

# Application for Determination of Employee Stock Ownership Plan

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

File with Form 5300 or 5303, whichever applies.

### For IRS Use Only

File folder  
number ▶

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

**2** Employer identification number

**3** Date plan was adopted

Mo. Day Yr.

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 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** The 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 entire distribution in employer securities, and if the securities are not readily marketable, the employer will repurchase the securities under a fair valuation formula . . . . .
- d** A participant is entitled to the election to diversify a portion of his or her account's investment in employer securities as required under section 401(a)(28) . . . . .
- e** A participant is entitled to commence distribution of his or her account balance after attaining normal retirement age, or after death, disability, or separation from service not later than required by section 409(o) . . . . .

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

- a** All employer securities transferred to or purchased by the plan for the employee plan credit or employee stock ownership credit 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 for the employee plan credit or employee stock ownership credit 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, termination of the plan, 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 for such credit shall remain in the plan and if allocated shall remain allocated . . . . .

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

- a** The plan is designated as an employee stock ownership plan within the meaning of section 4975(e)(7)
- b** The plan provides for 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) . . . . .

**9** If the plan is applying under section 409(n) with respect to transactions under section 1042, the plan provides that the assets of the plan attributable to employer securities acquired by the plan in a sale to which section 1042 applies cannot accrue for the benefit of the persons specified in section 409(n) during the nonallocation period .

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 unless otherwise noted.)

### Paperwork Reduction Act

**Notice.**— We ask for the information on this form 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).

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . 5 hrs., 30 min.

**Learning about the law or the form** . . . .1 hr., 23 min.

**Preparing and sending the form to IRS** . . . . .1 hr., 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **IRS** and the **Office of Management and Budget** at the addresses in the instructions for Form 5300 or Form 5303.

## 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 5300 or 5303, 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 54.4975-11 for the formal plan requirements of an ESOP, and Regulations section 1.46-8(d) for the formal requirements of a Tax Credit Employee Stock Ownership Plan.

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## General Instructions

### A. Who May File

**1.** Any corporate employer who elects to have an employee plan credit apply which was earned under section 48(n) as in effect prior to the

enactment of the Tax Reform Act of 1984 and has been properly carried from such prior year 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).

**3.** Any corporate employer who amends an ESOP under sections 409 or 4975.

### 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 5300 or 5303 plus a copy of all documents and statements required by those forms.

### C. Where To File

Attach the completed Form 5309 to Form 5300 or 5303 (whichever applies) and file with the IRS district listed in the instructions for Form 5300 and Form 5303.

### D. Signature

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