



# Instructions for Form 5330

## (Revised January 1992)

### Return of Excise Taxes Related to Employee Benefit Plans

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

## General Information

**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.

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

**Recordkeeping.** . . . . 12 hr., 40 min.

**Learning about the law or the form.** . . . . 8 hr., 02 min.

**Preparing and sending the form to the IRS.** . . . . 8 hr., 37 min.

If you have any comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0575), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, see **When and Where To File** on page 2.

## Purpose of Form

File Form 5330 to report the tax on: **(a)** a minimum funding deficiency (section 4971); **(b)** excess contributions to a section 403(b)(7)(A) custodial account (section 4973(a)); **(c)** a prohibited transaction occurring after December 31, 1974 (section 4975); **(d)** a disqualified benefit provided by funded welfare plans (section 4976); **(e)** excess fringe benefits (section 4977); **(f)** certain ESOP dispositions (sections 4978, 4978A, and 4978B); **(g)** nondeductible contributions to qualified plans (section 4972); **(h)** excess contributions to plans with cash or deferred arrangements (section 4979); **(i)** certain prohibited allocations of qualified securities by an ESOP (section 4979A); and **(j)** reversions of qualified plan assets to employers (section 4980).

Form 5330 is also 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 that took place prior to January 1, 1975, in order to avoid loss of the exempt status of the trust.

## A Change You Should Note

New Regulations section 54.4979-1 has changed the due date for the payment of excise tax on excess contributions to plans with cash or deferred arrangements. The tax is now due on or before the last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.

## 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 the case of an employer who is a party to a collective bargaining agreement, see section 413(b)(6));

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

3. Any disqualified person who participates in a prohibited transaction (other than a fiduciary acting only as such, or an individual (or his or her beneficiary) who engages in a prohibited transaction with respect to his or her individual retirement account) for each tax year or part of a tax year in the "taxable period" applicable to such prohibited transaction;

4. Any employer who maintains a funded welfare plan that provides a disqualified benefit during any tax year;

5. Any employer who pays excess fringe benefits and has elected to be taxed under section 4977 on such payments;

6. Any employer or worker-owned cooperative (as defined in section 1042(c)(2)) that maintains an ESOP plan that disposes of the qualified securities (as defined in section 1042(c)(1)) or section 133 securities within the

specified 3-year period. See the instructions for Part VI for details on the excise tax under sections 4978, 4978A, and 4978B;

7. Any employer who is liable for the tax under section 4972 for nondeductible contributions to qualified plans;

8. Any employer who is liable for the tax under section 4979 on excess contributions to plans with a cash or deferred arrangement;

9. Any employer or worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) and made an allocation prohibited under section 409(n) of qualified securities of an ESOP taxable under section 4979A; or

10. Any employer who receives an employer reversion from a deferred compensation plan that is taxable under section 4980.

A Form 5330 and tax payment is required:

- For each year that you fail to meet the minimum funding standards under section 412 or contribute an excess amount to your 403(b)(7)(A) custodial account,
- For each year that any of the items in 3 through 9 above apply,
- For a reversion of plan assets from a qualified plan that is taxable under section 4980, or
- For each year (or part of a year) in the "taxable period" applicable to a prohibited transaction. See the instructions for Part III, line 13, column (c) for a definition of taxable period.

## Definitions

**Plan.**—For purposes of prohibited transactions (section 4975), the term "plan" means **any** of the following:

- A trust described in section 401(a) that forms part of a plan;
- A plan described in section 403(a), and that trust or plan is exempt from tax under section 501(a);
- An individual retirement account described in section 408(a);
- An individual retirement annuity described in section 408(b);
- A trust described in section 501(c)(22).

**Note:** *If the Internal Revenue Service determined at any time that your plan was a "plan" as defined above, it will always remain subject to the excise tax on prohibited transactions (section 4975). This also applies to the tax on minimum funding deficiencies (section 4971).*

See Part VIII for the definition of a plan for purposes of section 4979.

**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), or (c). For purposes of (c), 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; 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 applies, is permitted to make payments under section 4223 of ERISA.

**Prohibited transaction.**—A “prohibited transaction” is any direct or indirect:

1. Sale or exchange, or leasing of any property between a plan and a disqualified person; or a transfer of real or personal property by a disqualified person to a plan where the property is subject to a mortgage or similar lien placed on the property by the disqualified person within 10 years prior to the transfer, or the property transferred is subject to a mortgage or similar lien which the plan assumes;

2. Lending of money or other extension of credit between a plan and a disqualified person;

3. Furnishing of goods, services, or facilities between a plan and a disqualified person;

4. Transfer to, or use by or for the benefit of, a disqualified person of income or assets of a plan;

5. Act by a disqualified person who is a fiduciary whereby he or she deals with

the income or assets of a plan in his or her own 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 section 4975(d) for specific exemptions to prohibited transactions.

Also, see section 2003(c)(2) of ERISA for the rules that delay the application of section 4975 for certain arrangements in effect on June 30, 1974. In addition, certain other transactions or classes of transactions have been exempted under section 4975(c)(2).

## General Instructions

### When and Where To File

**1. For taxes due other than section 4971 tax, section 4977 tax, section 4979 tax, section 4980 tax, or tax resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA,** file Form 5330 by the last day of the 7th month after the end of the tax year of the employer or other person who must file this return.

**2. For tax due under section 4971,** file Form 5330 by the later of the 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 employer's tax year.

**3. For tax due under section 4977,** file Form 5330 by the last day of the 7th month after the end of the calendar year in which the excess fringe benefits were paid to your employees.

**4. For tax due under section 4979,** file Form 5330 by the last day of the 15th month after the close of the plan year to which the excess contributions or excess aggregate contributions relate.

**5. For tax due under section 4980,** file Form 5330 no later than the last day of the month following the month in which the reversion occurred.

**6. For tax due resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA,** file Form 5330 prior to 120 days after the date of notification, under Regulations section 1.503(a)-1(c), that the trust is not exempt from taxation under section 501(a) because it engaged in a pre-1975 prohibited transaction.

**Extension.**—File Form 5558, Application of 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. However, no extension will be granted if you are electing to be taxed under section 2003(c)(1)(B) of ERISA

(dealing with the transitional rule for prohibited transactions prior to 1975).

File your return at the applicable IRS address listed below.

If the taxpayer is located in ▼	Use the following Internal Revenue Service Center address ▼
Connecticut, Delaware, District of Columbia, Foreign address, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia	Holtsville, NY 00501
Alabama, Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Washington	Atlanta, GA 39901
Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, West Virginia, Wisconsin, Wyoming	Memphis, TN 37501

**Name of filer.**—Enter the name of the employer or the name of the individual on whom the tax is imposed.

**Identification number.**—If an employer is filing this return, enter the employer's identification number. If an individual (other than a sole proprietor filing as an employer) is filing this return, enter the individual's social security number.

**Name of sponsor.**—The term “plan sponsor” means:

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

**Address.**—Include the suite, room or other unit numbers after the street number. If the Post Office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

**Signature of preparer.**—If someone prepares your return and does not charge you, that person should not sign your return. For example, your regular full-time employee or your business partner should not sign.

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

## Reminders

### Penalties and Interest

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

**Late filing of return.**—Failure to file a return when due (including extensions of time to file) may be subject to a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if you can show that failure to file a timely return is due to reasonable cause. Those filing late (after the due date, including extensions) must attach a statement to Form 5330 explaining the reasonable cause.

**Late payment of tax.**—The penalty for late payment of taxes is usually ½ of 1% of the unpaid tax for each month or part of a month the tax is unpaid. The penalty cannot exceed 25% of the amount due. This penalty may also apply to any additional tax not paid within 10 days of notice and demand for payment.

**Claim for Refund or Credit/Amended Return.**—File an amended Form 5330 for any of the following:

- To claim a refund of overreported taxes reportable on Form 5330;
- For a credit for overreported but unpaid taxes; or

• To report additional taxes due. Write "Amended Return" at the top of page 1 of the return and report the correct amount of taxes in Parts I through X, as appropriate, and on lines 21 through 31a of Part XI.

**Note:** If you file an amended return to claim a refund or credit, the claim must state in detail the reasons why the refund is claimed. In order for us to promptly consider your claim, you must explain why you are filing the claim and provide the appropriate supporting evidence. See Regulations section 301.6402-2 for more details.

## Specific Instructions

### Part I (Section 4971)

#### Taxes on Failure To Meet Minimum Funding Standards

**Lines 1 through 3.**—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 you use the alternative minimum funding standards account. (See Schedule B (Form 5500) and Form 5500 or Form 5500-C/R, whichever is applicable.)

**Line 3.**—Enter 10% of line 1 on line 3. If line 2 applies, enter the smaller of line 1 or 10% of line 2 on line 3. For multiemployer plans, enter 5% of line 1 on line 3. If line 2 applies, enter the smaller of line 1 or 5% of line 2 on line 3.

**Note:** Except in the case of a multiemployer plan, all members of a controlled group are jointly and severally liable for this tax.

A "controlled group" in this case means a controlled group of corporations (section 414(b)), a group of trades or businesses under common control (section 414(c)), an affiliated service group (section 414(m)), and any other group treated as a single employer under section 414(o).

### Part II (Section 4973)

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

**Line 4.**—Reduce total current year contributions by any rollover contributions described in sections 403(b)(8) or 408(d)(3)(A)(iii).

**Line 5.**—The amount excludable for your tax year is the smaller of the exclusion allowance or the annual employer contribution limitation. Figure the amount to enter on line 5 as follows:

1. Multiply the compensation received during the tax year from your employer that was included in gross income, by 20%.

2. Multiply the amount in step 1 by the number of years of service as of the end of the tax year for the tax year you are computing this exclusion allowance.

3. Add all of the amounts contributed by your employer in previous years that were not included in your gross income.

4. Subtract step 3 from step 2.

5. Enter the smaller of \$30,000 (see the note below), or 25% of the compensation you received during the tax year.

6. Enter the smaller of step 4 or step 5 on line 5, Part II of Form 5330.

**Note:** The dollar limitation in effect under section 415(b)(1)(A) is adjusted each year for cost of living increases. The \$30,000 amount in step 5 may change if the section 415(b)(1)(A) dollar limit (which was \$108,963 in 1991) for benefits exceeds \$120,000. If the dollar limitation exceeds \$120,000, replace the \$30,000 amount in step 5 with 25% of the dollar limitation.

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 (Section 4975)

#### Tax on Prohibited Transactions

**Note:** Section 141.4975-13 of the Temporary Excise Tax Regulations states that, until permanent regulations are written 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 apply.

**Line 13a, Column (a).**—List all prohibited transactions that took place in connection with a particular plan during the current tax 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. A disqualified person or individual who engages in a prohibited transaction with more than one plan must file a separate Form 5330 to report the section 4975 tax(es) due with respect to each plan.

Transactions involving the use of money (loans, etc.) or other property (rent, etc.) 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 13a, Column (c)—Amount Involved in Prohibited Transaction.**—The "amount involved" in a prohibited transaction means the greater of the amount of money and the fair market value of the other property given, or the amount of money and the fair market value of the other property received. However, for services described in sections 4975(d)(2) and (10), the "amount involved" only applies to excess compensation. Fair market value must be determined as of the date on which the prohibited transaction occurs. If the use of money or other property is involved, the amount involved is the greater of the amount paid for the use or the fair market value of the use for the period for which the money or other property is used. In addition, transactions involving the use of money or other property will be treated as giving rise to a prohibited transaction occurring on the date of the actual

transaction plus a new prohibited transaction on the first day of each succeeding tax year or portion of a succeeding tax year which is within the "taxable period." The "taxable period" is the period of time beginning with the date of the prohibited transaction and ending with the earliest of: (a) the date correction is completed, (b) the date of the mailing of a notice of deficiency, or (c) the date on which the tax under section 4975(a) is assessed. See the instruction for line 33 for the definition of "correction."

The following example of a prohibited transaction does not cover all types of prohibited transactions. For more examples, see the Regulations section 53.4941(e)-1(c)(5).

**Example:** A disqualified person borrows money from a plan. The fair market value of the use of the money and the actual interest on the loan is \$1,000 per month. The loan was made on July 1, 1990, and repaid on December 31, 1991 (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 1990 and 1991 on July 31, 1991 (date tax was assessed), and July 31, 1992, respectively.

The "taxable period" for the first prohibited transaction runs from July 1, 1990 (date of loan), through July 31, 1991 (date tax was assessed). The "taxable period" for the second prohibited transaction runs from January 1, 1991, through December 31, 1991 (date of correction).

The disqualified person files a Form 5330 for 1990 on July 31, 1991, paying the tax due on the first prohibited transaction, which occurred on July 1, 1990. The amount to report on the Form 5330 filed for 1990 is \$6,000 (6 months × \$1,000). The amount in the second prohibited transaction, which is deemed

to have occurred on January 1, 1991, is \$12,000 (12 months × \$1,000).

Since the taxable period of the first prohibited transaction ended July 31, 1991, and the taxable period of the second prohibited transaction ended December 31, 1991, tax year 1991 is in both taxable periods. The amount reported on Form 5330 filed for 1991 would include both the first prohibited transaction of July 1, 1990, \$6,000, and the second prohibited transaction of January 1, 1991, \$12,000. Complete item 13 of Form 5330 as shown below.

## Part IV (Section 4976)

### Tax on Disqualified Benefits With Respect to Funded Welfare Plans

Section 4976 imposes an excise tax on employers who maintain a funded welfare benefit plan that provides a disqualified benefit during any tax year. The tax is equal to 100% of the disqualified benefit.

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 or life insurance benefit unless the plan meets the nondiscrimination requirements of section 505(b) for those benefits; or
- Any portion of the fund that reverts to the benefit of the employer.

## Part V (Section 4977)

### Tax on Excess Fringe Benefits

**Line 15.**—If you made an election to be taxed under section 4977, in order to continue your nontaxable fringe benefit policy that was in existence on or after

January 1, 1984, check the "Yes" box on line 15a and complete lines 15b through 15d.

**Line 15c.**—The excess fringe benefits are figured by subtracting 1% of the aggregate compensation paid by you to your employees during the calendar year that was includable in their gross income from the aggregate value of the nontaxable fringe benefits under sections 132(a)(1) and 132(a)(2).

**Line 15d.**—Your tax is 30% of the line 15c amount. Enter the tax on this line and on line 25.

## Part VI (Sections 4978, 4978A and 4978B)

### Tax on Certain ESOP Dispositions

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

**Line 16a.**—Report your section 4978 or section 4978A tax on line 16a. Check the box provided on line 16a to indicate which tax you are reporting. If you owe both sections 4978 and 4978A taxes, you must file a separate Form 5330 for each tax.

**Section 4978** imposes an excise tax on dispositions of securities acquired in a sale to which section 1042 applied if the dispositions take place within 3 years after the date of the acquisition of the qualified securities (as defined in section 1042(c)(1)). 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

### Example for 1990

#### PART III—Tax on Prohibited Transactions

13a 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)
1	7-1-90	Loan	\$6,000	\$300
2				
3				

**b Tax due**—Add amounts in column (d). Enter here and on line 23

\$300

### Example for 1991

#### PART III—Tax on Prohibited Transactions

13a 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)
1	7-1-90	Loan	\$6,000	\$300
2	1-1-91	Loan	12,000	600
3				

**b Tax due**—Add amounts in column (d). Enter here and on line 23

\$900

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.

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

This 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.

Section 4978 tax does not apply to a distribution to employees of qualified securities if any of the following occurs:

- The death of the employee;
- The retirement of the employee after the employee has reached age 59½;
- The disability of the employee (within the meaning of section 72(m)(7)); or
- The separation of the employee from service for any period that results in a 1-year break in service (as defined in section 411(a)(6)(A)).

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

**Section 4978A** imposes a tax on certain transactions involving qualified employer securities. Qualified employer securities for purposes of this tax are defined in section 2057(d).

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

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

The tax under section 4978A is equal to 30% of the amount realized on the disposition or 30% of the amount repaid on the loan, whichever applies. Enter the amount of the tax on lines 16a and 26a of Form 5330.

**Line 16b.**—Section 4978B imposes a tax on certain dispositions of section 133 securities held by an employee stock ownership plan (ESOP). This tax is 10% of the amount realized on section 133 securities that are (1) disposed of within 3 years of the date the securities were acquired, or (2) disposed of before the securities were allocated to the participants' accounts and the proceeds of the disposition are not allocated to

the accounts of the participants. For exceptions, see section 4978B.

This tax must be paid by the employer.

## Part VII (Section 4972)

### Tax on Nondeductible Employer Contributions to Qualified Plans

**Section 4972** imposes an excise tax on employers who make nondeductible contributions to their qualified plans. A "qualified plan" for purposes of this tax means any plan qualified under section 401(a), any annuity plan qualified under section 403(a), and any simplified employee pension qualified under section 408(k).

The nondeductible contributions are computed as of the end of the employer's tax year. The current year nondeductible contributions are equal to the amount contributed during the employer's tax year over the amount of contributions allowable as a deduction under section 404. In addition, prior year nondeductible contributions (for tax years beginning after December 31, 1986) continue to be subject to this tax annually until eliminated by either distributions to the employer of the amount of nondeductible contributions, or a carryforward deduction in years after the nondeductible contributions are made.

**Note:** 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 the Self-Employed**, for more details.

## Part VIII (Section 4979)

### Tax on Excess Contributions to Plans With a Cash or Deferred Arrangement

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

1. Was a 5% owner of the employer,
2. Earned more than \$75,000 annually from the employer,

3. Earned more than \$50,000 annually from the employer and was a member of the top-paid group of employees, or

4. Was an officer and received compensation greater than 50% of the dollar limitation on annual contributions to a defined contribution plan (section 415(c)(1)(A)).

**Note:** The amounts in 2 and 3 above, are adjusted annually for cost of living increases. The 1991 amounts were \$90,803 for 2 and \$60,535 for 3. The limitation under section 415(c)(1)(A) remained at \$30,000 in 1991. The cost of living increases are published each January in the Internal Revenue Bulletin.

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

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

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

## Part IX (Section 4979A)

**Section 4979A.**—Report on lines 19 and 29 the section 4979A tax on the prohibited allocation of qualified securities by any ESOP or eligible worker-owned cooperative. The tax is 50% of the prohibited allocation.

## Part X (Section 4980)

**Section 4980.**—Include on lines 20b and 30 the section 4980 tax on employer reversions from a qualified plan. The section 4980 tax is a two-tier tax. If you do not meet one of the two conditions specified in section 4980(d)(1)(A) or (B), the tax is 50% of the reversion amount. If you meet either of the conditions of section 4980(d)(1)(A) or (B), the tax is only 20% of the reversion amount.

If you owe the section 4980 tax, enter the date of the reversion on line 20a and the amount of the tax on lines 20b and 30. On an attachment to the form, state which percentage you used to compute the tax. If you used the 20% rate, explain why you qualified for the 20% rate.

## Part XI

**Line 31a through 31c.**—If you are filing an amended Form 5330 and you paid tax with your original return, cross out “Form 5558, if applicable,” on line 31b and write “original return” instead. Enter the tax reported on your original return in the entry space for line 31b. If you file Form 5330 for a claim for refund or credit, show the amount of overreported tax in parentheses on line 31c. Otherwise, show the amount of

additional tax due on line 31c and include the payment with the amended Form 5330.

**Line 32.**—If this is an election under section 2003(c)(1)(B) of ERISA to have section 4975 apply to a prohibited transaction that occurred prior to 1975, check “Yes.”

**Line 33.**—To avoid liability for additional taxes and penalties under section 4975, and in some cases further initial taxes, a correction of the prohibited transaction 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 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 33 should be “Yes.” Also, complete Part XIII 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 XII

If more than one disqualified person participated 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 files this return, must be listed on this schedule.