

2009

AVOIDING 10% PENALTY ON 401(K) QDRO DISTRIBUTION



Department of the Treasury
Internal Revenue Service

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.

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

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.

NO
10%
PENALTY

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). 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.

TIP 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.