

# Department of the Treasury Internal Revenue Service

## Instructions for Form 5330

(Revised December 1981)

### Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans

(Section references are to the Internal Revenue Code of 1954 unless otherwise specified)

#### General Information

##### Paperwork Reduction Act Notice.—

The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for the information to carry out the Internal Revenue laws of the United States. 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 required to give us this information.

#### Purpose

This return is to be used to report the tax on (i) a minimum funding deficiency (section 4971); (ii) excess contributions to a section 403(b)(7)(A) custodial account (section 4973(a)); (iii) excess contributions to a Keogh (H.R. 10) plan (section 4972); and (iv) a prohibited transaction occurring after December 31, 1974 (section 4975).

This return is also to be used to make the election under section 2003(c)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA). This election allows a disqualified person to elect to pay the section 4975 tax on a prohibited transaction which took place prior to January 1, 1975, in order to avoid loss of the exempt status by a trust.

**Who Must File.**—A Form 5330 must be filed by:

(1) any employer who fails to meet the minimum funding standards under section 412 (for liability for tax in case of an employer who is a party to a collective bargaining agreement see section 413(b)(6)); or

(2) any individual with respect to whom there has been made an excess contribution to a 403(b)(7)(A) custodial account and which excess has not been eliminated as specified in section 4973(c)(2)(A) and (B); or

(3) any disqualified person who participates in a prohibited transaction (other than a fiduciary acting only as such or an individual (or his beneficiary) who engages in a prohibited transaction with respect to his individual retirement account) for each tax year or part

thereof in the "taxable period" applicable to such prohibited transaction; or

(4) any self-employed individual or partnership who has made excess contributions to their Keogh (H.R. 10) pension or profit-sharing plan that have not been eliminated.

The payment of tax and filing of Form 5330 is required for each year in which you fail to meet the minimum funding standards under section 412 or contribute an excess amount to your 403(b)(7)(A) custodial account or your Keogh (H.R. 10) plan. The payment of tax and filing of Form 5330 is also required for each year (or part thereof) in the "taxable period" applicable to a prohibited transaction. Generally the "taxable period" begins with the date of the prohibited transaction and ends with the earliest of: (i) the date correction is completed, (ii) the date of mailing of a notice of deficiency, (iii) or the date on which the tax under section 4975(a) is assessed.

#### Definitions

**A. Plan.**—For purposes of these definitions, the term "plan" means a trust described in section 401(a) which forms part of a plan, or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) or a retirement bond described in section 409. For purposes of the tax on minimum funding deficiencies and prohibited transactions, a trust, plan, account, annuity, or a bond which, at any time, has been determined by the Internal Revenue Service to be a trust, plan, account, annuity or bond as described in the preceding sentence is a plan subject to these taxes.

A trust described in section 501(c)(22) is considered a plan for purposes of prohibited transactions.

**B. Disqualified Person.**—A "disqualified person" is any person who is:

- (1) a fiduciary;
- (2) a person providing services to the plan;
- (3) an employer, any of whose employees are covered by the plan;

(4) an employee organization, any of whose members are covered by the plan;

(5) an owner, direct or indirect, 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, which is an employer or an employee organization described in (3) or (4);

(6) a member of the family of any individual described in (1), (2), (3), or (5) (member of a family is the spouse, ancestor, lineal descendant, and any spouse of a lineal descendant);

(7) a corporation, partnership, or trust or estate of which (or in which) 50% or more of the interest described in (5)(a), (b), and (c) is owned directly or indirectly, or held by persons described in (1), (2), (3), (4), or (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); or

(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 is permitted to make payments under section 4223 of ERISA.

**C. Prohibited Transaction.**—Means any direct or indirect:

- (1) (a) sale or exchange, or leasing, of any property between a plan and a disqualified person;
- (b) 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 (she) deals with the income or assets of a plan in his (her) own interest or for his (her) own account; or

(6) receipt of any consideration for his (her) own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

**D. Exemptions.**—See section 4975(d) for specific exemptions to prohibited transactions.

In addition, section 2003(c)(2) of ERISA contains rules which delay the application of section 4975 for certain arrangements in effect on June 30, 1974. Furthermore, certain other transactions or classes of transactions have been exempted pursuant to section 4975(c)(2).

## General Instructions

### A. When and Where to File.—

(1) For taxes due other than tax resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA, this return is to be filed on or before the last day of the seventh month after the end of the taxable year of the employer or other person who must file this return. However, you may be granted an extension of time to file this return if the request is made in writing on or before the due date for filing this return. Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, may be used to request this extension. Such extension shall not exceed six months.

(2) For tax due resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA, this return is to be filed prior to 120 days after the date of notification, under section 1.503(a)-1(c) of the income tax regulations, that the trust shall not be exempt from taxation under section 501(a) because it engaged in a pre-1975 prohibited transaction.

**Note:** If contributions are made to your plan within 8½ months after the plan year ended, you automatically have an extension until that time for filing

Form 5330 and paying the 5% tax on any funding deficiency (see section 412(c)(10)). If contributions are not made within the 8½-month period, the Form 5330 is due at the normal time, 7 months after the employer's tax year ended.

This return should be filed with the Internal Revenue Service Center where you filed your income tax return.

**B. Name, Address, etc.**—The name of the employer or the name of the individual on whom the tax is imposed should appear on the line designated on page 1. If an employer is filing this return, the employer's identification number should be entered to the right of the name in the space indicated. If an individual (other than a sole proprietor filing as an employer) is filing this return, the individual's social security number should be entered to the right of the name in the space indicated.

**C. Signature of Preparer.**—If someone fills out your return and does not charge you, that person should not sign your return. For example, your regular, full-time employee or your partner in business does not have to sign. (This example is not all inclusive.)

Generally, anyone who is paid to prepare your tax return must sign your return and fill in the other blanks in the Paid Preparer Use Only area of your return.

## Reminders

### Penalties and Interest

**A. Interest.**—Interest will be charged on taxes not paid on or before their due date, even if an extension of time to file is granted.

**B. Late Filing of Return.**—The law provides a penalty of from 5 percent to 25 percent of the tax due for filing late unless you can show reasonable cause for the delay. If you file a return late, attach an explanation to your return.

**C. Late Payment of Tax.**—The penalty for not paying tax when due is ½ of 1 percent of the unpaid amount for each month or part of a month it remains unpaid. The maximum penalty is 25 percent of the unpaid amount. The penalty applies to any unpaid tax shown on a return. It also applies to any additional tax shown on a bill if it is not paid within 10 days from the date of the bill. This penalty is in addition to the applicable interest charge on late payments.

## Specific Instructions

### Part I

If your plan has an accumulated funding deficiency as defined in section 412 (section 418B if this is a multiemployer plan in reorganization) complete lines 1 and 3. Complete line 2 only if the alternative minimum funding standard account is used. (See Schedule B (Form 5500) and Form 5500, Form 5500-C, Form 5500-K, or Form 5500-R, whichever is applicable.) Enter 5% of line 1 on line 3; or, if line 2 applies, enter the lesser of 5% of line 1 or 5% of line 2, on line 3.

### Part II

**Line 5.**—The amount excludable for your taxable year is the lesser of:

(a) The exclusion allowance which is the excess of: (i) 20% of your compensation includible in gross income (do not include any amount contributed by your employer for your annuity) from your employer, multiplied by the number of years of service as of the end of your taxable year for which you are computing this exclusion allowance over, (ii) the aggregate of the amounts which have been contributed by your employer and excludable from your gross income in prior years; or

(b) The annual employer contribution limitation. Since tax-sheltered annuities are considered defined contribution plans, the limitation is the lesser of:

- (1) \$25,000 (subject to adjustment annually to consider increases in the cost-of-living); or
- (2) 25% of the employee's compensation for the year.

If you are an employee of an educational institution, hospital or home health service agency, you may elect alternative limitations under section 415(c)(4)(A), (B) or (C).

### Part III

**Note:** Section 141.4975-13 of the Temporary Excise Tax Regulations provides that, until superseded by permanent regulations under section 4975(f), the definitions of "amount involved," and "correction" found in section 53.4941(e)-1 of the Foundation Excise Tax Regulations will be controlling.

**Line 13(a), Column a.**—List all prohibited transactions that took place during the current taxable year. Also list 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.

Remember, transactions involving the use of money (loans, etc.) or other property (rent, etc.) will be treated as giving rise to a new prohibited transaction on the first day of each succeeding taxable year or portion of a succeeding taxable year which is within the "taxable period."

**Column c.—Amount involved in prohibited transaction.**—The "amount involved" with respect to a prohibited transaction means the greater of the amount of money and fair market value of the other property given, or the amount of money and the fair market value of the other property received, except that, in the case of services described in section 4975(d)(2) and (10) the amount involved shall be only the excess compensation. Fair market value shall be determined as of the date on which the prohibited transaction occurs. Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Further, 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 prohib-

ited transaction on the first day of each succeeding taxable year or portion of a succeeding taxable year which is within the "taxable period." The "taxable period" is the period of time beginning with the date of the prohibited transaction and ending with the earliest of: (i) the date correction is completed, (ii) the date of mailing of a notice of deficiency, or (iii) the date on which the tax under section 4975(a) is assessed. See instruction for line 20 for the definition of "correction."

**Example:** A disqualified person borrows money from a plan. The fair market value of the actual interest on the loan is \$1,000 per month. The loan was made on July 1, 1981, and repaid on December 31, 1982 (date correction is completed). The disqualified person's tax year is the calendar year. The disqualified person files a Form 5330 for the tax years 1981 and 1982 on July 31, 1982 (date tax was assessed), and July 31, 1983, respectively.

From the above facts the "taxable period" for the first prohibited transaction runs from July 1, 1981 (date of loan), through July 31, 1982 (date tax was assessed). The "taxable period" for the second prohibited transaction runs from

January 1, 1982, through December 31, 1982 (date of correction).

The disqualified person files a Form 5330 for 1981 on July 31, 1982, paying the tax due on the first prohibited transaction which occurred on July 1, 1981. The amount involved to be reported on the Form 5330 filed for 1981 is \$6,000 (6 months x \$1,000). The amount involved in the second prohibited transaction, which is deemed to have occurred on January 1, 1982, is \$12,000 (12 months x \$1,000). The taxable period for the second prohibited transaction runs from January 1, 1982, through December 31, 1982, when correction took place.

Since the taxable period of the first prohibited transaction ended July 31, 1982, and the taxable period of the second prohibited transaction ended December 31, 1982, at least part of the tax year 1982 is in both taxable periods. Therefore, the amount reported on Form 5330 filed for 1982 would include both the first prohibited transaction of July 1, 1981, \$6,000, and the second prohibited transaction of January 1, 1982, \$12,000. Therefore, item 13 of Form 5330 would be completed in the following manner:

**For 1981**

**Part III Tax on Prohibited Transactions**

13(a) Transaction number	a. Date of transaction (see instructions)	b. Description of prohibited transaction	c. Amount involved in prohibited transaction (see instructions)	d. Initial tax on prohibited transaction (5% of column (c)) (see instructions)
(i)	7-1-81	Loan	\$6,000	\$300
(ii)				
(iii)				
<b>13(b) Tax due</b> —Add amounts in column d. Enter here and on line 16 . . . . .				\$300

**For 1982**

**Part III Tax on Prohibited Transactions**

13(a) Transaction number	a. Date of transaction (see instructions)	b. Description of prohibited transaction	c. Amount involved in prohibited transaction (see instructions)	d. Initial tax on prohibited transaction (5% of column (c)) (see instructions)
(i)	7-1-81	Loan	\$6,000	\$300
(ii)	1-1-82	Loan	12,000	600
(iii)				
<b>13(b) Tax due</b> —Add amounts in column d. Enter here and on line 16 . . . . .				\$900

**Part IV**

**Line 19.**—If you are electing as provided under section 2003(c)(1)(B) of ERISA to have section 4975 apply to a prohibited transaction which occurred prior to January 1, 1975, check "Yes."

**Line 20.**—In order to avoid liability for additional taxes and penalties under section 4975, and in some cases further initial taxes, the prohibited transaction must be corrected 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 at the time this return is filed the prohibited transaction giving rise to the liability for tax under section 4975 has been corrected, the answer to line 20 should be "Yes." Also, Part VI should be completed for each correction, giving the following information: (a) the number of

the transaction from Part III; (b) the nature of the correction; and (c) the date of the correction.

**Part V**

Where more than one disqualified person participates in the same prohibited transaction, the name, address and the social security number or employer identification number of each participant other than the participant who is filing this return must be listed on this schedule.

## Part VII

Excess contributions are cumulative. Therefore, if such contributions are not eliminated, a tax of six percent of such excess contributions is due for each taxable year the excess contributions exist.

Excess contributions may be reduced as follows:

**A. Qualified Distributions.**—For tax years beginning after 12-31-81 the current year excess contributions may be eliminated by qualified distributions. These qualified distributions:

- (1) Must be received by the filing date (including any extension of time to file) for your individual income tax return;
- (2) Must NOT be deducted on your income tax return as a contribution to your plan; and
- (3) The income earned on the excess contributions distributed must also be distributed to you. This income must be included in your net income for the tax year in

which the excess contribution was made.

**B. Correcting Distribution.**—The excess contribution may be offset in whole or in part by a correcting distribution made in a prior taxable year.

Correcting distribution means—

- (1) In the case of voluntary contributions, the amount of such excess voluntary contributions distributed to the owner-employee who contributed the excess voluntary contributions.
- (2) In the case of a defined benefit plan the excess contributions distributed from the plan to the employer.
- (3) In the case of a money purchase plan, the excess contributions distributed by the plan to the employer. In the case of any other defined contribution plan the excess contributions distributed by the plan to the employee to whose account the excess contributions

were contributed, or to the employer.

**C.** Excess contributions made in prior taxable years may be carried forward, combined with any succeeding year contributions, and deducted in such succeeding taxable year, subject to the allowable deduction limitations. Excess contributions applied in this manner will eliminate further excess contributions tax on such excess contributions. For example, if contributions of \$10,000 were made in 1981 to a plan (where voluntary contributions were not permitted) on behalf of a self-employed person (who was entitled to the full \$7,500 deduction) the \$2,500 excess contribution could be purged in 1982 if the contribution made on behalf of the individual in that year were limited to \$12,500. In this case, the 6 percent tax would be imposed, but only once on the \$2,500 excess, because the excess contribution had been eliminated in 1982. Also, in 1982 the individual would be entitled to a deduction of \$15,000 (\$12,500 of contributions in that year, plus the \$2,500 carryover).