

(f) Total ineligible, sum of (e)(i) through (iii)		
(g) Number eligible to participate, (d) less (f)		
(h) (i) Number of employees participating in the plan		
(ii) Percent participating, (h)(i) divided by (d). (If less than 70% complete (i) and (j). If 70% or more, do not complete (i) or (j).)		%
(i) Percent eligible, (g) divided by (d), if less than 70% see specific instructions		%
(j) Percent of eligible employees participating, (h)(i) divided by (g)		%
(k) If percent in (j) is less than 80, see specific instructions.		

General Information

(All section references are to the Internal Revenue Code of 1954 unless otherwise specified.)

Corporate employers may apply for an advance determination letter for an Employee Stock Ownership Plan which meets the requirements of section 301(d) of the Tax Reduction Act of 1975 (the Act).

The Act amended section 46(a)(1) to allow corporations to elect an 11 percent investment credit by establishing a plan which meets the requirements of section 301(d) of the Act.

A plan under section 301(d) of the Act need not be a plan qualified under section 401(a). The requirements of section 301(d) of the Act are as follows:

1. A corporate employer (employer) must establish a written stock bonus, stock bonus and money purchase pension plan, or a profit-sharing plan.

2. The plan must be designed to invest primarily in employer securities. Such securities may only be common stock issued by the employer or a corporation in control of the employer (within the meaning of section 368(c)) with voting power and dividend rights no less favorable than voting power and dividend rights of other common stock or securities convertible into such stock issued by the employer or such controlling corporation.

3. The contribution to the plan for any taxable year for which the 11 percent investment credit is elected may not be less than 1 percent of the amount of the qualified investment (as determined under section 46(c) and (d)) of the taxpayer for the taxable year.

4. All employer securities transferred to or purchased by the plan because of section 46(a)(1)(B) must be allocated to the account of each participant (who was a participant at any time during the plan year, whether or not he is a participant at the end of the plan year) as of the close of each plan year in substantially the same ratio that the compensation paid each participant (disregarding any compensation in excess of \$100,000) bears to the compensation (disregarding any compensation in excess of \$100,000 with respect to any participant) paid to all participants during that year.

5. Each participant must be entitled to direct the plan to vote his allocated stock in any way he wishes.

6. No stock may be distributed before the end of the 84th month after the month in which the stock is allocated, except in the case of separation from service, death or disability.

7. The rights of all participants must be nonforfeitable.

8. No amount shall be allocated to any participant in excess of the amount which might be allocated if the plan met the requirements of section 401.

9. The plan must meet requirements of sections 410 and 415.

10. Any amounts transferred to the plan because of section 46(a)(1)(B) may not revert to the employer if the amount of the investment credit determined under 46(a)(1)(B) is recaptured in accordance with the provisions of the Code.

3. To amend a plan previously qualified under 401(a) so that it also qualifies as a plan under section 301(d) of the Act, submit completed Forms 5309 and 4573 (if old law plan) or 5301 or 5303 in duplicate plus all the documents and statements required by such forms.

C. Where to File.—

1. An employer other than employers described in 2 below must file with the District Director for the district in which the principal place of business of the employer is located.

2. A parent company and each of its subsidiaries that adopt a single plan must file with the District Director for the district in which the principal place of business of the parent is located, whether or not separate or consolidated income tax returns are filed.

D. Signature.—The application must be signed by the principal officer authorized to sign.

Specific Instructions

For initial qualification of a plan intended to qualify under section 401(a) as well as section 301(d) of the Act or to amend a plan previously qualified under 401(a) so that it also qualifies as a plan under section 301(d) of the Act, complete only items 1 through 8 and 12 and file this Form 5309 as an attachment to Form 4573 or 5301 or 5303. If you check item 6(b) or (c) and also check item 8(c) complete item 7 for each plan, i.e., the money purchase plan and the stock bonus plan. File a Form 4573 or 5301 or 5303 for each such plan with a Form 5309 attached to each.

7(b). Plan Number.—Enter the three digit serial number you assigned this plan. Numbering starts with 001. If you have any other deferred compensation plans number these plans in sequence with existing plans.

14. Coverage.—In general, if your plan does not meet the requirements of section 410(b)(1)(A) (70-80% rule), you must submit a schedule using the format below to show that your plan meets the requirements of section 410(b)(1)(B). The question of acceptable classification is a continuing one and must be met in all subsequent years as well. You should review your classification at the time you submit your Form 5500, Annual Return/Report of Employee Benefit Plan.

1	2		3	4	5	6	7
Group	* Compensation range		Total employees	Statutory exclusions 410 (b)(2)	Other exclusions	Employees participating (3 minus sum of 4 and 5)	Participants who are officers or shareholders
	At least	But not more than					
Totals							

* The compensation brackets used must reflect the pay pattern of the employer.

General Instructions

A. Who may file.—Any corporate employer, who has elected the 11 percent investment credit under section 46(a)(1)(B) and established a plan intended to meet the requirements under section 301(d) of the Act may file their application.

B. What to File.—

1. For initial determination regarding a plan intended to meet the requirements under section 301(d) of the Act but not section 401(a) of the Code, file Form 5309 in duplicate plus a copy of the plan.

2. For initial determination regarding a plan intended to meet the requirements under section 301(d) of the Act as well as section 401(a) of the Code, file Forms 5309 and 4573 (if old law plan) or 5301 or 5303 in duplicate plus a copy of all documents and statements required by such forms.

Employees included in collective bargaining.—Section 410(b)(2)(A) provides that a plan may exclude certain employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

Nonresident aliens.—Section 410(b)(2)(C) provides that a plan may exclude nonresident alien employees who receive no earned income from the employer which constitutes income from sources within the United States.

14(a). Enter the total number of employees as of the date given on line 14. For a controlled group of corporations item 14 must be completed as though the controlled group constitutes a single entity.