

Special Edition
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employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Sample Plan Language under Code §409(p) for the Transfer of an ESOP's S Corporation Shares

Code §409(p) was enacted as part of the Pension Protection Act of 2006. It requires that an ESOP holding S corporation stock cannot have a prohibited allocation during a nonallocation year. That is, no portion of plan assets attributable to employer securities may accrue or be allocated for the benefit of a disqualified person. Code §409(p)(3) provides that a nonallocation year occurs when disqualified persons (as defined in §409(p)(4)) own or are deemed to own 50% of the outstanding stock of the S corporation, taking into consideration synthetic equity as defined in Code §409(p)(6)(C) and Regulations §1.409(p)-1(f). During a nonallocation year, prohibited allocations are deemed to be distributed and excise taxes are imposed on the S corporation pursuant to §4979A. Additional consequences of a nonallocation year relate to plan qualification and the tax status of the corporation.

Regulation §1.409(p)-1(b)(v) provides that a nonallocation year may be prevented by transferring assets from the accounts of disqualified persons to the non-ESOP portion of the plan. **Sample plan language** to provide for such transfers is posted on our web site: www.irs.gov/ep. Under this plan provision, the Plan Administrator calculates the number of shares that need to be transferred in order to prevent the occurrence of a nonallocation year. The employer needs to provide the Plan Administrator all the information needed to perform this calculation, including information on synthetic equity.

Comments on this language should be sent by August 15, 2008. However, this sample language can be used now pending the comment period.

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IRS Nationwide Tax Forums

The 2008 **IRS Nationwide Tax Forums** will be held at six locations across the country this summer. The EP seminars are "**401(k) Plans for Self-Employed Individuals**" and "**Retirement Plan Choices for Self-Employed Individuals**." For the first time, Employee Plans will be offering a workshop at the Tax Forums called "**Retirement Plan Pitfalls Workshop (Use IRS Fix-It Guides to Keep Your Clients Out of Trouble)**" where attendees will learn how to use the IRS "Fix-It Guides" to identify and correct four of the most frequent pension errors found by the IRS.

Attention All Actuaries

See our new **Joint Board for the Enrollment of Actuaries** web page for News from the Joint Board, Enrolled Actuary Information, Joint Board Examination Program, Renewal of Enrollment, Information of the Joint Board, Office of the Executive Director and Frequently Asked Questions.