Note: *The draft you are looking for begins on the next page.*

Caution: *DRAFT—NOT FOR FILING*

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We do **not** release draft forms until we believe we have incorporated all changes (except when explicitly stated on this coversheet). However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions generally are subject to OMB approval before they can be officially released, so we post only drafts of them until they are approved. Drafts of instructions and publications usually have some changes before their final release.

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Almost every form and publication has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at IRS.gov/Form1040; the Pub. 501 page is at IRS.gov/Pub501; the Form W-4 page is at IRS.gov/W4; and the Schedule A (Form 1040/SR) page is at IRS.gov/ScheduleA. If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or publications at IRS.gov/FormsComments. We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product.

If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click here.

Instructions for Form 5330

(Rev. December 2020)

Return of Excise Taxes Related to Employee Benefit Plans

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*.

What's New

Tax on multiemployer plans in endangered or critical status. Schedule F, line 2b, requires the number of days included in the period beginning the first day following the close of the 240-day period and ending on the day the rehabilitation plan is adopted. Filers should follow the instructions found here for Schedule F, line 2, to complete line 2b on the form.

Tax on prohibited transactions (section 4975). The instructions for Schedule C note that a section 403(b) tax sheltered annuity plan is not subject to the section 4975 excise tax.

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));
- 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. An employer liable for the tax under section 4972 for nondeductible contributions to qualified plans.

8. 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).

9. 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 his or her beneficiary who engages in a prohibited transaction with respect to his or her individual 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.

10. 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.

11. An employer who pays excess fringe benefits and has elected to be taxed under section 4977 on such payments.

12. 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).

13. An employer liable for the tax under section 4979 on excess contributions to plans with a cash or deferred arrangement, etc.

14. 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.

15. An employer who receives an employer reversion from a deferred

compensation plan taxable under section 4980.

16. 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."

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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. 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 after the normal due date of Form 5330.

CAUTION *Form 5558 does not extend the time to pay your taxes. See the instructions for Form 5558.*

Where To File

File Form 5330 at the following address:

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

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	last day of the 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)	last day of the 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(g)(2)	last day of the 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(g)(3)	last day of the 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(g)(4)	last day of the 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.
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.	

Private delivery services. 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* for the current list of designated services.

The private delivery service (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*.

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

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 from the due date, including extensions, to the date of payment for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax. The interest rate is 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 $435. 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 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 K, 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 his or her social security number. 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, name of the plan sponsor, or name of the insurance company or financial institution of the direct filing entity (DFE). In the case of a group insurance arrangement (GIA), enter the name of the trust or other entity that holds the insurance contract. In the case of a master trust investment account (MTIA), enter the name of the sponsoring employers.

If the plan covers only the employees of one employer, enter the employer's name 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, 2007, should be shown as 03/31/2007.

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 line 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.

CAUTION *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

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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. A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

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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 59½.
- 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 in 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.

Prohibited allocations of securities in an S corporation.

CAUTION *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 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 this purpose, 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% of the number of outstanding shares of the S corporation (including deemed-owned ESOP shares), or
- 50% 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 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.

CAUTION *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 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.

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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 below.

1. A "listed transaction" is a reportable transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary 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).

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. 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 which 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).

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TIP *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.

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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 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).

CAUTION *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.

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) of such entity. For this purpose, 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, that is permitted to make payments under section 4223 of the Employee Retirement Income Security Act (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; or

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 become exempt.

Line 1. 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 2, 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 2, 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. For purposes of section 4975(a), FMV 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" for this purpose is the period of time beginning with the date of the prohibited transaction and ending with the earliest of:

1. The date the 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 instructions for Schedule C, under *Additional tax for failure to correct the prohibited transaction (section 4975(b))*, for the definition of "correction."

CAUTION *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.*

Failure to transmit participant contributions. For purposes of calculating the excise tax on a prohibited transaction where there is a failure to transmit participant contributions (elective deferrals) or amounts that would have otherwise been payable to the participant in cash, the amount involved is based on interest on those elective deferrals. See Rev. Rul. 2006-38.

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 example of a prohibited transaction below 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, 2006 (date of transaction) and repaid on December 31, 2007 (date of correction). The disqualified person's tax year is the calendar year. On July 31, 2008, the disqualified person files a delinquent Form 5330 for the 2006 plan year (which in this case is the calendar year) and a timely Form 5330 for the 2007 plan year (which in this case is the calendar 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 excise tax has been made by the IRS before the time the disqualified person filed the Forms 5330.

Each prohibited transaction has its own separate taxable period that 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, 2006 (date of loan), through December 31, 2007 (date of correction). 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 tax year (or portion of a tax year) within the taxable period that begins on the date the loan occurs. Therefore, in this example, there are two prohibited transactions, the first occurring on July 1, 2006, and ending on December 31, 2006, and the second occurring on January 1, 2007, and ending on December 31, 2007.

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

The Form 5330 for the year ending December 31, 2006. The amount involved to be reported on the Form 5330, Schedule C, line 2, column (d), for the 2006 plan year, is $6,000 (6 months x $1,000). The tax due is $900 ($6,000 x 15%). (See Figure 1.) (Any interest and penalties imposed for the delinquent filing of Form 5330 and the delinquent payment of the excise tax for 2006 will be billed separately to the disqualified person.)

The Form 5330 for the year ending December 31, 2007. The excise tax to be reported on the 2007 Form 5330 would include both the prohibited transaction of July 1, 2006, with an amount involved of $6,000, resulting in a tax due of $900 ($6,000 x 15%), and the second prohibited transaction of January 1, 2007, with an amount involved of $12,000 (12 months x $1,000), resulting in a tax due of $1,800 ($12,000 x 15%). (See Figure 2.) The taxable period for the second prohibited transaction runs from January 1, 2007, through December 31, 2007 (date of correction). Because there are two prohibited transactions with taxable periods running during 2007, the section 4975(a) tax is due for the 2007 tax year for both prohibited transactions.

TIP *When a loan from a qualified plan that is a prohibited transaction spans successive tax years, constituting 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 Rev. Rul. 2002-43, 2002-32 I.R.B. 85 at www.irs.gov/pub/irs-irbs/irb02-28.pdf. 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 prohibited transaction 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

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Figure 1. **Example for the Calendar 2006 Plan Year Used When Filing for the 2006 Tax Year**

Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) **Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)**

(a) Transaction number	**(b)** Date of transaction (see instructions)	**(c)** Description of prohibited transaction	**(d)** Amount involved in prohibited transaction (see instructions)		**(e)** Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	7-1-06	Loan	$6,000		$900
(ii)					
(iii)					
3 Add amounts in column (e). Enter here and on Part I, line 3a				▶	$900

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Figure 2. **Example for the Calendar 2007 Plan Year Used When Filing for the 2007 Tax Year**

Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) **Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)**

(a) Transaction number	**(b)** Date of transaction (see instructions)	**(c)** Description of prohibited transaction	**(d)** Amount involved in prohibited transaction (see instructions)		**(e)** Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	7-1-06	Loan	$6,000		$900
(ii)	1-1-07	Loan	$12,000		$1,800
(iii)					
3 Add amounts in column (e). Enter here and on Part I, line 3a				▶	$2,700

additional tax on Part I, Section A, line 3b.

Line 4. Check "No" if 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 the correction has been or will be made.

Line 5. If more than one disqualified person participated in the same prohibited transaction, list on this schedule the name, address, and SSN or EIN of each disqualified person, other than the disqualified person who files this return.

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.

Prohibited transactions and investment advice. The prohibited transaction rules of section 4975(c) will not apply to any transaction in connection with investment advice, if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

For this purpose, an "eligible investment advice arrangement" is an arrangement which either:

- Provides that any fees, including any commission or other compensation, received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for the investment of plan assets do not vary depending on the basis of any investment option selected; or
- Uses a computer model under an investment advice program, described in section 4975(f)(8)(C), in connection with investment advice provided by a fiduciary adviser to a participant or beneficiary.

Additionally, the eligible investment advice arrangement must meet the provisions of sections 4975(f)(8)(D), (E), (F), (G), (H), and (I).

For purposes of the statutory exemption on investment advice, a "fiduciary adviser" is defined in section 4975(f)(8)(J).

Correcting certain prohibited transactions. Generally, if a disqualified person enters into a direct or indirect prohibited transaction, listed in (1) through (4) below, in connection with the acquisition, holding, or disposition of certain securities or commodities, and the transaction is corrected within the correction period, it will not be treated as a prohibited transaction and no tax will be assessed.

1. Sale or exchange, or leasing of any property between a plan and a disqualified person.
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.

However, if at the time the transaction was entered into, the disqualified person knew or had reason to know that the transaction was prohibited, the transaction would be subject to the tax on prohibited transactions.

For purposes of section 4975(d)(23), the term "correct" means to:

- Undo the transaction to the extent possible and in all cases to make good to the plan or affected account any losses resulting from the transaction, and
- Restore to the plan or affected account any profits made through the use of assets of the plan.

The "correction period" is the 14-day period beginning on the date on which the disqualified person discovers or reasonably should have discovered that the transaction constitutes a prohibited transaction.

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Schedule D. Tax on Failure to Meet Minimum Funding Standards (Section 4971(a))

In the case of a single-employer plan, section 4971(a) imposes a 10% tax on the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year. In the case of a multiemployer plan, section 4971(a) imposes a 5% tax 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 under section 412, the employer and all controlled group members will be subject to 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 under section 414(b), a group of trades or businesses under common control under section 414(c), an affiliated service group under section 414(m), and any other group treated as a single employer under section 414(o).

CAUTION *If the IRS determined at any time that your plan was a plan as defined on Schedule C, it will always remain subject to the excise tax on failure to meet minimum funding standards.*

Line 1. Enter the amount (if any) of the aggregate unpaid minimum required contributions (or in the case of a multiemployer plan, an accumulated funding deficiency as defined in section 431(a) (or section 418B if a multiemployer plan in reorganization).

Line 2. Multiply line 1 by the applicable tax rate shown below and enter the result.

- 10% for plans other than multiemployer plans.
- 5% for all multiemployer plans.

Additional tax for failure to correct. For single-employer plans, when an initial tax is imposed under section 4971(a) on any unpaid minimum required contribution and the unpaid minimum required contribution remains unpaid as of the close of the taxable period, an additional tax of 100% of the amount that remains unpaid is imposed under section 4971(b).

For multiemployer plans, when an initial tax is imposed under section 4971(a)(2) 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 under section 4971(b).

For this purpose, the "taxable period" is the period beginning with the end of the plan year where there is an unpaid minimum required contribution or 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 unpaid minimum required contribution or the accumulated funding deficiency on Part I, Section B, line 8b.

Special rule for certain single-employer defined benefit plans. Single-employer defined benefit plans to which section 430 does not yet apply (because of a delayed effective date under the Pension Protection Act of 2006) should follow the instructions for multiemployer plans.

Schedule E. 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 1 through 4.

Line 1. Enter the amount of the liquidity shortfall(s) for each quarter of the plan year.

Line 2. Enter the amount of any contributions made to the plan by the due date of the required quarterly installment(s) that partially corrected the liquidity shortfall(s) reported on line 1.

Line 3. Enter the net amount of the liquidity shortfall (subtract line 2 from line 1).

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 Part I, Section B, line 9b.

Schedule F. Tax on Multiemployer Plans in Endangered or Critical Status (Sections 4971(g)(3) & 4971(g)(4))

For years beginning after 2007, section 4971(g) imposes an excise tax on employers who contribute to multiemployer plans for failure to comply with a funding improvement or rehabilitation plan, failure to meet requirements for plans in endangered or critical status, or failure to adopt a rehabilitation plan. See the instructions for line 10a, earlier.

Line 1. Under section 4971(g)(3), a multiemployer plan that is in seriously endangered status when it fails to meet its applicable benchmarks by the end of the funding improvement period will be treated as having an accumulated funding deficiency for the last plan year in such period and each succeeding year until the funding benchmarks are met.

Similarly, a plan that is in critical status and either fails to meet the requirements of section 432 by the end of the rehabilitation period, or has received certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan, will be treated as having an accumulated funding deficiency for the last plan year in such period and each succeeding plan year until the funding requirements are met.

In both cases, the accumulated funding deficiency is an amount equal to the greater of the amount of the contributions necessary to meet the benchmarks or requirements, or the amount of the accumulated funding deficiency without regard to this rule. The existence of an accumulated funding deficiency triggers the initial 5% excise tax under section 4971(a).

A plan is in "endangered status" if either of the following occurs.

- The plan's actuary timely certifies that the plan is not in critical status for that plan year and at the beginning of that plan year the plan's funded percentage for the plan year is less than 80%.
- The plan has an accumulated funding deficiency for the plan year or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

A plan is in "critical status" if it is determined by the multiemployer plan's actuary that one of the four formulas in section 432(b)(2) is met for the applicable plan year.

All or part of this excise tax may be waived due to reasonable cause.

Line 2. Under section 4971(g)(4), the plan sponsor of a multiemployer plan in critical status, as defined above, will be liable for an excise tax for failure to adopt a rehabilitation plan within the time prescribed under section 432. The tax is equal to the greater of:

- The amount of tax imposed under section 4971(a)(2); or
- An amount equal to $1,100, multiplied by the number of days in the tax year which are included in the period that begins on the first day following the close of the 240-day period that a multiemployer plan has to adopt a rehabilitation plan once it has entered critical status and that ends on the day that the rehabilitation plan is adopted. Section 432(e)(1)(A) allows the plan sponsor to adopt a rehabilitation plan within the 240-day period following the required date for the actuarial certification of critical status in section 432(b)(3)(A).

Liability for this tax is imposed on each plan sponsor. This excise tax may not be waived.

CAUTION *Follow the instructions as defined above for counting days and completing line 2b.*

Schedule G. Tax on Excess Fringe Benefits (Section 4977)

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 "Yes" on line 1 and complete lines 2 through 4.

Line 3. Excess fringe benefits are calculated 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 (2).

Schedule H. 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 excess aggregate contributions made on behalf of highly compensated employees. The employer may also be subject to an excise tax on 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).

Generally, a "highly compensated employee" is an employee who:

1. Was a 5% 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 ($105,000 for 2008) 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% of employees when ranked on the basis of compensation paid. An employee (who is not a 5% owner) who has compensation in excess of $105,000 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) or section 408(k)(6) in the instance of certain SEPs.

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 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.

Schedule I. Tax on Reversion of Qualified Plan Assets to an Employer (Section 4980)

Section 4980 imposes an excise tax on an employer reversion of qualified plan assets to an employer. Generally, the tax is 20% of the amount of the employer reversion. The excise tax rate increases to 50% if the employer does not establish or maintain a qualified replacement plan following the plan termination or provide certain pro-rata benefit increases in connection with the plan termination. See section 4980(d)(1)(A) or (B) for more information.

An "employer reversion" is the amount of cash and the FMV of property received, directly or indirectly, by an employer from a qualified plan. For exceptions to this definition, see section 4980(c)(2)(B) and section 4980(c)(3).

A "qualified plan" is:

- Any plan meeting the requirements of section 401(a) or 403(a), other than a plan maintained by an employer if that employer has at all times been exempt from federal income tax; or
- A governmental plan within the meaning of section 414(d).

Terminated defined benefit plan. 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,

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see Rev. Rul. 2003-85, 2003-32 I.R.B. 291 at www.irs.gov/irb/2003-32_IRB/ar11.html.

Lines 1 through 4. Enter the date of reversion on line 1. Enter the reversion amount on line 2a and the applicable excise tax rate on line 2b. If you use a tax percentage other than 50% on line 2b, explain on line 4 why you qualify to use a rate other than 50%.

Schedule J. Tax on Failure to Provide Notice of Significant Reduction in Future Accruals (Section 4980F)

Section 204(h) notice. Section 4980F imposes an excise tax on an employer (or, in the case of a multiemployer plan, the plan) for failure to give section 204(h) 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. The tax is $100 per day per each applicable individual and each employee organization representing participants who are applicable individuals for each day of the noncompliance period. This notice is called a "section 204(h) notice" because section 204(h) of ERISA has parallel notice requirements.

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 by a plan amendment. (For plan years beginning after December 31, 2007, the requirement to give 204(h) notice was extended to an employer who has an obligation to contribute to a multiemployer plan.)

Whether a participant, alternate payee, or an employer (as described in the above paragraph) 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 on 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 failure is provided or the failure is corrected.

Exceptions. The section 4980F excise tax will not be imposed for a failure during any period in which the following occurs.

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; or

b. At the latest date permitted for delivery of section 204(h) notice, the person reasonably believed 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.

Generally, section 204(h) notice must be provided at least 45 days before the effective date of the section 204(h) amendment. For exceptions to this rule, see Regulations section 54.4980F-1, Q&A 9.

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 tax 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. 2013-4, 2013-1 I.R.B. 123, as revised by subsequent documents, available at www.irs.gov/irb/2013-01_IRB/ar09.html, for procedures to follow in applying for a waiver of part or all of the excise tax due to reasonable cause.

Line 4. A *failure* occurs on any day that any applicable individual (AI) is not provided section 204(h) notice.

Example. There are 1,000 AIs. The plan administrator fails to give section 204(h) notice to 100 AIs for 60 days, and to 50 of those AIs for an additional 30 days. In this case, there are 7,500 failures ((100 AIs x 60 days) + (50 AIs x 30 days) = 7,500).

Schedule K. Tax on Prohibited Tax Shelter Transactions (Section 4965)

Section 4965 provides that an entity manager of a tax-exempt organization may be subject to an excise tax on prohibited tax shelter transactions under section 4965. In the case of a plan entity, an *entity manager* is any person who approves or otherwise causes the tax-exempt entity to be a party to a prohibited tax shelter transaction. The excise tax is $20,000 and is assessed for each approval or other act causing the organization to be a party to the prohibited tax shelter transaction.

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 4965, 4971, 4972, 4973, 4975, 4976, 4977, 4978, 4979, 4979A, 4980, and 4980F of the Internal Revenue Code. Section 6109 requires you to provide your identifying number. 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.

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 section 6103.

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

DRAFT AS OF October 6, 2020

Recordkeeping . . .	30 hr., 22 min.
Learning about the law or the form	15 hr., 45 min.
Preparing and sending the form to the IRS	18 hr., 08 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 send us comments from *IRS.gov/FormsComments*. Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 5330 to this address. Instead, see *Where To File*, earlier.

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