

802.35
802.10

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, October 30, 2013 2:23 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: RE: Two questions.

So do you think (b) would preclude former employees?

[REDACTED]

From: [REDACTED]
Sent: Tuesday, October 29, 2013 3:02 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: RE: Two questions.

Well, the Rule reads as follows:

- (a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;
- (b) The trust is controlled by a person that employs the beneficiaries and,
- (c) The voting securities acquired are those of that person or an entity within that person

In this case, the beneficiaries are former employees and, thus, the trust would not be controlled by a person that employs the beneficiaries. But, the second prong would apply anyway.

Thank you.

[REDACTED]

From: Verne, B. Michael [<mailto:MVERNE@ftc.gov>]
Sent: Tuesday, October 29, 2013 2:56 PM
To: [REDACTED] Walsh, Kathryn
Subject: RE: Two questions.

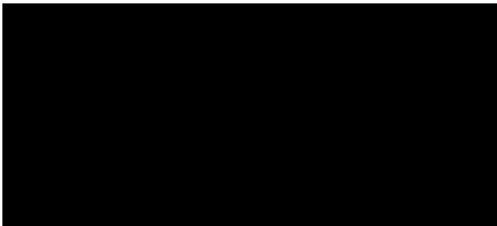
The ESOP exemption has three conditions. If those are all met, the ESOP can acquire stock of the company that created and controls it. I don't think it matters whether that is for the benefit of current or former employees as long as those three conditions are met.

As long as the holders retain the same interests in the corporation that they held in the LLC, the conversion is exempt under 802.10 for all holders.

From: [REDACTED]
Sent: Tuesday, October 29, 2013 2:50 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Two questions.

I know there is an exemption for acquisitions of a company stock by a trust for its current employees. Does that same exemption apply to acquisitions by a trust for former employees?

And if a LLC converts to a corporation and all holders retain the same interests, is that also exempt even though some may hold minority positions that would not have been subject to the Act with respect to a LLC but would be for a corporation?



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No - If the ESOP is for the benefit of former employees, I think we can interpret the exemption to cover that as well. It is certainly substantively the same as if it is for the benefit of current employees

Bmw
10/30/13