

1.

I attended your phone forum last week regarding the completion of Form 5330, and of course we need to complete one, actually many, this week. So, I have a question(s) that I hope you can help with or point me in the right direction of someone that can.

Here is a little background –

Client was receiving dividend checks and rather than deposit them into the plan, they decided to cash them for some reason. This goes back to 2006.

Lets take 1 check to start -

It was dated 11/21/2006. \$323.85

I calculated the interest from 11/21/2006 – 12/31/2006 = 3.59

\$327.44- 1/1/07-12/31/07=31.59

\$359.03- 1/1/08-12/31/08=24.20

\$383.23 – 1/1/09-12/31/09=17.37

\$400.60 – 1/1/10-12/31/10=16.64

\$417.03 – 1/1/11-4/1/11 (date of deposit) = 3.11

\$420.14 – total due.

I have completed a Form 5330 for years 2006-2011 (deposits are to be made on 4/1/2011).

On Page 4 – Schedule C, item 1(b) I have check – other than discrete

Item 2(a)(i)(b) – 11/21/2006

(c) dividend check not deposited to plan

(d) \$3.59

(e) \$.54

Item 3 = \$.54

Item 4 – No

Nothing has been completed on page 5 as the correction has not been made.

Page 1 Part 1, 3(a) = \$.54

3(b) = \$3.59

7 = \$4.13

17 & 18 = \$4.13

Then for the 2007 Form 5330, the form is completed the same, except:

On Page 4 – Schedule C, item 1(b) I have check – other than discrete

Item 2(a)(i)(b) – 11/21/2006

(c) dividend check not deposited to plan

(d) \$31.59

(e) \$4.74

Item 3 = \$4.74

Item 4 – No

Nothing has been completed on page 5 as the correction has not been made.

Page 1 Part 1, 3(a) = \$4.74

3(b) = \$31.59

7 = \$36.33

17 & 18 = \$4.13

And then so on..

Is this correct or are we way off on this? This is just an example of 1 check. The checks actually are over all years since 2006.

[This is correct.](#)

My next question is this: Because each dividend check and it's corresponding year we calculated interest on the check is considered an individual prohibited transaction (I have 16 checks in all), by the time I get to year 2010, I run out of lines on the Page 4, Schedule C, Item 2. It appears that I am unable to add an attachment to this, because the totals are calculated fields, so I am unable to change them. Should I file an additional 5330 for that particular year?

Any help you can provide on this would be greatly appreciated. Thank you in advance.

[See #6 below.](#)

2. I just listened in to the phone forum on Form 5330 and I am confused about one issue. Both the commentator and the sample form 5330 regarding the 4975 tax showed the name of the filer of the 5330 on line 5 of Schedule C of the form. Yet the instructions for Form 5330 suggest that columns (b) and (c) should be completed only if more than one disqualified person participated in the prohibited transaction. When I have completed this form for late contributions, I have always put N/A in the space at line 5, column (b). Can you clarify which approach is correct? Thank you.

You are correct, the 5330 used was just an example for discussion purposes.

3. Just listened to your teleconference and embarrassed as I am to admit this, did not realize the percent rate of the excise tax for Section 4975 is 15%.
Luckily I have not had a reason to prepare this form for some time, but was under the impression it was 10%.

Has it increased?

Historical Excise Tax Under IRC Section 4975(a), calculation of 5% (10% after 8/20/96 and 15% after 8/5/97)

Also, what is the percentage for Section 4979?

From Form 5330 (Rev. 4-2009) page 6

**Schedule H. Tax on Excess Contributions to Certain Plans (Section 4979)
Reported by the last day of the 15th month after the end of the plan year**

1. Enter the amount of an excess contribution under a cash or deferred arrangement that is part of a plan qualified under section 401(a), 403(a), 403(b), 408(k), or 501(c)(18) or excess aggregate contributions
2. Multiply line 1 by 10% and enter here and on Part I, line 13

4. Is it possible that you can give me an example or point me in the direction of a form 5330 that was prepared for the correction of late contributions.

Please reference the Form 5330 instructions attributable to IRC Section 4975 excise tax. The example provided for the session was for the excise tax related to late contributions that had been corrected.

5. Back to the de minimis question. At the 2010 ERPA conference in June 2010, IRS personnel there suggested that IRS does not want to process 5330s for less than \$20. In cases where the excise tax is that low, they suggested adding that amount to the make up earnings allocated to the affected participants.

This is similar to the DOL guidance in the VFCP. From the DOL website for VFCP:

If you are relying on the exception to the notice to interested parties requirement contained in section IV.C. of PTE 2002-51 covering delinquent participant contributions and participant loan repayments to pension plans, you may pay the amount of the excise tax otherwise due directly to the Plan if the amount is less than or equal to \$100. If the amount of the excise tax is less than or equal to \$100 and is paid to the Plan, you do not need to provide a notice to interested parties. However, you must provide a copy of a completed IRS Form 5330 or other written documentation showing the calculation of the excise tax amount and proof of payment of this amount to the Plan with your VFCP submission if you elect to pay the excise tax amount (again only an option if less than or equal to \$100) to the Plan.

<http://www.dol.gov/ebsa/calculator/2006vfcpapplication.html>

It would be helpful if the IRS and DOL could agree on whether or not there is de minimis amount, and if so, what level.

I agree, however no such agreement exists. Please use your best judgement.

6. Hello, could you address this question?

A 401(k) plan has multiple occurrences of late deferrals for a plan year. The number of incidents exceeds the spaces available on Form 5330, Schedule C, items 2 and 5. In such a situation, is it appropriate to file an attachment to Form 5330 with the additional Schedule C information?

Yes or to save time since it appears that the entire calculation was done in a spreadsheet, it would be appropriate to enter "see attachment" only on Schedule C.

7. Why don't you provide a sample of a completed 5330 for late deposits of 401k contributions where there are multiple late payments, loss earnings and excise taxes.

[See #6 above](#)

8. In the example where late deposits crossed multiple plan years before final correction, what dates are placed at the top of the Form 5330 and on line F?

Forms 5330 are the responsibility of the Disqualified Person (DP) and are filed using their year end. The plan and the DP may have different year ends. The tax year for the DP are placed at the top of the Form 5330. Line F is the corresponding plan year end. The Statute of Limitations (SOL) on the trust (plan) year runs with the filing of the Form 5500 for the plan year in which the trust year ends. The SOL for a Form 5330 for IRC Section 4975 excise tax runs with that of the Form 5500. So, if a plan has a fiscal year end and the DP has a calendar year end, the Form 5330's year end would be the calendar year ending within the plan year.

In the example, the loss date was in 2006 but correction didn't take place until 2008.

Three forms 5330 are due: one for 2006, one for 2007, and one for 2008 - all relating to the 2006 plan year.

Do you place 12/31/2006 at both the top and on line F of all three forms? Or use the relevant year's date?

Use the relevant year's dates.

9. If there are more than 12 late deferral deposits, should we file multiple Schedule C's or can we attach a spreadsheet?

[See #6 above](#)

10. A PTIN is required for a Form 5330. However, in the case of a excess contribution that is not refunded within 2 1/2 months and the owner must pay an excise tax. Must the individual who prepares the information or the calculation of the excess contribution have a PTIN?

Beginning January 1, 2011, **if you are a paid tax preparer** you must use a valid Preparer Tax Identification Number (PTIN) on returns you prepare. Use of the PTIN no longer is optional. If you do not have a PTIN, you must get one by using the [new IRS sign-up system](#). Even if you have a PTIN but you received it prior to September 28, 2010, you must apply for a new or renewed PTIN by using the new system. If all your authentication information matches, you may be issued the same number. **You must have a PTIN if you, for compensation, prepare all or substantially all of any federal tax return or claim for refund.**

LINK: <http://www.irs.gov/taxpros/article/0,,id=210909,00.html>

11. If a client goes through the IRS SCP or VCP does the client still need to file form 5330? Example, late employee deferrals made with appropriate earnings, etc.? Is there any exception to when you do not have to file form 5330 when an issue is corrected through the SCP or VCP?

Yes, for certain excise tax issues F5330 must still be completed and the tax paid.

However, there are some exceptions for **VCP** submissions, involving excise taxes under IRC sections 4972, 4973, 4974, 4979 and 72(t). Those waivers must be approved as part of the VCP correction.

Under SCP, all excise taxes must be paid.

See section 6.09 or Revenue Procedure 2008-50 regarding plan correction, which states in part:

“REV-PROC, 2008-50 Retirement plans: Failure to qualify: Correction: Employee Plans Compliance Resolutions System, I.R.B. 2008-35 (August 14, 2008)

6.09 *Matters subject to excise taxes or other penalties.* (1) Except as provided in this revenue procedure, the correction programs are not available for events for which the Code provides tax consequences other than plan disqualification (such as the imposition of an excise tax or additional income tax). For example, funding deficiencies (failures to make the required contributions to a plan subject to section 412), **prohibited transactions**, and failures to file the Form 5500 series cannot be corrected under this revenue procedure.”

Since late deferrals are calculated and treated as prohibited transactions, the return must be filed, the tax paid, and correction implemented.

12. Does IRS have any problem with rounding up to whole dollars, instead of reporting cents on Form 5330?

Where the excise tax is less than 50 cents, the preparer rounds up to \$1.00.

[That practice is acceptable.](#)

13. A 401(k) plan has multiple occurrences of late deferrals for a plan year. The number of incidents exceeds the spaces available on Form 5330, Schedule C, items 2 and 5. In such a situation, is it appropriate to file an attachment to Form 5330 with the additional Schedule C information?

[See #6 above](#)

14. Why don't you provide a sample of a completed 5330 for late deposits of 401k contributions where there are multiple late payments, loss earnings and excise taxes.

[See #6 above](#)

15. What sections do you fill out for late 401k contributions?

Please reference the Form 5330 instructions attributable to IRC Section 4975 excise tax.

16. Can you explain why Late deposits of Employee contributions are considered as a loan?

The Employer contributions are assets of the plan.

IRC §4975(c)(1)(B) defines a prohibited transaction, in part, as the lending of money or other extension of credit between a plan and a disqualified person.

IRC §4975(c)(1)(D) and (E) provide, in part, that the term “prohibited transaction” means any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan or the direct or indirect act by a disqualified person who is a fiduciary whereby he deals with the income he deals with the income or assets of a plan in his own interest or for his own account.

17. For 4975 prohibited transactions, e.g. late deferral contributions submitted to the plan, did you say that on Schedule C, line #1, these should be characterized as loans and be considered “other than discrete”?

Yes.