversion on line 32 and the reversion amount and applicable excise tax rate on line 33a and b. If you use a tax percentage other than 50%, explain on line 35 why you qualify to use a rate other than 50%.

Part X (Section 4980F)

Tax on Failure to Provide Notice of Significant Reduction in Future Accruals

Section 4980F imposes on an employer (or, in the case of a multiemployer plan, the plan) an excise tax of $100 per day per each applicable individual and each employee organization representing participants who are applicable individuals for each day of the noncompliance period for the failure to give notice of plan amendments that provide for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction of an early retirement benefit or retirement-type subsidy. This notice is called a “section 204(h) notice” because the same notice requirement appears at section 204(h) of ERISA.

An “applicable individual” is a participant in the plan, or an alternate

payee of a participant under a qualified domestic relations order, whose rate of future benefit accrual (or early retirement benefit or retirement-type subsidy) under the plan may reasonably be expected to be significantly reduced.

Whether a participant or alternate payee is an applicable individual is determined on a typical business day that is reasonably approximate to the time the section 204(h) notice is provided (or at the latest date for providing section 204(h) notice, if earlier), based on all relevant facts and circumstances. For more information in determining whether an individual is a participant or alternate payee see Regulations section 54.4980F-1, Q&A 10.

The "noncompliance period" is the period beginning on the date the failure first occurs and ending on the date the notice of the failure is provided or the failure is corrected.

Exceptions. Section 4980F excise tax will not be imposed for a failure during any period in which:

1. Any person subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the notice requirement. A person is considered to have exercised reasonable diligence, but did not know the failure existed, only if:

a. The responsible person exercised reasonable diligence in attempting to deliver section 204(h), notice to applicable individuals by the latest date permitted. Generally, the section 204(h) notice must be provided at least 45 days before the effective date the section 204(h) amendments take effect. For exceptions to this rule see Regulations section 54.4980F-1, Q&A 9.

b. At the latest date permitted for delivery of section 204(h) notice, the person reasonably believes that section 204(h) notice was actually delivered to each applicable individual by that date.

2. Any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and corrects the failure within 30 days after the employer (or other person responsible for the tax) knew, or exercising reasonable diligence would have known, that the failure existed.

If the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. Furthermore, in the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax would be excessive relative to the failure involved. See Rev. Proc. 2004-4, 2004-1 I.R.B. 125 for procedures to follow in applying for a waiver of part or all of the excise tax due to reasonable cause. You can find Rev. Proc. 2004-4 at *www.irs.gov/pub/irs-irbs/irb04-01.pdf* .

Line 39. A failure occurs on any day that any applicable individual is not provided section 204(h) notice. For more information in determining whether an individual is a participant or alternate payee, see Regulations section 54.4980F-1, Q&A 10.

Example: There are 1000 applicable individuals (AI). The plan administrator fails to give section 204(h) notice to 100 applicable individuals for 60 days, and to 50 of those applicable individuals for an additional 30 days. In this case there are 7,500 failures ((100 AI x 60 days) + (50 AI x 30 days) = 7,500).

Part XI (Section 4971(f))

Tax on Failure to Pay Liquidity Shortfall

Section 4971(f)(1). If your plan has a liquidity shortfall for which an excise tax under section 4971(f)(1) is imposed for any quarter of the plan year, complete lines 42 through 45.

Line 42. Include on line 42 the amount of the liquidity shortfall(s) for each quarter of the plan year.

Line 43. Include on line 43 the amount of any contributions made to the plan by the due date of the required quarterly installment(s) which partially "corrected" the liquidity shortfall(s) reported on line 42.

Line 44. Include on line 44 the net amount of the liquidity shortfall (subtract line 43 from line 42).

Additional tax for failure to correct liquidity shortfall. If the plan has a liquidity shortfall as of the close of any quarter and as of the close of the following 4 quarters, an additional tax will be imposed under section 4971(f)(2) equal to the amount on which tax was imposed by section 4971(f)(1) for such quarter. Report the additional tax on line 12b.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. This form is required to be filed under sections 4971, 4972, 4973, 4975, 4976, 4977, 4978, 4978A, 4979, 4979A, 4980, and 4980F of the Internal Revenue Code. Section 6109 requires you to provide your taxpayer identification number (SSN or EIN). If you fail to provide this information in a timely manner, you may be liable for penalties and interest. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to federal and state or local agencies to enforce federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . .	25 hr., 27 min.
Learning about the law or the form . . .	11 hr., 59 min.
Preparing and sending the form to the IRS	14 hr., 11 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave., NW, Washington, DC 20224. **Do not** send this form to this address. Instead, see **Where To File** on page 2.