



# Instructions for Form 5329

## Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts

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

### General Instructions

#### What's New

**Waiver of required minimum distributions for 2009.** For 2009, you are not required to take a minimum distribution from your defined contribution plan or IRA. For more information, see *Waiver of required minimum distributions for 2009* on page 6.

#### Purpose of Form

Use Form 5329 to report additional taxes on:

- IRAs,
- Other qualified retirement plans,
- Modified endowment contracts,
- Coverdell ESAs,
- QTPs,
- Archer MSAs, or
- HSAs.

#### Who Must File

You must file Form 5329 if any of the following apply, except you do not have to file Form 5329 to report a qualified disaster recovery assistance distribution.

- You received an early distribution from a Roth IRA, the amount on line 23 of Form 8606, Nondeductible IRAs, is more than zero, and you are required to enter an amount that is more than zero on Form 5329, line 1 (see *Exception for Roth IRA Distributions* on page 2).
- You received an early distribution subject to the tax on early distributions from a qualified retirement plan (other than a Roth IRA) and distribution code 1 is not shown in box 7 of Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

**Note.** You do not have to file Form 5329 if distribution code 1 is correctly shown in box 7 of all Forms 1099-R and you owe the additional tax on each Form 1099-R. Instead, see the instructions for Form 1040, line 58, or Form 1040NR, line 54, for how to report the additional 10% tax directly on that line.

- You meet an exception to the tax on early distributions and distribution code 1 is shown in box 7 of Form 1099-R.
- You meet an exception to the tax on early distributions from the list on page

3 but box 7 of your Form 1099-R does not indicate an exception or the exception does not apply to the entire distribution.

- You received taxable distributions from Coverdell ESAs or QTPs.
- The contributions for 2009 to your traditional IRAs, Roth IRAs, Coverdell ESAs, Archer MSAs, or HSAs exceed your maximum contribution limit, or you had a tax due from an excess contribution on line 17, 25, 33, 41, or 49 of your 2008 Form 5329.
- You did not receive the minimum required distribution from your qualified retirement plan. However, for 2009, you are not required to take a minimum distribution from your defined contribution plan or IRA. See *Waiver of required minimum distributions for 2009* on page 6 for more information.



**TIP** If you rolled over part or all of a distribution from a qualified retirement plan, the part rolled over is not subject to the additional tax on early distributions. See the instructions for Form 1040, lines 15a and 15b or lines 16a and 16b; Form 1040A, lines 11a and 11b or 12a and 12b; or Form 1040NR, lines 16a and 16b or 17a and 17b, for how to report the rollover.

#### When and Where To File

File Form 5329 with your 2009 Form 1040 or Form 1040NR by the due date, including extensions, of your Form 1040 or Form 1040NR.

If you do not have to file a 2009 income tax return, complete and file Form 5329 by itself at the time and place you would be required to file Form 1040 or Form 1040NR. Be sure to include your address on page 1 and your signature and the date on page 2. Enclose, but do not attach, a check or money order payable to "United States Treasury" for any taxes due. Write your SSN and "2009 Form 5329" on the check. For information on other payment options, including credit or debit card payments, see the instructions for Form 1040 or Form 1040NR, or go to [www.irs.gov](http://www.irs.gov).

**Prior tax years.** If you are filing Form 5329 for a prior year, you must use that year's version of the form. If you do not have other changes and have not previously filed a federal income tax return for that year, file Form 5329 by itself (discussed earlier). If you have

other changes, file Form 5329 for that year with Form 1040X, Amended U.S. Individual Income Tax Return.

#### Definitions

**Qualified retirement plan.** A qualified retirement plan includes:

- A qualified pension, profit-sharing, or stock bonus plan (including a 401(k) plan),
- A tax-sheltered annuity contract,
- A qualified annuity plan, and
- An IRA.

For purposes of the additional tax on early distributions, an eligible governmental section 457 deferred compensation plan is treated as a qualified retirement plan, but only to the extent that a distribution is attributable to an amount transferred from a qualified retirement plan (defined above).

**Note.** Modified endowment contracts are not qualified retirement plans.

**Traditional IRAs.** For purposes of Form 5329, a traditional IRA is any IRA, including a simplified employee pension (SEP) IRA, other than a SIMPLE IRA or Roth IRA.

**Early distribution.** Generally, any distribution from your IRA, other qualified retirement plan, or modified endowment contract before you reach age 59½ is an early distribution.

**Rollover.** Generally, a rollover is a tax-free distribution of assets from one qualified retirement plan that is reinvested in another plan or the same plan. Generally, you must complete the rollover within 60 days of receiving the distribution. Any taxable amount not rolled over must be included in income and may be subject to the additional tax on early distributions.

You can roll over (convert) amounts from a qualified retirement plan to a Roth IRA. Any amount rolled over to a Roth IRA is subject to the same rules for converting a traditional IRA to a Roth IRA. You must include in your gross income distributions from a qualified retirement plan that you would have had to include in income if you had not rolled them into a Roth IRA. Generally, the 10% tax on early distributions does not apply. For more information, see *Rollover From Employer's Plan Into a Roth IRA* in chapter 2 of Pub. 590.

The IRS may waive the 60-day requirement if failing to waive it would

be against equity or good conscience, such as situations where a casualty, disaster, or other events beyond your reasonable control prevented you from meeting the 60-day requirement. Also, the 60-day period may be extended if you had a frozen deposit. See Pub. 590 for details.

**Compensation.** Compensation includes wages, salaries, tips, bonuses, and other pay you receive for services you perform. It also includes sales commissions, commissions on insurance premiums, and pay based on a percentage of profits. It includes net earnings from self-employment, but only for a trade or business in which your personal services are a material income-producing factor.

For IRAs, treat nontaxable combat pay and any differential wage payments, and all taxable alimony received under a decree of divorce or separate maintenance as compensation.

Compensation does not include any amounts received as a pension or annuity and does not include any amount received as deferred compensation.

Taxable compensation is your compensation that is included in gross income reduced by any deductions on Form 1040, lines 27 and 28, or on Form 1040NR, line 27, but not by any loss from self-employment.

## Additional Information

See Pub. 590; Pub. 560, Retirement Plans for Small Business; Pub. 575; Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans; Pub. 970, Tax Benefits for Education; and Pub. 4492-B, Information for Affected Taxpayers in the Midwestern Disaster Areas.

## Specific Instructions

**Joint returns.** If both you and your spouse are required to file Form 5329, complete a separate form for each of you. Include the combined tax on Form 1040, line 58.

**Amended returns.** If you are filing an amended 2009 Form 5329, check the box at the top of page 1 of the form. Do not use the 2009 Form 5329 to amend your return for any other year. Instead, see *Prior tax years* on page 1.

## Part I—Additional Tax on Early Distributions

In general, if you receive an early distribution (including an involuntary cashout) from an IRA, other qualified retirement plan, or modified endowment contract, the part of the distribution included in income generally is subject to an additional 10% tax. But see *Exception for Roth IRA Distributions* on this page.

The additional tax on early distributions does not apply to any of the following:

- A qualified disaster recovery assistance distribution. See Form 8930 for more details.
- A qualified HSA funding distribution from an IRA (other than a SEP or SIMPLE IRA). See Pub. 969 for details.
- A distribution from a traditional or SIMPLE IRA that was converted to a Roth IRA.
- A rollover from a qualified retirement plan to a Roth IRA.
- A distribution of certain excess IRA contributions (see the instructions for lines 15 and 23 on page 4).

**Note.** Any related earnings withdrawn with excess contributions are subject to the additional tax on early distributions if you were under age 59½ at the time of the distribution.

- A distribution of excess contributions from a qualified cash or deferred arrangement.
- A distribution of excess aggregate contributions to meet nondiscrimination requirements for employee contributions and matching employer contributions.
- A distribution of excess deferrals.
- A distribution from an eligible governmental section 457 deferred compensation plan to the extent the distribution is not attributable to an amount transferred from a qualified retirement plan (excluding an eligible section 457 deferred compensation plan).

See the instructions for line 2 on page 3 for other distributions that are not subject to the tax.

### Line 1

Enter the amount of early distributions included in income that you received from:

- A qualified retirement plan, including earnings on withdrawn excess contributions to your IRAs included in income in 2009, or
- A modified endowment contract entered into after June 20, 1988.

Certain prohibited transactions, such as borrowing from your IRA or pledging your IRA assets as security for a loan, are considered to be distributions and may also cause you to owe the additional tax on early distributions. See Pub. 590 for details.

### Exception for Roth IRA Distributions

If you received an early distribution from a Roth IRA, first allocate the amount on your 2009 Form 8606, line 19 (not including any qualified disaster recovery assistance distributions), in the order shown, to the amounts on the lines listed below (to the extent a prior year distribution was not allocable to the amount).

- Your 2009 Form 8606, line 20.
- Your 2009 Form 8606, line 22\*.
- Your 1998 Form 8606, line 16.
- Your 1998 Form 8606, line 15.

- Your 1999 Form 8606, line 16.
- Your 1999 Form 8606, line 15.
- Your 2000 Form 8606, line 16.
- Your 2000 Form 8606, line 15.
- Your 2001 Form 8606, line 18.
- Your 2001 Form 8606, line 17.
- Your 2002 Form 8606, line 18.
- Your 2002 Form 8606, line 17.
- Your 2003 Form 8606, line 18.
- Your 2003 Form 8606, line 17.
- Your 2004 Form 8606, line 18.
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- Your 2005 Form 8606, line 17.
- Your 2006 Form 8606, line 18.
- Your 2006 Form 8606, line 17.
- Your 2007 Form 8606, line 18.
- Your 2007 Form 8606, line 17.
- Your 2008 Form 8606, line 18.
- Your 2008 Form 8606, line 17.
- Your 2009 Form 8606, line 18.
- Your 2009 Form 8606, line 17.
- Your 2009 Form 8606, line 25c.

\*If applicable, reduce this amount by any amounts attributable to qualified disaster recovery assistance distributions.

Then, include on line 1 of Form 5329 the amount from your 2009 Form 8606, line 25c, plus the amount, if any, allocated to the amount on your 2009 Form 8606, line 20, and the amount, if any, allocated to line 18 of your 2005 through 2009 Forms 8606. Also include the amount, if any, from your 2009 Form 8606, line 20, on Form 5329, line 2, and enter exception number 09.

**Example.** You converted \$20,000 from a traditional IRA to a Roth IRA in 2005 and converted \$10,000 in 2006. Your 2005 Form 8606 had \$5,000 on line 17 and \$15,000 on line 18 and your 2006 Form 8606 had \$3,000 on line 17 and \$7,000 on line 18. You made Roth IRA contributions of \$2,000 for 2005 and 2006. You did not make any Roth IRA conversions or contributions for 2007 through 2009, or take any Roth IRA distributions before 2009. On July 9, 2009, at age 53, you took a \$33,000 distribution from your Roth IRA. Your 2009 Form 8606 shows \$33,000 on line 19; \$29,000 on line 23 (\$33,000 minus \$4,000 for your contributions on line 22) and \$0 on line 25a (\$29,000 minus your basis in conversions of \$30,000). First, \$4,000 of the \$33,000 is allocated to your 2009 Form 8606, line 22; then \$15,000 to your 2005 Form 8606, line 18; \$5,000 to your 2005 Form 8606, line 17; and \$7,000 to your 2006 Form 8606, line 18. The remaining \$2,000 is allocated to the \$3,000 on your 2006 Form 8606, line 17. On line 1, enter \$22,000 (\$15,000 allocated to your 2005 Form 8606, line 18, plus the \$7,000 that was allocated to your 2006 Form 8606, line 18). If you take a Roth IRA distribution in 2010, the first \$1,000 will be allocated to the \$1,000 remaining from your 2006 Form 8606, line 17, and will not be subject to the additional tax on early distributions.

**Additional information.** For more details, see *Are Distributions Taxable?* in Pub. 590.

## Line 2

The additional tax on early distributions does not apply to the distributions described below. Enter on line 2 the amount that can be excluded. In the space provided, enter the applicable exception number (01-12).

### No. Exception

- 01 Qualified retirement plan distributions (does not apply to IRAs) if you separated from service in or after the year you reach age 55 (age 50 for qualified public safety employees).
- 02 Distributions made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from an employer plan, payments must begin after separation from service).
- 03 Distributions due to total and permanent disability.
- 04 Distributions due to death (does not apply to modified endowment contracts).
- 05 Qualified retirement plan distributions up to (1) the amount you paid for unreimbursed medical expenses during the year minus (2) 7.5% of your adjusted gross income for the year.
- 06 Qualified retirement plan distributions made to an alternate payee under a qualified domestic relations order (does not apply to IRAs).
- 07 IRA distributions made to unemployed individuals for health insurance premiums.
- 08 IRA distributions made for higher education expenses.
- 09 IRA distributions made for purchase of a first home, up to \$10,000.
- 10 Distributions due to an IRS levy on the qualified retirement plan.
- 11 Qualified distributions to reservists while serving on active duty for at least 180 days.
- 12 Other (see *Other*, below). Also, enter this code if more than one exception applies.

**Other.** The following exceptions also apply.

- Distributions incorrectly indicated as early distributions by code 1, J, or S in box 7 of Form 1099-R. Include on line 2 the amount you received when you were age 59½ or older.
- Distributions from a section 457 plan, which are not from a rollover from a qualified retirement plan.
- Distributions from a plan maintained by an employer if:
  1. You separated from service by March 1, 1986;
  2. As of March 1, 1986, your entire interest was in pay status under a

written election that provides a specific schedule for distribution of your entire interest; and

3. The distribution is actually being made under the written election.
- Distributions that are dividends paid with respect to stock described in section 404(k).
  - Distributions from annuity contracts to the extent that the distributions are allocable to the investment in the contract before August 14, 1982.

For additional exceptions that apply to annuities, see Pub. 575.

## Line 4

If any amount on line 3 was a distribution from a SIMPLE IRA received within 2 years from the date you first participated in the SIMPLE IRA plan, you must multiply that amount by 25% instead of 10%. These distributions are included in boxes 1 and 2a of Form 1099-R and are designated with code S in box 7.

## Part II—Additional Tax on Certain Distributions From Education Accounts

### Line 6

This tax does not apply to distributions that are includible in income if:

- Due to the death or disability of the beneficiary;
- Made on account of a tax-free scholarship, allowance, or payment described in section 25A(g)(2);
- Made because of attendance by the beneficiary at a U.S. military academy. This exception applies only to the extent that the distribution does not exceed the costs of advanced education (as defined in title 10 of the U.S. Code) at the academy; or
- Included in income because you used the qualified education expenses to figure the American opportunity, Hope, and lifetime learning credits.

Enter on line 6 the portion of line 5 that is excluded.

## Part III—Additional Tax on Excess Contributions to Traditional IRAs

If you contributed more for 2009 than is allowable or you had an amount on line 17 of your 2008 Form 5329, you may owe this tax. But you may be able to avoid the tax on any 2009 excess contributions (see the instructions for line 15 on page 4).

### Line 9

Enter the amount from line 16 of your 2008 Form 5329 only if the amount on

line 17 of your 2008 Form 5329 is more than zero.

## Line 10

If you contributed less to your traditional IRAs for 2009 than your contribution limit for traditional IRAs, enter the difference.

If you are not married filing jointly, your contribution limit for traditional IRAs is the smaller of your taxable compensation (see page 2) or \$5,000 (\$6,000 if age 50 or older at the end of 2009). If you are married filing jointly, your contribution limit is generally \$5,000 (\$6,000 if age 50 or older at the end of 2009) and your spouse's contribution limit is \$5,000 (\$6,000 if age 50 or older at the end of 2009). But if the combined taxable compensation for you and your spouse is less than \$10,000 (\$11,000 if one spouse is 50 or older at the end of 2009; \$12,000 if both spouses are 50 or older at the end of 2009), see *How Much Can Be Contributed?* in Pub. 590 for special rules.



*If you participated in a 401(k) plan and the employer who maintained the plan went into bankruptcy in an earlier year, you may be able to contribute up to \$8,000 to your traditional IRA. See Pub. 590 for more details.*

Also include on line 11a or 11b of the IRA Deduction Worksheet in the instructions for Form 1040, line 32, the smaller of (a) Form 5329, line 10, or (b) the excess, if any, of Form 5329, line 9, over the sum of Form 5329, lines 11 and 12.

## Line 11

Enter on line 11 any withdrawals from your traditional IRAs that are included in your income. Do not include any withdrawn contributions reported on line 12.

## Line 12

Enter any excess contributions to your traditional IRAs for 1976 through 2007 that you had returned to you in 2009 and any 2008 excess contributions that you had returned to you in 2009 after the due date (including extensions) of your 2008 income tax return, that are included on line 9, if:

- You did not claim a deduction for the excess contributions and no traditional IRA deduction was allowable (without regard to the modified AGI limitation) for the excess contributions, and
- The total contributions to your traditional IRAs for the tax year for which the excess contributions were made were not more than the amounts shown in the following table.

Year(s)	Contribution limit	Contribution limit if age 50 or older at the end of the year
2008	\$5,000	\$6,000
2007 or 2006	\$4,000	\$5,000
2005	\$4,000	\$4,500
2002 through 2004	\$3,000	\$3,500
1997 through 2001	\$2,000	—
before 1997	\$2,250	—

If the total contributions for the year included employer contributions to a SEP, increase that amount by the smaller of the amount of the employer contributions or:

2008	\$46,000
2007	\$45,000
2006	\$44,000
2005	\$42,000
2004	\$41,000
2003 or 2002	\$40,000
2001	\$35,000
before 2001	\$30,000

### Line 15

Enter the excess of your contributions to traditional IRAs for 2009 (unless withdrawn—see below) over your contribution limit for traditional IRAs. See the instructions for line 10 on page 3 to figure your contribution limit for traditional IRAs. Any amount you contribute for the year in which you reach age 70½ or a later year is an excess contribution because your contribution limit is zero. Do not include rollovers in figuring your excess contributions.

You can withdraw some or all of your excess contributions for 2009 and they will not be treated as having been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2009 tax return,
- You do not claim a traditional IRA deduction for the withdrawn contributions, and
- You withdraw any earnings on the withdrawn contribution and include the earnings in gross income (see the Instructions for Form 8606 for details). Also, if you had not reached age 59½ at the time of the withdrawal, include the earnings as an early distribution on line 1 of Form 5329 for the year in which you report the earnings.

If you timely filed your return without withdrawing the excess contributions, you can still make the withdrawal no later than 6 months after the due date of your tax return, excluding extensions. If you do, file an amended return with “Filed pursuant to section 301.9100-2” written at the top. Report any related earnings for 2009 on the amended return and include an explanation of the withdrawal. Make any other necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

## Part IV—Additional Tax on Excess Contributions to Roth IRAs

If you contributed more to your Roth IRA for 2009 than is allowable or you had an amount on line 25 of your 2008 Form 5329, you may owe this tax. But you may be able to avoid the tax on any 2009 excess contributions (see the instructions for line 23 on this page).

### Line 18

Enter the amount from line 24 of your 2008 Form 5329 only if the amount on line 25 of your 2008 Form 5329 is more than zero.

### Line 19

If you contributed less to your Roth IRAs for 2009 than your contribution limit for Roth IRAs, enter the difference. Your contribution limit for Roth IRAs is generally your contribution limit for traditional IRAs (see the instructions for line 10 on page 3) reduced by the amount you contributed to traditional IRAs. But your contribution limit for Roth IRAs may be further reduced or eliminated if your modified AGI for Roth IRA purposes is over:

- \$166,000 if married filing jointly or qualifying widow(er),
- \$0 if married filing separately and you lived with your spouse at any time in 2009, or
- \$105,000 for any other taxpayer.

See Pub. 590 for details.

### Line 20

Generally, enter the amount from Form 8606, line 19, plus any qualified distributions. But if you withdrew the entire balance of all your Roth IRAs, do not enter less than the amount on Form 5329, line 18 (see *Example*).

**Example.** You contributed \$1,000 to a Roth IRA in 2007, your only contribution to Roth IRAs. In 2009, you discovered you were not eligible to contribute to a Roth IRA in 2007. On September 9, 2009, you withdrew \$800, the entire balance in the Roth IRA. You must file Form 5329 for 2007 and 2008 to pay the additional taxes for those

years. When you complete Form 5329 for 2009, you enter \$1,000 (not \$800) on line 20, because you withdrew the entire balance.

### Line 23

Enter the excess of your contributions to Roth IRAs for 2009 (unless withdrawn—see below) over your contribution limit for Roth IRAs (see the instructions for line 19 on this page).

Any amounts converted (including any amounts rolled over from a qualified retirement plan) to a Roth IRA are excess Roth IRA contributions if your modified AGI for Roth IRA purposes is over \$100,000 or your filing status is married filing separately and you lived with your spouse at any time in 2009. See *Recharacterizations* in the Instructions for Form 8606 for details. Do not include rollovers from another Roth IRA or designated Roth account in figuring your excess contributions.

You can withdraw some or all of your excess contributions for 2009 and they will not be treated as having been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2009 tax return, and
- You withdraw any earnings on the withdrawn contributions and include the earnings in gross income (see the Instructions for Form 8606 for details). Also, if you had not reached age 59½ at the time of the withdrawal, include the earnings as an early distribution on line 1 of Form 5329 for the year in which you report the earnings.

**Note.** A Form 5329 is not required if the excess Roth IRA contributions are not treated as having been contributed and you do not have any earnings to report as early distributions on the form.

If you timely filed your return without withdrawing the excess contributions, you can still make the withdrawal no later than 6 months after the due date of your tax return, excluding extensions. If you do, file an amended return with “Filed pursuant to section 301.9100-2” written at the top. Report any related earnings for 2009 on the amended return and include an explanation of the withdrawal. Make any other necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

## Part V—Additional Tax on Excess Contributions to Coverdell ESAs

If the contributions to your Coverdell ESAs for 2009 were more than is allowable or you had an amount on line 33 of your 2008 Form 5329, you may owe this tax. But you may be able to avoid the tax on any 2009 excess

contributions (see the instructions for line 31 below).

### **Line 26**

Enter the amount from line 32 of your 2008 Form 5329 only if the amount on line 33 of your 2008 Form 5329 is more than zero.

### **Line 27**

Enter the excess, if any, of the maximum amount that can be contributed to your Coverdell ESAs for 2009 (see the instructions for line 31 below) over the amount actually contributed for 2009.

### **Line 28**

Enter your total distributions from Coverdell ESAs in 2009. Do not include rollovers or returned excess contributions.

### **Line 31**

Enter the excess of the contributions to your Coverdell ESAs for 2009 (not including rollovers) over your contribution limit for Coverdell ESAs. Your contribution limit is the smaller of \$2,000 or the sum of the maximum amounts allowed to be contributed by the contributor(s) to your Coverdell ESAs. The maximum contribution may be limited based on the contributor's modified AGI. See Pub. 970 for details.

You can withdraw some or all of the excess contributions for 2009 and they will not be treated as having been contributed if:

- You make the withdrawal before June 1, 2010, and
- You also withdraw any income earned on the withdrawn contributions and include the earnings in gross income for the year in which the contribution was made.

If you filed your return without withdrawing the excess contributions, you can still make the withdrawal, but it must be made before June 1, 2010. If you do, file an amended return. Report any related earnings for 2009 on the amended return and include an explanation of the withdrawal. Make any other necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

## **Part VI—Additional Tax on Excess Contributions to Archer MSAs**

If you or your employer contributed more to your Archer MSA for 2009 than is allowable or you had an amount on line 41 of your 2008 Form 5329, you may owe this tax. But you may be able to avoid the tax on any 2009 excess contributions (see the instructions for line 39 on this page).

### **Line 34**

Enter the amount from line 40 of your 2008 Form 5329 only if the amount on line 41 of your 2008 Form 5329 is more than zero.

### **Line 35**

If your contribution limit for your Archer MSAs (the smaller of line 3 or line 4 of Form 8853, Archer MSAs and Long-Term Care Insurance Contracts) is greater than the contributions to your Archer MSAs for 2009, enter the difference on line 35. Also include on your 2009 Form 8853, line 5, the smaller of:

- Form 5329, line 35, or
- The excess, if any, of Form 5329, line 34, over Form 5329, line 36.

### **Line 39**

Enter the excess of your contributions to your Archer MSA for 2009 (from Form 8853, line 2) over your contribution limit (the smaller of line 3 or line 4 of Form 8853). Also include on line 39 any excess contributions your employer made. See the Instructions for Form 8853 for details.

However, you can withdraw some or all of the excess contributions for 2009 and they will not be treated as having been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2009 tax return, and
- You withdraw any income earned on the withdrawn contributions and include the earnings in gross income for the year in which you receive the withdrawn contributions and earnings.

Include the withdrawn contributions and related earnings on Form 8853, lines 6a and 6b.

If you timely filed your return without withdrawing the excess contributions, you can still make the withdrawal no later than 6 months after the due date of your tax return, excluding extensions. If you do, file an amended return with "Filed pursuant to section 301.9100-2" written at the top. Report any related earnings for 2009 on the amended return and include an explanation of the withdrawal. Make any other necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

## **Part VII—Additional Tax on Excess Contributions to Health Savings Accounts (HSAs)**

If you, someone on your behalf, or your employer contributed more to your HSAs for 2009 than is allowable or you had an amount on line 49 of your 2008 Form 5329, you may owe this tax. But you may be able to avoid the tax on

any 2009 excess contributions (see the instructions for line 47 below).

### **Line 43**

If your contribution limit for your HSAs (line 12 of Form 8889, Health Savings Accounts (HSAs)) is greater than the contributions you made to your HSAs (or those made on your behalf) for 2009 (Form 8889, line 2), enter the difference on line 43. Also include on your 2009 Form 8889, line 13, the smaller of:

- Form 5329, line 43, or
- The excess, if any, of Form 5329, line 42, over Form 5329, line 44.

### **Line 47**

Enter the excess of your contributions (including those made on your behalf) to your HSAs for 2009 (Form 8889, line 2) over your contribution limit (Form 8889, line 12). Also include on line 47 any excess contributions your employer made. See the instructions for Form 8889 for details.

However, you can withdraw some or all of the excess contributions for 2009 and they will not be treated as having been contributed if:

- You make the withdrawal by the due date, including extensions, of your 2009 return, and
- You withdraw any income earned on the withdrawn contributions and include the earnings in gross income for the year in which you receive the withdrawn contributions and earnings.

Include the withdrawn contributions and related earnings on Form 8889, lines 14a and 14b.

If you timely filed your return without withdrawing the excess contributions, you can still make the withdrawal no later than 6 months after the due date of your tax return, excluding extensions. If you do, file an amended return with "Filed pursuant to section 301.9100-2" written at the top. Report any related earnings for 2009 on the amended return and include an explanation of the withdrawal. Make any other necessary changes on the amended return (for example, if you reported the contributions as excess contributions on your original return, include an amended Form 5329 reflecting that the withdrawn contributions are no longer treated as having been contributed).

## **Part VIII—Additional Tax on Excess Accumulation in Qualified Retirement Plans (Including IRAs)**

You owe this tax if you do not receive the required minimum distribution from your qualified retirement plan, including an IRA or an eligible section 457 deferred compensation plan. The additional tax is 50% of the excess accumulation—the difference between the amount that was required to be distributed and the amount that was actually distributed. The tax is due for

the tax year that includes the last day by which the minimum required distribution is required to be taken.

**Waiver of required minimum distributions for 2009.** For 2009, you are not required to take a minimum distribution from your IRA or certain employer-provided qualified retirement plans that are defined contribution plans. This waiver applies to plan participants as well as beneficiaries in:

- Qualified retirement plans (including 401(k) plans),
- Section 403(a) or 403(b) plans,
- Section 457(b) governmental plans, and
- IRAs.

The waiver also applies to those individuals who turned age 70½ in 2009 and delay taking their required distribution until April 1, 2010. For more information on the temporary waiver, see Pub. 575 (retirement plans) and Pub. 590 (IRAs).

### Line 50

The temporary waiver does not apply to required distributions for 2008, even for individuals who turned age 70½ in 2008 and chose to take their required distribution by April 1, 2009. If you postponed a distribution required for 2008 until 2009, enter that amount on line 50. Also enter any amount which does not qualify for the 2009 waiver for minimum distributions. See *Waiver of required minimum distributions for 2009* above for plans that qualify for this waiver.

### Required Distributions

**IRA (other than a Roth IRA).** You must start receiving distributions from your IRA by April 1 of the year following the year in which you reach age 70½. At that time, you can receive your entire interest in the IRA or begin receiving periodic distributions. If you choose to receive periodic distributions, you must receive a minimum required distribution each year. You can figure the minimum required distribution by dividing the account balance of your IRAs (other than Roth IRAs) on December 31 of the year preceding the distribution by the applicable life expectancy. For applicable life expectancies, see Pub. 590.

If the trustee, custodian, or issuer of your IRA informs you of the minimum required distribution, you can use that amount.

If you have more than one IRA, you can take the minimum required distribution from any one or more of the individual IRAs.

For more details on the minimum distribution rules (including examples), see Pub. 590.



*A qualified charitable distribution will count towards your minimum required distribution. See Pub. 590 for more information.*

**Roth IRA.** There are no minimum required distributions during the lifetime of the owner of a Roth IRA. Following the death of the Roth IRA owner, required distribution rules apply to the beneficiary. See Pub. 590 for details.

**Qualified retirement plans (other than IRAs) and eligible section 457 deferred compensation plans.** In general, you must begin receiving distributions from your plan no later than April 1 following the later of (a) the year in which you reach age 70½ or (b) the year in which you retire.

**Exception.** If you owned more than 5% of the employer maintaining the plan, you must begin receiving distributions no later than April 1 of the year following the year in which you reach age 70½, regardless of when you retire.

Your plan administrator should figure the amount that must be distributed each year.

**Waiver of tax.** The IRS can waive part or all of this tax if you can show that any shortfall in the amount of distributions was due to reasonable error and you are taking reasonable steps to remedy the shortfall. If you believe you qualify for this relief, attach a statement of explanation and file Form 5329 as follows.

1. Complete lines 50 and 51 as instructed.
2. Enter "RC" and the amount you want waived in parentheses on the dotted line next to line 52. Subtract this amount from the total shortfall you figured without regard to the waiver, and enter the result on line 52.
3. Complete line 53 as instructed. You must pay any tax due that is reported on line 53.

The IRS will review the information you provide and decide whether to grant your request for a waiver.

For more details, see Pub. 590.

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### Privacy Act and Paperwork

**Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need this information to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information if you made certain contributions or received certain distributions from qualified plans, including IRAs, and other tax-favored accounts. Our legal right to ask for the information requested on this form is sections 6001, 6011, 6012(a), and 6109 and their regulations. If you do not provide this information, or you provide incomplete or false information, you may be subject to penalties.

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 section 6103. However, we may give this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

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