



# Instructions for Form 5329

## Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, and Modified Endowment Contracts

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

### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

**Recordkeeping** . . . . . 2 hr., 24 min.

**Learning about the law or the form** . . . . . 32 min.

**Preparing the form** . . . . . 1 hr., 19 min.

**Copying, assembling, and sending the form to the IRS** . . . . . 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 the form to this address. Instead, see **When and Where To File** on this page.

### General Instructions

#### Purpose of Form

Use Form 5329 to report any additional income tax or excise tax you may owe in connection with your qualified retirement plan (including your individual retirement arrangement (IRA)), annuity, or modified endowment contract.

Do not use Form 5329 to report your deduction for contributions to your IRA. Report this deduction on your **Form 1040, 1040A, or 1040-T**. If you make nondeductible contributions to your IRA, use **Form 8606, Nondeductible IRAs (Contributions, Distributions, and Basis)**, to report the nondeductible contribution. Also, if you previously made nondeductible IRA contributions, use Form 8606 to figure the taxable part of your IRA distributions.

#### Who Must File

You **MUST** file Form 5329 if any of the following apply.

- You owe a tax on early distributions from your qualified retirement plan (including an IRA), annuity, or modified endowment contract but 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.** (complete Part I).
- You meet an exception to the tax on early distributions, but distribution code 2, 3, or 4 is not shown in box 7 of Form 1099-R, or the distribution code shown is incorrect.
- You owe a tax because of excess contributions to your IRA (complete Part II).
- You owe a tax because you did not receive a minimum required distribution from your qualified retirement plan (complete Part III).
- You received distributions from a qualified retirement plan that exceed the applicable threshold amount, whether or not you owe a tax (complete Part IV).

You **DO NOT** have to file Form 5329 if:

- You owe **only** the 10% tax on early distributions (distribution code 1 must be shown in box 7 of Form 1099-R). If you are filing **Form 1040, U.S. Individual Income Tax Return**, do not complete Form 5329. Enter 10% of the taxable part of your distribution on Form 1040, line 51. Write "No" on the dotted line next to line 51 to indicate that you do not have to file Form 5329.
- You received an early distribution from your plan, but meet an exception to the tax (distribution code 2, 3, or 4 must be correctly shown on Form 1099-R).
- You rolled over the taxable part of all distributions you received during the year.

#### When and Where To File

Attach your 1995 Form 5329 to your 1995 Form 1040 and file both by the due date for your Form 1040 (including extensions).

If you do not have to file Form 1040 but owe a tax on Form 5329 or otherwise have to file Form 5329 (see above), you **must** still complete and file it with the IRS at the time and place you would be required to file Form 1040. If you are filing your 1995 Form 5329 by itself, be sure to include your address on page 1 and your signature and date on page 2. Enclose, but do not attach, a check or money order payable to the "Internal Revenue Service" for the total of any taxes due. Include your social security number and "1995 Form 5329" on the check or money order.

#### Filing for Previous Tax Years

If you are filing a Form 5329 to pay a tax for a previous year, you must use that year's version of the form. For example, if you are paying tax for 1993, you must use the 1993 version of the form to report the tax.

If you owe a tax for that previous year because of an early distribution, complete the appropriate part of Form 5329 for that year and attach it to **Form 1040X, Amended U.S. Income Tax Return**. Be sure to include the distribution as additional income on Form 1040X if not previously reported.

If you owe only a tax other than the tax on early distributions for a previous year, file Form 5329 by itself for that year. Be sure to include your signature and date on page 2. Enclose, but do not attach, a check or money order payable to the "Internal Revenue Service" for the amount of tax due. Include your social security number, "Form 5329," and the year for which the form is being filed on the check or money order.

#### Definitions

##### Qualified Retirement Plan

A qualified retirement plan includes:

- A qualified pension, profit-sharing, and stock bonus plan (including a qualified cash or deferred arrangement (CODA) under section 401(k)),
- A qualified annuity plan,
- A tax-sheltered annuity contract,
- An individual retirement account, and
- An individual retirement annuity.

## Early Distribution

Generally, any distribution from your qualified retirement plan, annuity, or modified endowment contract that you receive before you reach age 59½ is an early distribution. See **Part I—Tax on Early Distributions** below for details on early distributions that are subject to an additional tax.

## Rollover

A rollover is a tax-free distribution (withdrawal) of assets from one qualified retirement plan that is reinvested in another plan. Generally, you must complete the rollover within 60 days following the distribution to qualify it for tax-free treatment. Get **Pub. 590**, Individual Retirement Arrangements (IRAs), for more details and additional requirements regarding rollovers.

**Note:** *If you instruct the trustee of your plan to transfer funds directly to another plan, the transfer is **not** considered a rollover. Do not include the amount transferred in income or deduct the amount transferred as a contribution. A transfer from a qualified employee plan to an IRA, however, **is** considered a rollover.*

## Compensation

Compensation includes wages, salaries, professional fees, and other pay you receive for services you perform. It also includes sales commissions, commissions on insurance premiums, pay based on a percentage of profit, tips, and bonuses. 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 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.

## Additional Information

For more details, see Pub. 590. Also get **Pub. 575**, Pension and Annuity Income.

## Specific Instructions

### Joint Returns

Each spouse must complete a **separate** Form 5329 for taxes attributable to his or her own qualified retirement plan, annuity, or modified endowment contract. If both spouses owe penalty taxes and are filing a joint return, enter the combined total tax from Forms 5329 on Form 1040, line 51.

## Amended Return

If you are filing an amended 1995 Form 5329, check the box at the top of page 1 of the form. **Do not** use this version of Form 5329 to amend your return for any year other than 1995. See **Filing for Previous Tax Years** on page 1.

## Part I—Tax on Early Distributions

In general, if you receive an early distribution from a qualified retirement plan, an annuity, or a modified endowment contract (including an involuntary cashout under section 411(a)(11) or 417(e)), the part of the distribution that is includible in gross income is subject to an additional 10% tax.

The tax on early distributions from qualified retirement plans does **not** apply to:

- 1995 IRA contributions withdrawn during the year or 1994 excess contributions withdrawn in 1995 before the filing date (including extensions) of your 1994 income tax return;
- Excess IRA contributions for years before 1994 that were withdrawn in 1995, and 1994 excess contributions withdrawn after the due date (including extensions) of your 1994 income tax return, if no deduction was allowed for the excess contributions, and the total IRA contributions for the tax year for which the excess contributions were made were not more than \$2,250 (or if the total contributions for the year included employer contributions to a SEP, \$2,250 increased by the smaller of the amount of the employer contributions to the SEP or \$30,000);
- The part of your IRA distributions that represents a return of nondeductible IRA contributions figured on Form 8606;
- Distributions rolled over to another retirement arrangement or plan;
- Distributions of excess contributions from a qualified cash or deferred arrangement;
- Distributions of excess aggregate contributions to meet nondiscrimination requirements for employer matching and employee contributions;
- Distributions of excess deferrals; and
- Amounts distributed from unfunded deferred compensation plans of tax-exempt or state and local government employers.

See the instructions for **Line 2** below for other distributions that are not subject to the tax.

### Line 1

Enter the taxable amount of early distributions made to you from a

qualified pension plan, including your IRA (and income earned on excess contributions to your IRA), an annuity contract, or a modified endowment contract (as defined in section 7702(A), entered into after June 20, 1988). The taxable amount of a distribution is the amount you include in gross income.

**Prohibited transactions.**—If you engaged in a prohibited transaction, such as **borrowing** from your individual retirement **account** or **annuity**, or pledging your individual retirement **annuity** as security for a loan, your account or annuity no longer qualified as an IRA on the first day of the tax year in which you did the borrowing or pledging. You are considered to have received a distribution of the entire value of your account or annuity at that time. Using your IRA as a basis for obtaining a benefit is also a prohibited transaction. If you were under age 59½ on the first day of the year, report the entire value of the account or annuity on line 1.

**Pledging individual retirement account.**—If you pledged any part of your individual retirement **account** as security for a loan, that **part** is considered distributed to you at the time pledged. If you were under age 59½ at the time of the pledge, enter the amount pledged on line 1.

**Collectibles.**—If your IRA trustee invested your funds in collectibles, you are considered to have received a distribution equal to the cost of any “collectible.” Collectibles include works of art, rugs, antiques, metals, gems, stamps, coins, alcoholic beverages, and certain other tangible personal property.

If you were under age 59½ when the funds were invested, include the cost of the collectible on line 1. Also, include the total cost of the collectible as income on your 1995 Form 1040, line 15b.

**Exception.** Your IRA trustee may invest your IRA funds in U.S. one, one-half, one-quarter, and one-tenth ounce gold coins, and one ounce silver coins, minted after September 30, 1986.

**Note:** *You must include the taxable amount of all distributions (including income earned on investments) from line 1, on either line 15b or 16b, Form 1040, or the appropriate line of **Form 4972**, Tax on Lump-Sum Distributions, whichever applies.*

### Line 2

The 10% additional tax does not apply to certain distributions specifically excepted by the Code. Enter on line 2 the amount that can be excluded. In the space provided, enter the applicable exception number (01-07) from the chart on the next page.

**No. Exception**

- 01** Distribution due to death (does not apply to modified endowment contracts)
- 02** Distribution due to total and permanent disability
- 03** Distribution 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 a qualified employee plan, payments must begin after separation from service)
- 04** Distribution due to separation from service in or after the year of reaching age 55
- 05** Distribution to the extent you have medical expenses deductible under section 213
- 06** Distributions made to an alternate payee under a qualified domestic relations order
- 07** Other (see instructions below)

**Note:** *Exceptions 04 through 06 above DO NOT apply to distributions from IRAs or annuity or modified endowment contracts. They apply only to distributions from qualified employee plans.*

**Other exceptions.**—In addition to the exceptions listed above, the tax does not apply to the following:

- Any 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 investment in the contract before August 14, 1982.
- For additional exceptions applicable to annuities, see Pub. 575.
- If any of these exceptions applies, include the amount that can be excluded on line 2. Enter Exception No. 07 in the space provided.
- Also, if you received a Form 1099-R for a distribution that incorrectly indicated an early distribution (code 1 was entered in box 7 of the Form 1099-R), include on line 2 the amount of the distribution that you received when you were age 59½ or older. Enter Exception No. 07 in the space provided.

**Worksheet for line 7** (Keep for your records)

<b>1</b>	Enter amount from line 2, column (a) or (b), IRA Worksheet 1, or line 7, column (a) or (b), IRA Worksheet 2, in the Form 1040 Instructions, but not more than \$2,000 (\$2,250 if you contributed to your nonworking spouse's account)	1. _____
<b>2</b>	Enter amount actually contributed either to your account or to your and your nonworking spouse's accounts	2. _____
<b>3</b>	<b>Contribution credit.</b> —Subtract line 2 from line 1 (but do not enter more than \$2,000). Enter this amount on line 7 of Form 5329. You should also add to the amount calculated on line 3 or 8 (whichever is applicable) of IRA Worksheet 1, or line 9 or 18 (whichever is applicable) of IRA Worksheet 2, the <b>smaller</b> of either: (a) this amount; or (b) your earlier years' excess contributions not previously eliminated	3. _____

**Part II—Tax on Excess Contributions to Individual Retirement Arrangements**

If you contributed, either this year or in earlier years, more to your IRA than is allowable, you may have to pay a tax on excess contributions. Your allowable contribution is the smaller of your taxable compensation or \$2,000 (\$2,250 if you contributed to an IRA for a nonworking spouse).

However, you can withdraw some or all of your excess contributions for 1995 and they will not be taxed as a distribution if:

- You make the withdrawal by the due date (including extensions) of your 1995 income tax return,
- You do not claim a deduction for the amount of the contribution withdrawn, and
- You also withdraw from your IRA any income earned on the withdrawn contributions.

**Do not** include the withdrawn contributions as excess contributions on line 5.

You **must** include the income earned on the contributions withdrawn before the due date of your income tax return on Form 1040 for the year in which you made the contribution. Also, if you had not reached age 59½ at the time you received the distribution, report the income (but not the withdrawn contributions) as an early withdrawal in Part I, line 1.

**Line 5**

Enter the excess contributions you made in 1995. To figure this amount, subtract your contributions limit from your actual contributions. To figure your contributions limit, use IRA Worksheet 1 in the Form 1040 instructions. For this purpose, use the amount from line 3, column (a) or (b), or line 8 (as applicable) of Worksheet 1 regardless of your adjusted gross income (AGI) and even though you use Worksheet 2 to figure your IRA deduction limit.

Do not include any rollover contributions in figuring your excess contributions.

**Line 6**

Enter the total amount of 1994 excess contributions not withdrawn from your IRA by the due date of your 1994 income tax return, plus the 1993 and earlier excess contributions not withdrawn or otherwise eliminated before January 1, 1995.

This entry should be the same as the amount from line 12 of your 1994 Form 5329.

**Line 7**

If you contributed less to your IRA for 1995 than your contributions limit, and your excess contributions from earlier years have not been eliminated, complete the worksheet above to see if you have a contribution credit. **Do not** enter an amount on line 7 if you have an amount on line 5.

**Line 8**

If you withdrew any money from your IRA in 1995 that must be included in your income for 1995, enter that amount on line 8. Do not include any contributions withdrawn that will be reported on line 9.

**Line 9**

Enter any excess contributions to your IRA for 1976 through 1993 that you withdrew in 1995, and any 1994 excess contributions that you withdrew after the due date (including any extensions) for your 1994 income tax return, if:

- You did not claim a deduction for the excess, and
- The total contributions to your IRA for the tax year for which the excess contributions were made were not more than \$2,250 (or if the total contributions for the year included employer contributions to a SEP, \$2,250 increased by the smaller of the amount of the employer contributions to the SEP or \$30,000).

**Part III—Tax on Excess Accumulation in Qualified Retirement Plans (Including IRAs)**

If you do not receive the minimum required distribution from your qualified retirement plan, you have an excess

accumulation subject to an additional tax.

For purposes of the tax on excess accumulations, a qualified retirement plan also includes an eligible deferred compensation plan under section 457.

The additional tax is equal to 50% of the difference between the amount that was required to be distributed and the amount that was actually distributed.

### Required Distributions

**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 may receive your entire interest in the IRA, or begin receiving periodic distributions over your life expectancy or over the joint life expectancy of you and your designated beneficiary (or over a shorter period).

If you choose to receive periodic distributions, you must receive a minimum required distribution each year. For each year after the year in which you reach age 70½, you must receive the minimum required distribution by December 31 of that year.

Figure the minimum required distribution by dividing the account balance of the IRA on December 31 of the year preceding the distribution by the applicable life expectancy.

For applicable life expectancies, you must use the expected return multiples from the tables in Pub. 590 or **Pub. 939**, Pension General Rule (Nonsimplified Method).

Under an alternative method, if you have more than one IRA, you may take the minimum distribution from any one or more of the individual IRAs.

For more details on the minimum distribution rules, with examples, and the life expectancy tables, see Pub. 590.

**Qualified pension, profit-sharing, stock bonus, or section 457 deferred compensation plan.**—In general, you must begin receiving distributions from your plan no later than April 1 of the year following the year in which you reach age 70½.

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

**Exceptions.** If you reached age 70½ before 1988 and were not a 5% owner, or are covered by a governmental or church plan, you must start receiving distributions from your qualified retirement plan no later than April 1 following the **later** of (1) the year in which you reached age 70½, or (2) the year in which you retired.

If you reached age 70½ in 1988 but had not retired by January 1, 1989, you were required to start receiving distributions no later than April 1, 1990. If you reached age 70½ in 1988 and

retired in 1988, you were required to start receiving distributions no later than April 1, 1989.

However, if you were a 5% owner 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 reached age 70½, regardless of when you retire.

**Note:** *The IRS may waive this tax on excess accumulations if you can show that any shortfall in the amount of withdrawals from your qualified retirement plan was due to reasonable error, and that you are taking appropriate steps to remedy the shortfall. If you believe you qualify for this relief, file Form 5329, pay this excise tax, and attach your letter of explanation. If the IRS grants your request, we will send you a refund.*

### Part IV—Tax On Excess Distributions From Qualified Retirement Plans (Including IRAs)

Generally, if you received distributions in 1995 from qualified retirement plans (including IRAs) in excess of \$150,000, you may have to pay an additional 15% tax on the excess.

#### Line 18

There are two types of retirement distributions: regular and lump-sum. See Form 4972 for details on distributions that can be treated as lump-sum distributions. You must make certain elections under section 402 or 403, such as the 5-year tax option, for those distributions.

If you rolled over part of a distribution, you must treat the entire distribution as a regular, not a lump-sum, distribution.

#### Line 19

The 15% additional tax does not apply to certain distributions specifically excepted by the Code. Enter on line 19 the amount that is to be excluded. In the space provided, enter the applicable exception number (01–06) from the chart below.

#### No. Exception

- 01** Distribution made as a result of death
- 02** Distribution paid to an alternate payee under a qualified domestic relations order
- 03** Distribution attributable to investment in contract
- 04** Distribution rolled over
- 05** Distribution of an annuity contract
- 06** Distribution of excess deferrals or excess contributions

#### Line 21

The threshold amount is \$150,000 for regular distributions and \$750,000 for lump-sum distributions.

If you made the special grandfather election in 1987 or 1988 under Temp. Regs. section 54.4981A-1T, use either Worksheet 1—Discretionary Method or Worksheet 2—Attained Age Method on page 5 to figure your 1995 recovery amount and your unrecovered grandfather amount for 1996.

Attach a copy of the applicable worksheet to your return if you are required to file Form 5329. Also, keep the completed worksheet as part of your permanent records to help you figure your 1996 recovery amount. In the case of your death, the executor or administrator of your estate will need to know the unrecovered amount to figure any increase in estate tax that may be due under section 4980A(d) on Schedule S of Form 706.

See Temp. Regs. section 54.4981A-1T for more details on the two grandfather recovery methods and recordkeeping requirements.

#### Line 24

The 15% excise tax on excess distributions is offset by the 10% tax on early distributions, to the extent that the 10% tax applies to excess distributions. If you entered an amount on line 4, figure the offset amount, if any, as follows.

- 1.** Add the amounts included on line 1 that were attributable to distributions from a qualified retirement plan (including an IRA), prohibited transactions, pledging of accounts as security for loans, or acquisition of collectibles,
- 2.** Subtract any amount on line 2 that is attributable to the distributions included in **1** above, and
- 3.** Subtract line 21 from the result obtained in **2** above.

If the result is zero or less, you are not eligible for an offset. If the result is greater than zero, multiply the result by 10% (the rate for tax on early distributions), and enter that result on line 24.

## Acceleration Elections

If you elected the special grandfather rule using the discretionary method, you may make (or revoke) an acceleration election for a prior year (and all later years) on a timely filed Form 1040X for any prior years to which the discretionary method of recovery applied. Indicate on Form 1040X that you are amending your return to make (or revoke) an acceleration election under Internal Revenue Code section 4980A. Attach the version of Form 5329

that was used for the year you are amending. Be sure to check the "amended return" box on page 1 and item 1 or 2 under **Acceleration Elections** on page 2 of each applicable Form 5329. You may need to amend more than one return because an amendment of an earlier year return to elect (or revoke) 100% acceleration will also require consistent treatment on later year returns.

An acceleration election becomes irrevocable once the period for

amending your return for the year of the election has expired. Acceleration applies to all distributions received during a calendar year and all later calendar years. If you have a fiscal tax year, you make the acceleration election on your return for your tax year that begins within the first calendar year for which the election applies.

**Note:** You cannot revoke a basic grandfather election you made in 1987 or 1988.

## Worksheet 1—Discretionary Method

Use this worksheet to figure your unrecovered grandfather amount under the discretionary method. Under this method, 10% of the distributions you receive during the calendar year is generally treated as a recovery of the grandfather amount. You may elect to accelerate the rate of recovery (on line 3) to 100%. If you make the election, the rate of recovery is accelerated to 100% for the calendar year for which the election is made and for all later years. See **Acceleration Elections** above for details on making or revoking an election for a prior year. Attach a completed copy of this worksheet to your 1995 return if you entered a recovery of the grandfather amount on line 21. Otherwise, keep for your records.

- |   |  |    |       |
|---|--|----|-------|
| 1 | Remaining unrecovered grandfather amount as of 1/1/95 (from line 4 of your 1994 worksheet)   | 1. | _____ |
| 2 | Distributions received during 1995   | 2. | _____ |
| 3 | 1995 recovery of grandfather amount. Enter the <b>smaller</b> of line 1 <b>or</b> 10% (.10) or, if elected, 100% (1.00) of line 2. Enter here and in Column <b>A</b> or <b>B</b> on line 21 of Form 5329 (ratably if both) | 3. | _____ |
| 4 | Remaining unrecovered grandfather amount for 1996. Subtract line 3 from line 1   | 4. | _____ |

## Worksheet 2—Attained Age Method

Use this worksheet to figure your unrecovered grandfather amount under the attained age method. Under this method, you figure the part of the distributions you received during the year that is treated as a recovery of the grandfather amount by multiplying the distributions you received by a fraction. The numerator of the fraction is the difference between your attained age in completed months on August 1, 1986, and age 35 (420 months). The denominator of the fraction is the difference between your attained age in completed months on December 31, 1995, and age 35 (420 months). Attach a completed copy of this worksheet to your 1995 return if you entered a recovery of the grandfather amount on line 21. Otherwise, keep for your records.

**Note:** If you were born after August 1, 1951, you cannot use this method.

- |    |  |     |         |
|----|--|-----|---------|
| 1  | Remaining unrecovered grandfather amount as of 1/1/95 (from line 7 of your 1994 worksheet)   | 1.  | _____   |
| 2  | Distributions received during 1995   | 2.  | _____   |
| 3a | Attained age in completed months on 8/1/86   | 3a. | _____   |
| b  | Number of completed months at age 35   | b.  | 420     |
| c  | Subtract line 3b from line 3a  | c.  | _____   |
| 4a | Attained age in completed months on 12/31/95   | 4a. | _____   |
| b  | Number of completed months at age 35   | b.  | 420     |
| c  | Subtract line 4b from line 4a  | c.  | _____   |
| 5  | Divide line 3c by line 4c. Enter the result as a percentage  | 5.  | _____ % |
| 6  | 1995 recovery of grandfather amount. Enter the <b>smaller</b> of (a) line 1 <b>or</b> (b) line 2 multiplied by the percentage on line 5. Enter here and in Column <b>A</b> or <b>B</b> on line 21 of Form 5329 (ratably if both) | 6.  | _____   |
| 7  | Remaining unrecovered grandfather amount for 1996. Subtract line 6 from line 1   | 7.  | _____   |