

SUPPORTING STATEMENT
(Form 5330)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Internal Revenue Code sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose excise taxes on certain employers with employee benefit plans.

2. USE OF DATA

The data is used by IRS to verify that the proper amount of tax has been reported.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans at this time to offer electronic filing because of the low filing volume compared to the cost of electronic enabling.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5330.

In response to the **Federal Register Notice** dated **March 14, 2007 (72 FR 11937)**, we received no comments during the comment period regarding Form 5330.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate is as follows:

	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
Form 5330	8,403	56.91	478,215
Inst, Table 5 (deleted)	<u>0</u>	<u>0</u>	<u>0</u>
Totals	8,403	56.91	478,215

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

The following regulations impose no additional burden. Please continue to assign OMB number 1545-0575 to these regulations.

54.6011-1T	54.6011-1(a) & (b)
53.6161-1(c)	
54.4975-7	54.6071-1T
53.4972-1	

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register Notice** dated **March 14, 2007 (72 FR 11937)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

After consultation with various functions within the Service, we have determined that the cost of developing, printing, processing, distribution, and overhead for this form is \$33,875.

15. REASONS FOR CHANGE IN BURDEN

Form 5330

Major changes to Form 5330 involved the following:

- Adding line 5b for the new excise tax on prohibited tax shelter transactions under IRC section 4965. Section 4965 was added by PL 109-222 sec 516.
- For tax years beginning after May 17, 2006, managers of plan entities may be subject to an excise tax on prohibited tax shelter transactions under section 4965(a)(2) for each approval or

other act causing the organization to be a party to the prohibited tax shelter transaction. The excise tax is \$20,000.

- Plan Entities, are:
 1. Qualified pension, profit-sharing and stock bonus plans described in section 401(a);
 2. Annuity plans described in section 403(a);
 3. Annuity contracts described in section 403(b);
 4. Qualified tuition programs described in section 529;
 5. Retirement plans described in section 457(b) maintained by a governmental employer;
 6. Individual retirement accounts within the meaning of section 408(a);
 7. Archer medical savings accounts (MSAs) within the meaning of section 220(d);
 8. Individual retirement annuities within the meaning of section 408(b);
 9. Coverdell education savings accounts described in section 530; and
 10. Health savings accounts within the meaning of section 223(d).

- A prohibited tax shelter transaction is any
 1. Listed transaction within the meaning of section 6707A(c)(2). Listed transactions are transactions that are the same as, or substantially similar to, any transactions that have been specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.
 2. Prohibited reportable transactions, which are:

a. Confidential transactions within the meaning of Regulations section 1.6011-4(b)(3); and

b. Transactions with contractual protection within the meaning of Regulations section 1.6011-4(b)(4).

Form 5330 Instructions

Major Changes to the Instructions for Form 5330

We added new paragraphs under "What's New," page 1, concerning changes in the excise taxes for employee benefit plans, summarized as follows:

Section 4965(a)(2). For tax years beginning after May 17, 2006, managers of plan entities may be subject to an excise tax on prohibited tax shelter transactions under section 4965(a)(2) for each approval or other act causing the organization to be a party to a prohibited tax shelter transaction. The excise tax is \$20,000.

Section 4971. Section 214 of the Pension Protection Act of 2006 provides a limited exception to the 10 % excise tax on certain multi-employer pension plan failure to meet the minimum funding standards. The plans must have less than 100 participants, annual normal costs of less than \$100,000, and a funding deficiency on August 17, 2006, and the employers must have participated in a Federal Fishery Capacity Reduction Program and the Northeast Fisheries Assistance Program.

Section 4975. Certain relief from the tax on prohibited transactions is explained and one clarification is made:

a. Actions described as prohibited transactions in section 4975(c)(1)(A), (B), (C), or (D), will not be treated as prohibited transactions if the transaction is corrected within a correction period.

b. In accordance with Rev. Rul. 2006-38, in calculating the prohibited transaction excise tax, when there has been a failure to transmit participant contributions or amounts otherwise payable to the participants in cash, the amount involved is based on interest on the elective deferrals.

c. Financial investment advice provided after December 31, 2006, will not be subject to the prohibited transaction rules of section 4975(c) if the investment advice is provided by a fiduciary adviser under an eligible investment advice arrangement.

Section 4972. A conforming amendment was made to section 4972 for purposes of determining the amount of nondeductible contributions to qualified employer plans under the combined plan deduction limits of section 404(a)(7).

Also on page 1, we added the tax on prohibited tax shelter transactions under section 4965(a)(2) to the list of taxes listed as reportable on the Form 5330 under "Purpose of Form." Similarly, a line was added to the Table 1. Excise Tax Due Dates on page 3, for taxes due under section 4965(a)(2).

The "Who Must File" section on page 2 was expanded to include a requirement that any plan entity manager who approves or causes an entity to be a party to a prohibited tax shelter transaction, and knows or has reason to know that the transaction is a prohibited tax shelter transaction must file a Form 5330.

On page 2, under Extension, we added "after the normal due date of Form 5330" to the end of the last sentence.

Under Specific Instructions, Part I, Line 5, pages 4 through 6, previously titled "Section 4979A - Tax on Certain Prohibited Allocations of Qualified ESOP Securities," was divided into line 5a, Section 4979A - Tax on Certain Prohibited Allocations of Qualified ESOP Securities and line 5b, Section 4965 - Prohibited Tax Shelter Transactions. The text portion of the new line 5a concerning prohibited allocations of qualified ESOP securities has been reworded for clarity. The text for line 5b is new and

- Explains how and when an entity manager of a tax exempt organization may be subject to the tax under section 4965.
- List kinds of plans considered plan entities for purposes of section 4965
- Provides definitions for:

- a. Entity Manager
- b. Prohibited Tax Shelter Transaction

- Provides information on the required disclosure by an entity manager of an organization's involvement in a prohibited tax shelter transaction. The disclosure must be made on a Form 8886-T, Disclosure by Tax- Exempt Entity Regarding Prohibited Tax Shelter Transactions, and the penalties for failure to disclose or failure by the entity manager to respond to a demand to disclose a transaction from the IRS.

The instructions under Part II (Section 4972), page 6, were expanded to cover the changes on how to determine the amount of nondeductible contributions to qualified employer plans under the combined plan deduction limits of section 404(a) (7). The text was also reorganized for clarity.

Under Part III, (Section 4973(a)(3)), page 7, a new paragraph was added to describe the 6% excise tax on excess contributions to section 403(b)(7)(A) custodial accounts. Also, the worksheet used to determine annual limits on additions to a custodial account was deleted. It was determined that Pub. 571, Tax-Sheltered Annuity (403(b)) Plans contained all the relevant information for the annual limits.

Next, under Part IV (Section 4975), on page 8, after the instructions for line 25, a paragraph was added. The paragraph clarifies that, in situations where there has been a failure to transmit participant contributions or amounts that would have otherwise been payable to a participant in cash, the amount involved for purposes of determining the prohibited transaction excise tax is based on interest on the elective deferrals.

The instructions under Part V Schedule of Other Participating Disqualified Persons and Description of Correction, page 9, were expanded to provide instructions concerning the exceptions from the prohibited transaction rules of section 4975 for:

- Qualified investment advice after December 31, 2006.
- Timely corrections of certain transactions between disqualified persons and a plan in connection with

the acquisition, holding, or disposition of any security or commodity.

Finally, the private delivery services listing on page 3 was updated with the Notice 2004-83 changes, the dates throughout the document were updated, the text of the instructions was revised to promote clarity and ease of understanding, the Privacy Act and Paperwork Reduction Act Notice on page 11 was revised to include section 4975, and the paragraph requesting comments on the forms on page 12 was updated.

The above changes will result in a program change increase of 28 Code references and a deletion of Table 5 worksheet, resulting in a burden increase of 47,751 hours.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attachment.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.