

## Internal Revenue Code Section 4975(e)(2)(E)

### Tax on prohibited transactions

(e) Definitions.

(1) Plan. For purposes of this section, the term "plan" means—

- (A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),
- (B) an individual retirement account described in section 408(a),
- (C) an individual retirement annuity described in section 408(b),
- (D) an Archer MSA described in section 220(d),
- (E) a health savings account described in section 223(d),
- (F) a Coverdell education savings account described in section 530, or
- (G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

(2) Disqualified person. For purposes of this section, the term "disqualified person" means a person who is—

- (A) a fiduciary;
- (B) a person providing services to the plan;
- (C) an employer any of whose employees are covered by the plan;
- (D) an employee organization any of whose members are covered by the plan;



(E) an owner, direct or indirect, of 50 percent or more of—

- (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

- (ii) the capital interest or the profits interest of a partnership, or
    - (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);
  - (F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);
  - (G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—
    - (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,
    - (ii) the capital interest or profits interest of such partnership, or
    - (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);
  - (H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or
  - (I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G). The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).
- (3) Fiduciary. For purposes of this section, the term "fiduciary" means any person who—
- (A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
  - (B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
  - (C) has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated

under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

- (4) Stockholdings. For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).
- (5) Partnerships; trusts. For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).
- (6) Member of family. For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.
- (7) Employee stock ownership plan. The term "employee stock ownership plan" means a defined contribution plan—
  - (A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and
  - (B) which is otherwise defined in regulations prescribed by the Secretary. A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n), 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).
- (8) Qualifying employer security. The term "qualifying employer security" means any employer security within the meaning of section 409(1). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.
- (9) Section made applicable to withdrawal liability payment funds. For purposes of this section—

- (A) In general. The term "plan" includes a trust described in section 501(c)(22).
- (B) Disqualified person. In the case of any trust to which this section applies by reason of subparagraph (A), the term "disqualified person" includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.