

IRS Form 5329

Quick-Take: The IRS is updating its Form 5329 to include information regarding Trump Accounts along with the penalty and reporting requirements associated with these Accounts.

Background: Form 5329 is how various excise taxes and other additional taxes are reported for tax-favored accounts such as IRAs. The information usually included on this Form covers: (i) the 10% penalty or excise tax on early distributions; (ii) the 6% penalty or additional tax for excess IRA contributions; (iii) excess Health Savings Account contribution penalties; and (iv) various penalties for the failure to take a required minimum distribution (RMD.) In its most recent draft 'update,' Form 5329 will now include information regarding a distribution from a Trump Account after its 'growth period,' as a distribution that may be potentially subject to the 10% early distribution excise tax.

Updated Form to Include Trump Accounts: For early distribution purposes, the suggested updated Form 5329 implies that *post-growth period* (i.e., after the beneficiary attains age 18) Trump Account distributions will be handled similar to distributions from other qualified retirement accounts and IRA arrangements. However, Trump Accounts, described in IRC 530A, have some provisions that are not identical to the rules that apply to traditional IRAs and Roth IRAs.

- **Excess Contributions:** Part X of Form 5329 imposes a 6% excise tax on excess contributions made during a Trump Account's growth period, i.e., before the child-beneficiary attains the age of 18. While like the calculation that is made with respect to an excess contribution to an IRA, it is not the same methodology. The Form directs that this calculation is made looking at: (1) current-year excess contributions; (2) distributions of excess contributions; (3) remaining excess contributions; and (4) the resulting 6% excise tax that is imposed. Unlike the calculations that deal with an excess contribution to an IRA, the proposed Form does not appear to limit the excise tax to the year-end value of the Trump Account.
- **Additional Tax on Earnings:** Part XI of Form 5329 imposes a 100% additional tax on earnings attributable to excess contributions distributed from a Trump Account. Consequently, under the draft Form, earnings attributable to any excess contributions to a Trump Account could be offset by a penalty tax that is equal to the full amount of those earnings, which seems like a pretty harsh result. In contrast,

when a traditional IRA has an excess contribution, the earnings distributed with a corrective distribution are generally taxable, but under the SECURE 2.0 Act, those earnings are not subject to the 10% early distribution penalty solely because they are attributable to the excess contribution. Form 5329 seems to suggest that the penalty is going the other way, as it appears to impose a separate 100% additional tax on those earnings. Form 5329 will have a separate reporting field that is limited to reporting earnings on excess contributions to a Trump Account.

Conclusion: Probably one of the biggest dangers associated with Trump Accounts is the assumption that they work and are reported exactly like traditional IRAs. The proposed revisions to Form 5329 suggest that such assumptions should be avoided. Admittedly certain concepts associated with reporting IRAs will apply to Trump Accounts along with similar excise tax rules. Yet the proposed Form 5329 uses separate calculations, imposes separate penalties, and has separate earnings reporting references that will need to be implemented when Form 5329 is completed for a Trump Account.

If you would like to read additional missives, [click here](#).