



December 12, 2023

Mr. Curt Freeman
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Tax Forms & Publications
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Darron Hamilton
Senior Technical Advisor
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RE: Needed Update to Instructions and Top of Form 5329 to Include Form 1041

Dear Mr. Freeman and Mr. Hamilton:

On behalf of the American Institute of CPAs (AICPA), we are writing to request the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) update the instructions and top of [Form 5329](#), *Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts*, to include [Form 1041](#), *U.S. Income Tax Return for Estates and Trusts*, in the list of forms that may need the Form 5329 attached. That list of forms at the top of Form 5329 should be updated to state: “Attach to Form 1040, 1040-SR, 1040-NR, **or 1041.**” (**bolded** new text, emphasis added). The Form 5329 instructions should indicate that the Form 5329 also applies to a shortfall required minimum distribution (RMD) waiver request or an opt in for the reduced 10 percent excise tax relating to a decedent’s retirement account distribution to an estate or trust that files a Form 1041.

Please forward this letter to the appropriate person who handles the Form 5329 and instructions for consideration.

We are also submitting this recommendation to the IRS website for [comment on tax forms and publications](#).

Background

Form 5329 is used to report additional taxes on IRAs, other qualified retirement plans, modified endowment contracts, Coverdell education saving accounts (Coverdell ESAs), qualified tuition plans (QTPs), Archer medical savings accounts (Archer MSAs), or health savings accounts (HSAs).

The top of Form 5329 currently says to “Attach to Form 1040, 1040-SR, or 1040-NR.” It does not include Form 1041 in the list of forms that may need Form 5329 attached.

[Form 5329 instructions](#) currently state on page 2 under “Who Must File” “You didn’t receive the minimum required distribution from your qualified retirement plan. This also includes trusts and estates that didn’t receive this amount.” However, the instructions do not indicate that the form applies to a shortfall RMD waiver request or an opt in for the reduced 10 percent excise tax relating to a decedent’s retirement account distribution to an estate or trust that files a Form 1041.

Mr. Curt Freeman
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December 12, 2023
Page 2 of 3

Recommendations

Treasury and IRS should update the instructions and top of Form 5329 to include Form 1041 in the list of forms that may need Form 5329 attached. That list of forms at the top of Form 5329 should be updated to state: “Attach to Form 1040, 1040-SR, 1040-NR, **or 1041.**” (**bolded** new text, emphasis added).

The Form 5329 instructions should indicate that the Form 5329 also applies to a shortfall RMD waiver request or an opt in for the reduced 10 percent excise tax relating to a decedent’s retirement account distribution to an estate or trust that files a Form 1041.

Analysis

Because the current instructions and top of Form 5329 do not mention Form 1041 as one of the forms to attach the Form 5329, taxpayers and practitioners with Form 1041 situations relevant to a Form 5329 are unclear what should be done and what IRS will do with such filings. Currently, IRS systems do not appear able to efficiently handle such situations. It would help taxpayers, practitioners, and IRS to clarify that the Form 5329 also should be attached to the Form 1041.

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The AICPA is the world’s largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

We appreciate your consideration of our recommendations and welcome the opportunity to discuss our comments. If you have any questions, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or Irene.C.Estrada@pwc.com; Eileen Sherr, AICPA Director – Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com.

Sincerely,



Blake Vickers, CPA
Chair, AICPA Tax Executive Committee

cc: Ms. Catherine Hughes, Estate and Gift Tax Attorney-Advisor, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury
Ms. Lisa Piehl, Program Manager, Estate and Gift Tax Policy, SE:S:E:HQ:SP:E>P, IRS

Mr. Curt Freeman
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December 12, 2023
Page 3 of 3

Ms. Laura B. Warshawsky, Deputy Associate Chief Counsel (Employee Benefits), (Employee Benefits, Exempt Organizations, and Employment Taxes) (CC:EEE:EB:QP1), Office of Associate Chief Counsel (EEE), IRS

Mr. Brandon M. Ford, General Attorney (Tax), (Employee Benefits, Exempt Organizations, and Employment Taxes) (CC:EEE:EB:QP1), Office of Associate Chief Counsel (EEE), IRS

Mr. Robert D. Alinsky, Branch Chief, Branch 3, Office of Associate Chief Counsel (PSI), IRS

Ms. Laura C. Fields, Branch Chief, Branch 1, Office of Associate Chief Counsel (PSI), IRS

Ms. Karlene Lesho, Branch Chief, Branch 4, Office of Associate Chief Counsel (PSI), IRS