

Instructions for Form 5329

Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, Modified Endowment Contracts, and MSAs

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

General Instructions

Changes To Note

- Part III was added to reflect the new tax on excess contributions to Medical Savings Accounts (MSAs).
- The tax on excess distributions from qualified retirement plans (which was figured in Part IV of the 1996 form) has been repealed.
- The following changes were made to the exceptions listed in the instructions for line 2:
 - Exceptions 01 through 04 were rearranged.
 - New exception 07 was added for distributions to unemployed individuals for health insurance premiums.
 - Exception 05 (distribution to the extent you have medical expenses deductible under section 213) now also applies to distributions from IRAs.

Purpose of Form

Use Form 5329 to report any additional income tax or excise tax you may owe in connection with a qualified retirement plan (including an individual retirement arrangement (IRA)), annuity, modified endowment contract, or MSA.

Do not use Form 5329 to report a deduction for contributions to an IRA or MSA. Report an IRA deduction on **Form 1040 or 1040A**. If you make nondeductible contributions to your IRA, use **Form 8606**, Nondeductible IRAs (Contributions, Distributions, and Basis), to report the nondeductible contribution. Also, if you previously made nondeductible IRA contributions, use Form 8606 to figure the taxable part of your IRA distributions. Report an MSA deduction on **Form 8853**, Medical Savings Accounts and Long-Term Care Insurance Contracts.

Who Must File

You **MUST** file Form 5329 if any of the following apply.

- You owe a tax on early distributions from your qualified retirement plan (including an IRA), annuity, or modified endowment contract but distribution code 1 is not shown in box 7 of **Form 1099-R**, Distributions From Pensions, Annuities,

Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (complete Part I).

- You meet an exception to the tax on early distributions, but distribution code 2, 3, or 4 is not shown in box 7 of Form 1099-R, or the distribution code shown is incorrect.
- You owe a tax because of excess contributions to your IRA (complete Part II) or MSA (complete Part III).
- You owe a tax because you did not receive a minimum required distribution from your qualified retirement plan (complete Part IV).

You **DO NOT** have to file Form 5329 if:

- You owe **only** the 10% tax on early distributions (distribution code 1 must be shown in box 7 of Form 1099-R). If you are filing **Form 1040**, U.S. Individual Income Tax Return, do not complete Form 5329. Enter 10% of the taxable part of your distribution on Form 1040, line 50. Write "No" on the dotted line next to line 50 to indicate that you do not have to file Form 5329.
- You received an early distribution from your plan, but meet an exception to the tax (distribution code 2, 3, or 4 must be correctly shown on Form 1099-R).
- You rolled over the taxable part of all distributions you received during the year.

When and Where To File

Attach your 1997 Form 5329 to your 1997 Form 1040 and file both by the due date for your Form 1040 (including extensions).

If you do not have to file Form 1040 but owe a tax on Form 5329 or otherwise have to file Form 5329 (see above), you **must** still complete and file it with the IRS at the time and place you would be required to file Form 1040. If you are filing your 1997 Form 5329 by itself, be sure to include your address on page 1 and your signature and date on page 2. Enclose, but do not attach, a check or money order payable to the "Internal Revenue Service" for the total of any taxes due. Include your social security number and "1997 Form 5329" on the check or money order.

Filing for Previous Tax Years

If you are filing a Form 5329 to pay a tax for a previous year, you must use that year's version of the form. For example,

if you are paying tax for 1995, you must use the 1995 version of the form to report the tax.

If you owe a tax for that previous year because of an early distribution, complete the appropriate part(s) of Form 5329 for that year and attach it to **Form 1040X**, Amended U.S. Individual Income Tax Return. Be sure to include the distribution as additional income on Form 1040X if not previously reported.

If you owe only a tax other than the tax on early distributions for a previous year, file Form 5329 by itself for that year. Be sure to include your signature and date on page 2. Enclose, but do not attach, a check or money order payable to the "Internal Revenue Service" for the amount of tax due. Include your social security number, "Form 5329," and the year for which the form is being filed on the check or money order.

Definitions

Qualified Retirement Plan

A qualified retirement plan includes:

- A qualified pension, profit-sharing, and stock bonus plan (including a qualified cash or deferred arrangement (CODA) under section 401(k)),
- A qualified annuity plan,
- A tax-sheltered annuity contract,
- An individual retirement account, and
- An individual retirement annuity.

SIMPLE Retirement Plans

A SIMPLE retirement plan is a written arrangement established under section 408(p) that provides a simplified tax-favored retirement plan for small employers. A SIMPLE retirement plan can be an individual retirement account or an individual retirement annuity. Therefore, a SIMPLE retirement plan is a qualified retirement plan as defined above. As such, any mention of qualified retirement plans, individual retirement accounts, IRAs, or individual retirement annuities in these instructions includes SIMPLE retirement plans.

Early Distribution

Generally, any distribution from your qualified retirement plan, annuity, or modified endowment contract that you receive before you reach age 59½ is an early distribution. See **Part I—Tax on**

Early Distributions on page 2 for details on early distributions that are subject to an additional tax.

Rollover

A rollover is a tax-free distribution (withdrawal) of assets from one qualified retirement plan that is reinvested in another plan. Generally, you must complete the rollover within 60 days following the distribution to qualify it for tax-free treatment. Get **Pub. 590**, Individual Retirement Arrangements (IRAs), for more details and additional requirements regarding rollovers.

Note: *If you instruct the trustee of your plan to transfer funds directly to another plan, the transfer is **not** considered a rollover. Do not include the amount transferred in income or deduct the amount transferred as a contribution. A transfer from a qualified employee plan to an IRA, however, **is** considered a rollover.*

Compensation

Compensation includes wages, salaries, professional fees, and other pay you receive for services you perform. It also includes sales commissions, commissions on insurance premiums, pay based on a percentage of profit, tips, and bonuses. It includes net earnings from self-employment, but only for a trade or business in which your personal services are a material income-producing factor.

For IRAs, treat all taxable alimony received under a decree of divorce or separate maintenance as compensation.

Compensation does not include any amounts received as a pension or annuity and does not include any amount received as deferred compensation.

Additional Information

For more details, see Pub. 590. Also get **Pub. 575**, Pension and Annuity Income.

Specific Instructions

Joint returns. Each spouse must complete a **separate** Form 5329 for taxes attributable to his or her own qualified retirement plan, annuity, modified endowment contract, or MSA. If both spouses owe penalty taxes and are filing a joint return, enter the combined total tax from Forms 5329 on Form 1040, line 50.

Amended return. If you are filing an amended 1997 Form 5329, check the box at the top of page 1 of the form. **Do not** use this version of Form 5329 to amend your return for any year other than 1997.

See **Filing for Previous Tax Years** on page 1.

Part I—Tax on Early Distributions

In general, if you receive an early distribution from a qualified retirement plan, an annuity, or a modified endowment contract (including an involuntary cashout under section 411(a)(11) or 417(e)), the part of the distribution that is includible in gross income is subject to an additional 10% tax.

The tax on early distributions from qualified retirement plans does **not** apply to:

- 1997 IRA contributions withdrawn during the year or 1996 excess contributions withdrawn in 1997 before the filing date (including extensions) of your 1996 income tax return;
- Excess IRA contributions for years before 1996 that were withdrawn in 1997, and 1996 excess contributions withdrawn after the due date (including extensions) of your 1996 income tax return, if no deduction was allowed for the excess contributions, and the total IRA contributions for the tax year for which the excess contributions were made were not more than \$2,250 (or if the total contributions for the year included employer contributions to a SEP, \$2,250 increased by the smaller of the amount of the employer contributions to the SEP or \$30,000) ;
- The part of your IRA distributions that represents a return of nondeductible IRA contributions figured on Form 8606;
- Distributions rolled over to another retirement arrangement or plan;
- Distributions of excess contributions from a qualified cash or deferred arrangement;
- Distributions of excess aggregate contributions to meet nondiscrimination requirements for employer matching and employee contributions;
- Distributions of excess deferrals; and
- Amounts distributed from unfunded deferred compensation plans of tax-exempt or state and local government employers.

See the instructions for **Line 2** below for other distributions that are not subject to the tax.

Line 1

Enter the taxable amount of early distributions made to you from **(a)** a qualified pension plan, including your IRA

(and income earned on excess contributions to your IRA), **(b)** an annuity contract, or **(c)** a modified endowment contract (as defined in section 7702A) entered into after June 20, 1988. The taxable amount of a distribution is the amount you include in gross income.

Prohibited transactions. If you engaged in a prohibited transaction, such as **borrowing** from your individual retirement account or **annuity**, or pledging your individual retirement **annuity** as security for a loan, your account or annuity no longer qualified as an IRA on the first day of the tax year in which you did the borrowing or pledging. You are considered to have received a distribution of the entire value of your account or annuity at that time. Using your IRA as a basis for obtaining a benefit is also a prohibited transaction. If you were under age 59½ on the first day of the year, report the entire value of the account or annuity on line 1.

Pledging individual retirement account. If you pledged any part of your individual retirement **account** as security for a loan, that **part** is considered distributed to you at the time pledged. If you were under age 59½ at the time of the pledge, enter the amount pledged on line 1.

Collectibles. If your IRA trustee invested your funds in collectibles, you are considered to have received a distribution equal to the cost of any "collectible." Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages, and certain other tangible personal property.

If you were under age 59½ when the funds were invested, include the cost of the collectible on line 1. Also, include the total cost of the collectible as income on your 1997 Form 1040, line 15b.

Exception. Your IRA trustee may invest your IRA funds in U.S. one, one-half, one-quarter, and one-tenth ounce gold coins, and one ounce silver coins, minted after September 30, 1986.

Note: *You must include the taxable amount of all distributions (including income earned on investments) from line 1, on either line 15b or 16b, Form 1040, whichever applies.*

Line 2

The 10% additional tax does not apply to certain distributions specifically excepted by the Code. Enter on line 2 the amount that can be excluded. In the space provided, enter the applicable exception number (01-08) from the chart on the next page.

| No. | Exception |
|-----|--|
| 01 | Distribution due to separation from service in or after the year of reaching age 55 |
| 02 | Distribution made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from a qualified employee plan, payments must begin after separation from service) |
| 03 | Distribution due to total and permanent disability |
| 04 | Distribution due to death (does not apply to modified endowment contracts) |
| 05 | Distribution to the extent you have medical expenses deductible under section 213 |
| 06 | Distributions made to an alternate payee under a qualified domestic relations order |
| 07 | Distributions made to unemployed individuals for health insurance premiums |
| 08 | Other (see instructions below) |

Note: *Exceptions 01 and 06 above DO NOT apply to distributions from IRAs or annuity or modified endowment contracts. They apply only to distributions from qualified employee plans. Exceptions 05 and 07 do not apply to annuity or modified endowment contracts.*

Other exceptions. In addition to the exceptions listed above, the tax does not apply to the following:

- Any distributions from a plan maintained by an employer if:
 - ÿ1. You separated from service by March 1, 1986;
 - ÿ2. As of March 1, 1986, your entire interest was in pay status under a written election that provides a specific schedule for distribution of your entire interest; and
 - ÿ3. The distribution is actually being made under the written election.
- Distributions that are dividends paid with respect to stock described in section 404(k).
- Distributions from annuity contracts to the extent that the distributions are allocable to investment in the contract before August 14, 1982.

For additional exceptions applicable to annuities, see Pub. 575.

If any of these exceptions applies, include the amount that can be excluded on line 2. Enter Exception No. 08 in the space provided.

Also, if you received a Form 1099-R for a distribution that incorrectly indicated an early distribution (code 1 was entered in box 7 of the Form 1099-R), include on line 2 the amount of the distribution that you received when you were age 59½ or

Worksheet for line 7 (keep for your records)

1 Enter the smaller of:

- \$2,000; or
- Your wages and other earned income (combined for you and your spouse, if married filing jointly) from Form 1040, minus any deductions on Form 1040, lines 26 and 28. If married filing jointly, reduce this amount by your spouse's allowed IRA contribution. Do not reduce wages by any loss from self-employment 1. _____

2 Enter amount actually contributed to your account 2. _____

3 **Contribution credit.**—Subtract line 2 from line 1 (but do not enter less than zero). Enter this amount on line 7 of Form 5329. You should also add to the amount calculated on line 10a or 10b (whichever applies to you) of the IRA Worksheet in the Form 1040 instructions the **smaller** of either: (a) this amount; or (b) your earlier years' excess contributions not previously eliminated 3. _____

older. Enter Exception No. 08 in the space provided.

Line 4

Multiply line 3 by 10%. However, if any amount on line 3 was a distribution from a SIMPLE retirement plan (see definition on page 1), you must multiply that amount by 25% instead of 10%. SIMPLE distributions are included in boxes 1 and 2a of Form 1099-R and are designated with a code "S" in box 7.

Part II—Tax on Excess Contributions to Individual Retirement Arrangements

If you contributed, either this year or in earlier years, more to your IRA than is or was allowable, you may have to pay a tax on excess contributions. For 1997, your allowable contribution is generally the smaller of your taxable compensation or \$2,000. If you are married filing a joint return and your taxable compensation is less than your spouse's taxable compensation, your allowable contribution is based on the combined taxable compensation of you and your spouse minus your spouse's allowed contribution to his or her IRA, limited to \$2,000. The limit does not apply to SIMPLE retirement plans. For details, see Pub. 590.

However, you can withdraw some or all of your excess contributions for 1997 and they will not be taxed as a distribution if:

- You make the withdrawal by the due date (including extensions) of your 1997 income tax return,
- You do not claim a deduction for the amount of the contribution withdrawn, and
- You also withdraw from your IRA any income earned on the withdrawn contributions.

Do not include the withdrawn contributions as excess contributions on line 5.

You **must** include the income earned on the contributions withdrawn by the due date of your income tax return on Form 1040 for the year in which you made the contribution. Also, if you had not reached age 59½ at the time you received the distribution, report the income (but not the

withdrawn contributions) as an early withdrawal in Part I, line 1.

Line 5

Enter the excess contributions you made for 1997. To figure this amount, subtract your contributions limit from your actual contributions. Your contributions limit is the smaller of:

- \$2,000; or
- Your wages and other earned income (combined for you and your spouse, if married filing jointly) from Form 1040, minus any deductions on Form 1040, lines 26 and 28. If married filing jointly, reduce this amount by your spouse's allowed IRA contribution. Do not reduce wages by any loss from self-employment.

Do not include any rollover contributions in figuring your excess contributions.

Line 6

Enter the total amount of 1996 excess contributions not withdrawn from your IRA by the due date of your 1996 income tax return, plus the 1995 and earlier excess contributions not withdrawn or otherwise eliminated before January 1, 1997.

This entry should be the same as the amount from line 12 of your 1996 Form 5329.

Line 7

If you contributed less to your IRA for 1997 than your contributions limit, and your excess contributions from earlier years have not been eliminated, complete the worksheet above to see if you have a contribution credit. **Do not** enter an amount on line 7 if you have an amount on line 5.

Line 8

If you withdrew any money from your IRA in 1997 that must be included in your income for 1997, enter that amount on line 8. Do not include any contributions withdrawn that will be reported on line 9.

Line 9

Enter any excess contributions to your IRA for 1976 through 1995 that you withdrew in 1997, and any 1996 excess contributions that you withdrew after the

due date (including any extensions) for your 1996 income tax return, if:

- You did not claim a deduction for the excess, and
- The total contributions to your IRA for the tax year for which the excess contributions were made were not more than \$2,250 (or if the total contributions for the year included employer contributions to a SEP, \$2,250 increased by the smaller of the amount of the employer contributions to the SEP or \$30,000).

Part III—Tax on Excess Contributions to Medical Savings Accounts

If you or your employer contributed more to your MSA than is allowable, you may have to pay a tax on excess contributions. However, you can withdraw some or all of your excess contributions for 1997 and they will not be taxed as a distribution if:

- You make the withdrawal by the due date (including extensions) of your 1997 income tax return,
- You do not claim a deduction for the amount of the contribution withdrawn, and
- You also withdraw from your MSA any income earned on the withdrawn contributions.

Do not include the withdrawn contributions as excess contributions on line 14.

You **must** include the income earned on the contributions withdrawn by the due date of your income tax return on Form 1040 for the year in which you made the contribution. Also, report the withdrawn contributions (and the earnings on them) as MSA distributions on lines 8a and 8b of Form 8853.

Line 14

Enter the excess contributions you made in 1997. To figure this amount, subtract your contributions limit (line 7 of Form 8853) from your actual contributions (line 4 of Form 8853).

You may also have an amount that must be entered on line 14 as a result of excess employer contributions to your MSA. For details, see the instructions for Form 8853.

Do not include any rollover contributions in figuring your excess contributions.

Part IV—Tax on Excess Accumulation in Qualified Retirement Plans (Including IRAs)

If you do not receive the minimum required distribution from your qualified

retirement plan, you have an excess accumulation subject to an additional tax.

For purposes of the tax on excess accumulations, a qualified retirement plan also includes an eligible deferred compensation plan under section 457.

The additional tax is equal to 50% of the difference between the amount that was required to be distributed and the amount that was actually distributed.

Required Distributions

IRA. You must start receiving distributions from your IRA by April 1 of the year following the year in which you reach age 70½. At that time, you may receive your entire interest in the IRA, or begin receiving periodic distributions over your life expectancy or over the joint life expectancy of you and your designated beneficiary (or over a shorter period).

If you choose to receive periodic distributions, you must receive a minimum required distribution each year. For each year after the year in which you reach age 70½, you must receive the minimum required distribution by December 31 of that year.

Figure the minimum required distribution by dividing the account balance of the IRA on December 31 of the year preceding the distribution by the applicable life expectancy.

For applicable life expectancies, you must use the expected return multiples from the tables in Pub. 590 or **Pub. 939**, General Rule for Pensions and Annuities.

Under an alternative method, if you have more than one IRA, you may take the minimum distribution from any one or more of the individual IRAs.

For more details on the minimum distribution rules (including examples) and the life expectancy tables, see Pub. 590.

Qualified pension, profit-sharing, stock bonus, or section 457 deferred compensation plan. In general, you must begin receiving distributions from your plan no later than April 1 following the **later** of (1) the year in which you reached age 70½, or (2) the year in which you retired.

Your plan administrator figures the amount that must be distributed each year. Unless you are covered by a governmental or church plan, if you retire in a calendar year after the year in which you reach age 70½, the amount to be distributed must be actuarially increased to take into account the period after age 70½ in which you were not receiving any benefits under the plan.

Exception. If you were a 5% owner of the employer maintaining the plan, you must begin receiving distributions no later than April 1 of the year following the year in which you reached age 70½, regardless of when you retire.

Note: *The IRS may waive this tax on excess accumulations if you can show that any shortfall in the amount of withdrawals from your qualified retirement plan was due to reasonable error, and that you are taking appropriate steps to remedy the shortfall. If you believe you qualify for this relief, file Form 5329, pay this excise tax, and attach your letter of explanation. If the IRS grants your request, we will send you a refund.*

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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:

| | |
|--|---------|
| Recordkeeping..... | 40 min. |
| Learning about the law or the form | 22 min. |
| Preparing the form | 35 min. |
| Copying, assembling, and sending the form to the IRS | 35 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 Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **When and Where To File** on page 1.