Department of the Treasury
Internal Revenue Service

Instructions for Form 5330

(Revised April 1996)

Return of Excise Taxes Related to Employee Benefit Plans

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

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 Code section 6103.

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

Recordkeeping	17 hr., 56 min.
Learning about the law or the form	7 hr., 56 min.
Preparing and sending the form to the IRS	8 hr., 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 this form to this address. Instead, see **Where To File** on page 2.

General Instructions

Purpose of Form

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

Changes To Note

- Form 5330 has been revised to include a new Part XIV dealing with the excise tax imposed by IRC section 4971(f). This excise tax applies to those filers/plan sponsors who fail to meet the liquidity requirement of section 412(m)(5).
- Use one Form 5330 to report excise taxes with the same filing due date. For example, all of the excise taxes on pages 2 and 3 of the form have the same filing due dates. One Form 5330 may be filed to report one or more of these taxes. However, if the taxes are from separate plans, file separate forms for each plan. Also file a separate Form 5330 to report taxes with different filing due dates.

Who Must File

A Form 5330 must be filed by:

1. Any employer who is liable for the tax under section 4971(a) for failure 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 employer who is liable for the tax under section 4971(f) for a failure to meet the liquidity requirement of section 412(m)(5);

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

4. Any individual who is liable for the tax under section 4973 because an excess contribution to a section 403(b)(7)(A) custodial account was made for them and that excess has not been eliminated as specified in sections 4973(c)(2)(A) and (B);

5. Any disqualified person who is liable for the tax under section 4975 for participating in a prohibited transaction (other than a fiduciary acting only as such, or an individual (or his or her beneficiary) who engages in a prohibited transaction with respect to his or her individual retirement account) for each tax year or part of a tax year in the “taxable period” applicable to such prohibited transaction;

6. Any employer who is liable for the tax under section 4976 for maintaining a funded welfare benefit plan that provides a disqualified benefit during any tax year;

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

8. Any employer or worker-owned cooperative (as defined in section 1042(c)(2)) that maintains an ESOP 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 V for details on the excise tax under sections 4978, 4978A, and 4978B;

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

10. 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

11. 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 or 5 through 10 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 VII, line 26a, 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).*

Section 4979 applies to plans described in sections 401(a), 403(a), 403(b), 408(k), or 501(c)(18).

Plan sponsor.—The term "plan sponsor" means:

1. The employer, for an employee benefit plan that a single employer establishes 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.

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. Any direct or indirect owner of 50% or more of **(a)** the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation, **(b)** the capital interest or the profits interest of a partnership, or **(c)** the beneficial interest of a trust or unincorporated enterprise, 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) any direct or indirect owner holds 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 interest or account; or

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

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

Also, see section 4975(c)(2) for certain other transactions or classes of transactions that have been exempted.

When To File

Use one Form 5330 to report excise taxes with the same filing due date. For example, all of the excise taxes on pages 2 and 3 of the form have the same filing due dates. One Form 5330 may be filed to report one or more of these taxes. However, if the taxes are from separate plans, file separate forms for each plan. Also file a separate Form 5330 to report taxes with different filing due dates.

1. For taxes due under sections 4972, 4973(a)(2), 4975, 4976, 4978, 4978A, 4978B, and 4979A, 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(a) and 4971(f), 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 filer'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.

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.

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

Where To File

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

Interest and Penalties

Interest.—Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also charged on penalties imposed 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.

Penalty for late filing of return.—If you do not file a return by the due date, including extensions, you may have to pay a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or $100. The penalty will not be imposed if you can show that the failure to file on time was due to reasonable cause. If you file late, you must attach a statement to Form 5330 explaining the reasonable cause.

Penalty for late payment of tax.—If you do not pay the tax when due, you may have to pay a penalty of ½ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if you can show that the failure to pay on time was due to reasonable cause.

Note: *Interest and penalties will be billed separately after the return is filed.*

Claim for Refund or Credit/Amended Return

File an amended Form 5330 for any of the following:

- To claim a refund of overreported taxes reportable on Form 5330;
- For a credit for overreported but unpaid taxes; or
- To report additional taxes due within the same tax year of the filer if those taxes have the same due date as those previously reported. Check the "Amended Return" box in item H on page 1 of the return and report the correct amount of taxes in Parts II through XIV, as appropriate, and on lines 1 through 12a of Part I. See instructions for lines 12a through 12c.

Note: *If you file an amended return to claim a refund or credit, the claim must state in detail the reasons for claiming the refund. In order for 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

Filer tax year.—Enter the tax year of the employer, entity, or individual on whom the tax is imposed.

Item A.—Name and address of filer.— Enter the name and address of the employer, individual, or other entity who is liable for the tax.

Include the suite, room, or other unit 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.

Item B.—Filer's identifying number.— The identifying number of an individual (other than a sole proprietor) is his or her social security number. The identifying number of all others is their employer identification number.

Item C.—Name and address of plan 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.

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.

Item D.—Name of plan.—Enter the formal name of the plan, group insurance arrangement, or enough information to identify the plan. This should be the same name indicated on the Form 5500 series return/report filed for the plan.

Item E.—Plan sponsor's EIN.—Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor. This should be the same number used to file the Form 5500 series return/report.

Item F.—Plan year ending.—Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in year-month order. This number assists the IRS in properly identifying the plan and time period for which Form 5330 is being filed. For example, a plan year ended March 31, 1996 should be shown as 9603.

Item G.—Plan number.—Enter the three-digit number that the employer or plan administrator assigned to the plan.

Item H.—If this is an amended return, check the box.

Filer's signature.—Please sign and date the form. Also enter a daytime phone number where you can be reached.

Preparer's signature.—Anyone who prepares your return and does not charge you should not sign your return. For example, a regular full-time employee or your business partner who prepares the return should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the Paid Preparer's Use Only area.

The paid preparer must complete the required preparer information and—

- Sign the return by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the filer.

Part I

Lines 12a through 12c.—If you are filing an amended Form 5330 and you paid tax with your original return and those taxes have the same due date as those previously reported, check the box in item H and enter the tax reported on your original return in the entry space for line 12b. If you file Form 5330 for a claim for refund or credit, show the amount of overreported tax in parentheses on line 12c. Otherwise, show the amount of additional tax due on line 12c and include the payment with the amended Form 5330.

Part II (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 plan qualified under section 408(k). The term "qualified plan" does not include certain governmental plans and cetain plans maintained by tax-exempt organizations.

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 III (Section 4973)

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

Line 14.—Reduce total current year contributions by any rollover contributions described in sections 403(b)(8) or 408(d)(3)(A)(iii).

Line 15.—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 15 according to the following steps:

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

Step 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.

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

Step 4. Subtract step 3 from step 2.

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

Step 6. Enter the smaller of step 4 or step 5 on line 15, Part III 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 $115,641 in 1993, $118,800 in 1994, and $120,000 in 1995 and 1996) 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. The cost of living increases are published during the fourth quarter of each calendar year in the Internal Revenue Bulletin.*

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 IV (Section 4976)

Tax on Disqualified Benefits for 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 100% of the disqualified benefit.

Generally, a "disqualified benefit" is any of the following:

- Any post-retirement medical benefit or life insurance benefit provided for a key employee unless the benefit is provided from a separate account established for the key employee under section 419A(d);
- Any post-retirement medical 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 (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 24a.—Report the section 4978 or section 4978A tax on line 24a. Check the box on line 24a to show which tax you are reporting. If you owe both sections 4978 and 4978A taxes, 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 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.

The section 4978 tax must be paid by the employer or the eligible worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) on dispositions that occurred during their tax year.

The section 4978 tax does not apply to a distribution of qualified securities or sale of such securities if any of the following occurs:

- The death of the employee;
- The retirement of the employee after the employee has reached age 59½;
- The disability of the employee (within the meaning of section 72(m)(7)); 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 30% of the amount realized on the disposition or 30% of the amount repaid on the loan, whichever applies.

Line 24b.—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 VI (Section 4979A)

Tax on Certain Prohibited Allocations of Qualified ESOP Securities

Section 4979A.—Report on lines 25 and 5 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 VII (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*

Example for 1993

PART VII—Tax on Prohibited Transactions (section 4975)

26a 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)	7-1-93	Loan	$6,000	$300
(ii)				
(iii)				
26b Add amounts in column (d). Enter here and on line 6 . . . . ▶				$300

Example for 1994

PART VII—Tax on Prohibited Transactions (section 4975)

26a 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)	7-1-93	Loan	$6,000	$300
(ii)	1-1-94	Loan	12,000	600
(iii)				
26b Add amounts in column (d). Enter here and on line 6 . . . . ▶				$900

53.4941(e)-1 of the Foundation Excise Tax Regulations will apply.

Line 26a, 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 one or more prohibited transactions with more than one plan must file a separate Form 5330 to report the tax due under section 4975 for 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 26a, 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 27 for the definition of “correction.”

The following example of a prohibited transaction does not cover all types of prohibited transactions. For more examples, see Regulations section 53.4941(e)-1(b)(4).

Example: A disqualified person borrows money from a plan in a prohibited transaction under section 4975. 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, 1993, and repaid on December 31, 1994 (date of correction). The disqualified person’s taxable year is the calendar year. On July 31, 1995, the disqualified person files a delinquent Form 5330 for the 1993 plan year and a timely Form 5330 for the 1994 plan year. No Notice of Deficiency with respect to the tax imposed by section 4975(a) has been mailed to the disqualified person and no assessment of such tax has been made before the time the disqualified person filed the Forms 5330.

When a loan is a prohibited transaction, the loan is treated as giving rise to a prohibited transaction on the date the transaction occurs, and an additional prohibited transaction on the first day of each succeeding taxable year (or portion of a taxable year) within the taxable period that begins on the date the loan occurs. Each prohibited transaction has its own separate taxable period which begins on the date the prohibited transaction occurred or is deemed to occur and ends on the date of the correction. The taxable period that begins on the date the loan occurs runs from July 1, 1993 (date of loan) through December 31, 1994 (date of correction). Therefore, in this example, there are two prohibited transactions, the first occurring on July 1, 1993, and the second occurring on January 1, 1994. **Section 4975(a) imposes a 5% tax on the amount involved for each taxable year or part thereof in the taxable period of each prohibited transaction.**

The amount involved to be reported on the Form 5330 filed for 1993 is $6,000 (6 months × $1,000). The amount of tax due is $300 ($6,000 × 5%). (Any interest and penalties imposed for the delinquent filing of the Form 5330 for 1993 will be billed separately to the disqualified person.)

The taxable period for the second prohibited transaction runs from January 1, 1994, through December 31, 1994 (date of correction). Because there are two prohibited transactions with taxable periods running during 1994, the section 4975(a) tax is due for the 1994 taxable year for both prohibited transactions. The excise tax to be reported on the Form 5330 filed for 1994 would include both the prohibited transaction of July 1, 1993, with an amount involved of $6,000, resulting in a tax due of $300 ($6,000 × 5%) and the second prohibited transaction of January 1, 1994, with an amount involved of $12,000 (12 months × $1,000), resulting in a tax due of $600 ($12,000 × 5%). Complete line 26 of the Forms 5330 as shown.

Line 27.—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.

Check "Yes" on line 27 if, at the time this return is filed, the prohibited transaction giving rise to the liability for tax under section 4975 has been corrected. Also, complete line 29, Part IX, for each correction, giving the following information: **(a)** the number of the transaction from Part VII; **(b)** the nature of the correction; and **(c)** the date of the correction.

Part VIII

Schedule of Other Participating Disqualified Persons

If more than one disqualified person participated in the same prohibited transaction, list on this schedule the name, address, and the social security number or employer identification number of each disqualified person, other than the disqualified person who files this return.

Part X (Section 4971(a))

Tax on Failure To Meet Minimum Funding Standards

Line 30.—If your plan has an accumulated funding deficiency as defined in section 412(a) (section 418B if this is a multiemployer plan in reorganization), complete line 30.

Line 31.—Multiply line 30 by the applicable tax rate shown below and enter the result on line 31. Check the box for the applicable tax rate. The applicable tax rate is:

- 10% for plans (other than multiemployer plans) with plan years beginning after 1988.
- 5% for plans with plan years beginning before 1989 and for all multiemployer plans (regardless of when the plan year starts).

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 XI (Section 4977)

Tax on Excess Fringe Benefits

Line 32.—If you made an election to be taxed under section 4977 to continue your nontaxable fringe benefit policy that was in existence on or after January 1, 1984, check the "Yes" box on line 32a and complete lines 32b through 32d.

Line 32c.—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).

Part XII (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 a cash or deferred arrangement connected with the plan.

The tax is on the excess contributions and the excess aggregate contributions made to or on behalf of the highly compensated employees (as defined in section 414(q)).

Generally, a highly compensated employee is one who during the year or the preceding year:

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 $75,000 amount in **2** above was increased to $96,368 in 1993, $99,000 in 1994, and $100,000 in 1995 and 1996. The $50,000 amount in **3** was increased to $64,245 in 1993, and $66,000 in 1994, 1995, and 1996. The cost of living increases are published during the fourth quarter of each calendar year 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 any income earned on the contributions are distributed (or, if forfeitable, forfeited) to the participants for whom the excess contributions were made within 2½ months after the end of the plan year.

Part XIII (Section 4980)

Tax on Reversion of Qualified Plan Assets to an Employer

Section 4980.—Include on lines 36 and 10 the section 4980 tax on employer reversions from a qualified plan. The reversion excise tax is either 50% or 20%. The excise tax rate is 50% if the employer **(1)** does not establish or maintain a qualified replacement plan following the plan termination, or **(2)** provide certain pro-rata benefit increases in connection with the plan termination. See section 4980(d)(1)(A) or (B) for more information.

If you owe the section 4980 tax, enter the date of the reversion on line 34 and the reversion amount and applicable excise tax rate on line 35. If you use a tax percentage other than 50%, explain on line 37 why you qualify to use a rate other than 50%.

Part XIV (Section 4971(f))

Tax on Failure to Correct Liquidity Shortfall

Section 4971(f).—If your plan has a liquidity shortfall for which an excise tax under 4971(f) is imposed for any quarter of the plan year, complete lines 38 through 41.

Line 38.—Include on line 38 the amount of the liquidity shortfall(s) for each quarter of the plan year.

Line 39.—Include on line 39 the amount of any contributions made to the plan by the due date of the required quarterly installment(s) which partially "corrected" the liquidity shortfall(s) reported on line 38.

Line 40.—Include on line 40 the net amount of the liquidty shortfall (subtract line 39 from line 38).

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