



defined benefit plans of the employer taken into account under § 404(a)(7) have more than 100 participants under § 404(a)(1)(D), and only to the extent that nondeductible contributions to defined contribution plans do not exceed 6 percent of compensation paid or accrued to beneficiaries under the defined contribution plans.

Section 4972(c)(6)(B) is effective for taxable years ending on or after December 31, 1992. For some of the taxable years to which § 4972(c)(6)(B) applies, the § 4972 excise tax was due before the enactment of § 4972(c)(6)(B) in RPA '94. Accordingly, employers that paid the § 4972 excise tax for taxable years ending on or after December 31, 1992, may be entitled to a refund.

In order to request a refund of the § 4972 excise tax on account of § 4972(c)(6)(B) for an employer's taxable year, the employer must submit an amended Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, for that taxable year. The words “§ 4972(c)(6)(B) Refund Request” should be printed clearly and highlighted on the top right corner of the Form 5330. Under § 301.6402-2(b)(1) of the Procedure and Administration Regulations, a claim for refund must set forth in detail each ground upon which a refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The Service has identified the information listed on the attached sample worksheet (Exhibit 1) as needed to provide sufficient facts to enable the Service to evaluate § 4972(c)(6)(B) claims. This information generally relates to contributions, limits on deductions and participant compensation for all relevant qualified employer plans. The § 4972 excise tax for the taxable year, calculated consistently with the computations shown in the sample worksheet, should be entered in line 12j of Form 5330, and the remainder of the form should be completed consistently with this calculation. Employers must also include copies of all previously filed Forms 5330 that reflect § 4972 tax liability for any of the taxable years affected, as well as any additional information relevant under the particular circumstances.

The Service is issuing a field directive to the affected Internal Revenue Service Centers, to assist those Service Centers in processing refund requests under § 4972(c)(6)(B).

Refund Requests under Section 4972(c)(6)

Announcement 96-26

This announcement provides information to assist taxpayers in requesting refunds of the excise tax under § 4972 of the Internal Revenue Code for nondeductible contributions that were retroactively exempted from the § 4972 excise tax by the Retirement Protection Act of 1994 (RPA '94).

Section 4972 imposes an excise tax on employers (other than governmental and tax exempt employers) equal to 10 percent of the nondeductible contributions made to a qualified employer plan. Section 4972(c)(6)(B), added by § 755 of RPA '94, provides a limited exception to this excise tax. Under § 4972(c)(6)(B), the § 4972 excise tax does not apply to contributions to defined contribution plans that are nondeductible solely because of the § 404(a)(7) combined limit on deductions for contributions. The § 4972(c)(6)(B) exception to the § 4972 excise tax applies only if the

Exhibit 1

Worksheet for Computation of Corrected Section 4972 Excise Tax

General Information

Employer's taxable year ending (month/day/year): _____

EIN: _____

List of Plans subject to 404(a)(7)

Name of defined benefit plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Name of money purchase pension plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Name of profit-sharing and stock bonus plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Contributions to defined benefit and money purchase pension plans that are deductible (before giving effect to section 404(a)(7))

- 1. Contributions paid for year:
 - (a) to defined benefit plans listed above _____
 - (b) to money purchase plans listed above _____
- 2. Nondeductible carryover from prior years (carryover under section 404(a)(1)(E)) _____
- 3. Deductible limit for year (taking into account section 404(a)(1)(D), but not section 404(a)(7)) _____
- 4. Amount deductible before giving effect to section 404(a)(7) (lesser of the sum of lines (1)(a), (1)(b) and (2), or line (3)) _____

Contributions to profit-sharing and stock bonus plans listed above that are deductible (before giving effect to section 404(a)(7))

- 5. Contributions paid for year to profit-sharing and stock bonus plans listed above _____
- 6. Nondeductible carryover from prior years (carryover under section 404(a)(3)(A)(ii)) _____
- 7. Deductible limit for year (before giving effect to section 404(a)(7)) _____
- 8. Amount deductible before giving effect to section 404(a)(7) (lesser of the sum of lines (5) and (6), or line (7)) _____

Determination of Section 404(a)(7) Deductible Limit

9. Total compensation under section 404(a)(7)(A)(i) _____
10. 25% of line 9 _____
11. Amount of contributions made to defined benefit plans necessary to satisfy the minimum funding standard of section 412 (treating the minimum required contribution as not less than the unfunded current liability, for any plan to which section 404(a)(1)(D) applies) _____
12. Section 404(a)(7) limit (greater of line 10 or line 11) _____

Determination of deductible contribution amount

13. Deductible contributions without regard to section 404(a)(7) (line 4 plus line 8) _____
14. Deductible contributions under section 404(a)(7) without section 404(a)(7)(B) carryover (lesser of line 12 or line 13) _____
15. Contributions carried over from prior years under section 404(a)(7)(B), consisting of contributions:
- (a) Attributable to contributions to defined benefit plans and/or defined contribution plans that were not exempted from section 4972 tax for the taxable year in which contributed _____
 - (b) Attributable to contributions to defined contribution plans that were exempted from the section 4972 tax for the taxable year in which contributed _____
 - (c) Total (sum of (a) and (b)) _____

Note: Line 15(c) is not necessarily the same as the sum of lines 2 and 6.

16. Deductible section 404(a)(7)(B) carryover (lesser of line 15(c), or line 10 minus line 14, but not less than zero) _____
17. Total deductible contribution amount (line 14 plus line 16) _____

Determination of nondeductible contributions exempt from section 4972 tax

18. Nondeductible contributions for the year exempted from section 4972 tax (least of: (1) line 13 minus line 14; (2) line 1(b) plus line 5; or (3) 6% of compensation of participants in the employer's defined contribution plans) _____
19. Deductible portion of nondeductible carryover contributions exempt from section 4972 tax for the taxable year in which contributed (lesser of (1) line 16 minus line 15(a), with the result not less than zero, and (2) line 15(b)) _____
20. Net section 404(a)(7) nondeductible carryover contributions exempt from section 4972 tax (line 15(b) minus line 19) _____
21. Total nondeductible contributions and carryovers exempted from the section 4972 tax for the current year (line 18 plus line 20) _____

Determination of corrected section 4972 excise tax

22. Contributions subject to section 4972 tax (sum of all contributions made for the year or carried over from previous years under section 404(a)(1)(E), 404(a)(3)(A)(ii), or 404(a)(7)(B), minus the sum of lines 17 and 21) _____
23. Section 4972 excise tax (10% times line 22) _____