



## What's New

An S corporation–sponsored ESOP must provide that no prohibited allocation of employer stock may be made to a disqualified person for a nonallocation year. This applies to all plan years beginning on or after January 1, 2005. This also applies to plan years ending after March 14, 2001, if:

1. The ESOP was established after March 14, 2001 or
2. The ESOP was established on or before March 14, 2001, if the employer maintaining the ESOP had not made an S corporation election in effect on such date.

## General Information

*Section references are to the Internal Revenue Code unless otherwise noted.*

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). Attach Form 5309 to Form 5300.

The plan you establish must be designed to invest primarily in employer securities. For a definition of employer securities and how it applies 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.

## General Instructions

### Who May File

1. Any corporate employer who has established an ESOP intended to meet the requirements under section 4975(e)(7).
2. Any corporate employer who amends an ESOP under section 409 or 4975.

### 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 Form 5309, Form 5300, and a copy of all documents and statements required by those forms. Attach the completed Form 5309 to Form 5300.

### Signature

Form 5309 must be signed by the principal officer authorized to sign.

**Privacy Act and 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 the IRS to determine if your plan qualifies under section 409 or 4975(e)(7).

Section 6109 requires you to provide your taxpayer identification number (SSN or EIN). If you fail to provide this information in a timely manner, you may be liable for penalties and interest. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities,

states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, or to federal and state or local agencies to enforce federal nontax criminal laws and to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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

**Recordkeeping** . . . 6 hr., 42 min.

**Learning about the law or the form** . . . 2 hr., 17 min.

**Preparing and sending the form to the IRS** . . . . 2 hr., 29 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224.