

# Application for Determination of Employee Stock Ownership Plan

**(Under section 409 or 4975(e)(7) of the Internal Revenue Code)**

File with Form 5301, 5303 or 5307, whichever applies

### For IRS Use Only

File folder  
number ▶

**2 Employer's identification number**

**3 Date plan was adopted**

**Mo. Day Yr.**

**1** Name, address and ZIP code of employer

**Telephone number ▶ ( )**

**4** This application is for (complete one):

- (a)  A tax credit employee stock ownership plan under section 409
- (b)  An employee stock ownership plan under section 4975(e)(7)

**5** Type of plan:

- (a)  Profit-sharing
- (b)  Stock bonus
- (c)  Money purchase
- (d)  Money purchase and stock bonus

*Indicate the section and page number in the plan document where the following provisions will be found.*

**Section and  
Page Number**

**6** Complete the following for all plans:

- (a) Plan is designed to invest primarily in employer securities . . . . .
- (b) Each participant must be entitled to direct the plan to vote the allocated securities as required in section 409(e) . . . . .
- (c) A participant entitled to a distribution from the plan has a right to demand the distribution in employer securities and, if the securities are not readily marketable, the employer will repurchase the securities under a fair valuation formula . . . . .

**7** Only plans applying under section 409 complete the following:

- (a) All employer securities transferred to or purchased by the plan because of the requirements of section 48(n)(1)(A) as in effect before enactment of the Tax Reform Act of 1984 or section 41(c)(1)(B) shall be allocated for the plan year to the accounts of all participants who are entitled to share in these allocations . . . . .
- (b) The allocation to each participant of the employer securities transferred or purchased because of section 48(n)(1)(A) as in effect before enactment of the Tax Reform Act of 1984 or section 41(c)(1)(B) is in substantially the same proportion as each employee's compensation is to the total compensation of all participants. For this allocation, compensation of any participant in excess of the first \$100,000 per year shall be disregarded . . . . .
- (c) No allocated securities as described in section 409(d) may be distributed to any participant before the end of the 84th month after the month of allocation of such securities except for separation from service, death, disability, or as otherwise stated in section 409(d) . . . . .
- (d) The right of all participants to the securities allocated to them must be nonforfeitable . . . . .
- (e) If any part of the employee plan credit or employee stock ownership credit is recaptured or redetermined, amounts transferred to the plan because of the requirements of section 48(n)(1)(A) as in effect before enactment of the Tax Reform Act of 1984 or section 41(c)(1)(B) shall remain in the plan and, if allocated, shall remain allocated . . . . .

**8** Only plans applying under section 4975(e)(7) complete the following:

- (a) Plan is designated as an employee stock ownership plan within the meaning of section 4975(e)(7) . . . . .
- (b) The establishment and maintenance of a suspense account as required under regulations section 54.4975-11(c) . . . . .
- (c) Participants' rights to plan assets acquired by use of the exempt loan are protected as specified in regulations section 54.4975-11(a)(3)(i) and (ii) . . . . .

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct and complete.

**Signature ▶**

**Title ▶**

**Date ▶**

## Instructions

(Section references are to the Internal Revenue Code.)

### General Information

Use this form to apply for a determination letter for either a Tax Credit Employee Stock Ownership Plan that meets the requirements of section 409, or an Employee Stock Ownership Plan (ESOP) that meets the requirements of section 4975(e)(7). Use the form in conjunction with Form 5301, 5303, or 5307, whichever applies.

The plan you establish must be designed to invest primarily in employer securities. For a definition of employer securities as it pertains to your plan, see section 409(l) or section 4975(e)(8). Also see regulations section 1.46-8(d) for the formal plan requirements.

**Paperwork Reduction Act Notice.—** The Paperwork Reduction Act of 1980 says that we must tell you why we are collecting

this information, how it is to be used, and whether your response is voluntary, required to obtain a benefit, or mandatory. The information is used to determine whether you meet the legal requirements for the plan approval you request. Your filing of this information is only required if you wish IRS to determine if your plan qualifies under section 409 or 4975(e)(7).

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## General Instructions

### A. Who May File

1. Any corporate employer who elects to have the section 48(n)(1)(A) as in effect before enactment of the Tax Reform Act of 1984 or section 41, employee stock ownership credit apply and establishes a plan intended to meet the requirements under section 409.

2. Any corporate employer who has established an ESOP intended to meet the requirements under section 4975(e)(7).

### B. What to File

To receive a determination on whether a plan, initially or as a result of a plan amendment, meets the requirements of section 409 or 4975(e)(7), submit Forms 5309 and 5301, 5303, or 5307 plus a copy of all documents and statements required by those forms.

### C. How to File

Attach the completed Form 5309 to Form 5301, 5303 or 5307 (whichever applies) and file with that form.

### D. Signature

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