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The Game-Changing Rules to Rollover as Business Start-ups (ROBS) Strategies

Access to liquidity to fund a new business interest can be a challenge. Financial advisors offer that one of the hottest financing options at present is a Rollover as Business Start-ups (“ROBS”) strategy. Commercial business projects funded from 401(k), 403(b), or traditional IRA plans utilize retirement funds to capitalize an enterprise.

Alternative Funding Source

Qualified Employer Securities (“QES”) transactions, these alternative investment funding sources are increasingly the source of funding for newly formed C-corporation entities with authorized, yet unissued stock shares. In some cases, these new owners have a history of poor credit. QES transactions offer an opportunity to fund an entrepreneurial scheme within the traditional C-corporation model without rejection from would-be commercial lenders. The popularity of ROBS strategies backed by QES transactions in recent years reflects a growing trend fostered by entrepreneurs seeking tax-free forms of capital investment for their start-up ventures.

Convertible Asset, Tax-Free Incentive

QES transactions have the potential to incentivize capital investment in a business venture. Convertible 401(k) plan securities enable an entrepreneur to request tax-exempt distribution from an employer-sponsored retirement fund for purposes of business investment. The best designed ROBS strategies are QES transactions with Roth 401(k) rollovers, and pre-paid income tax. Proceeds from any third-party acquisition of company stock go to the entrepreneur's 401(k) or other retirement account. Income tax is also deferred until distribution or sale of those shares in the future. The result is a game-changing strategy - an account that remains tax-free in-perpetuity.

Federal ERISA, IRS Regulation

A loophole in Employee Retirement Income Security Act of 1974 (ERISA) fiduciary rules and IRS guidelines, [rules to QES transactions permit rollover of funds from a former employer's tax-qualified retirement plan](#). To meet rules of eligibility, QES transactions must fulfill federal ERISA compliance audit and Internal Revenue Service ("IRS") Form 5500 tax filing. An annual business valuation is also required of enterprises funded with QES transactions under federal law. While the [IRS subjects ROBS strategies to specific tax reporting criteria](#), QES transactions are considered compliant under law.

In 2016, Arizona proposed legislation, SB 1005, exempting venture-capital managers from registration of "investment advisers" requirements, including professionals responsible for the management of employer-sponsored pension funds. Since 2017, ERISA reforms have restated federal rules to prudential duty by financial professionals, now mandated to meet bonding and fiduciary requirements. February 14, 2018, [SB 1005 failed in the Arizona Senate](#), effectuating federal rules to venture-capital manager fiduciary responsibility by default.

Contact a Corporate Law Attorney

An attorney experienced in advising financing strategies can assist a client in executing a "qualified employer securities" transaction. If you are interested in a ROBS alternative financing strategy for a C-corporation, consult with an attorney about ERISA and IRS compliance before structuring an investment deal. Thrasher PLLC Law Offices is a licensed attorney at law practice in Tucson, Arizona specializing in matters of business investment. Contact [Thrasher PLLC Law Offices](#) for consultation about a QES backed Rollover as "Business Start-ups" financing strategy.