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## msk secures important private letter ruling from irs

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### practice areas

transactional tax

MSK has secured an important Private Letter Ruling (PLR) for companies that have had generous plans and want to do a substantial ESOP transaction. In the past, it was not uncommon that a company had to cut back on its existing programs in order to implement a significant ESOP transaction. As a result of this ruling, these companies will not necessarily have to choose between the two.

The facts involved a company with money purchase pension and 401(k) plans to which it had historically contributed about 15% of compensation. The company wants to adopt an ESOP and do a leveraged transaction that would require annual contributions of about 25% of compensation to pay principal.

Prior to EGTRRA, the IRC 415 limitation was the lesser of \$35,000 or 25% of compensation. Under EGTRRA, the IRC 415 limitation is the lesser of \$40,000 or 100% of compensation.

The PLR states, in effect, that the IRC 404(a)(3) limitation is separate and independent of the IRC 404(a)(g) limitation, subject to the IRC 415 limitation of the lesser of \$40,000 or 100% of compensation. In effect, the company can (1) proceed with the ESOP transaction and make its 25% of compensation contribution to pay principal and an unlimited amount to pay interest, and (2) continue its money purchase pension and 401(k) programs as it has in the past, subject to (3) the IRC 415 limitation that no employee can receive more than the lesser of \$40,000 or 100% of compensation.