



K-State Research and Extension



**Use your 401(k) or IRA as capital
to start or buy a business –
*without paying taxes or penalties***

Accelefund

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Mickey Parker, CPA



- Grew up in Manhattan; K-State graduate in Accounting & Finance
- Experienced Controller and CFO for successful entrepreneurs—all privately held
- Licensed CPA in Kansas
- Helping entrepreneurs use their retirement funds as startup capital since 2011



Importance of boosting Kansas businesses and communities

First Friday e-call from February 2024; Amber Dunn from NXTUS, Wichita.
Some trends of note that she provided:

- **More entrepreneurs means less poverty in a community.** Research indicates that for every 1% increase in a state's entrepreneurship rate, poverty decreases by 2%.
- **More startups mean more jobs.** She said **virtually all net new jobs come from small and young businesses.**
- **Retaining and attracting modern talent grows the economy.** Modern talent strengthens the ecosystem that helps innovators thrive.



Importance of boosting Kansas businesses and communities

Most common reason people don't start a business is lack of funding or financial resources

- Lack of education on sources of funding

Goal today is to educate you on a source of funding that most people do not know about – even though it has been used for decades.



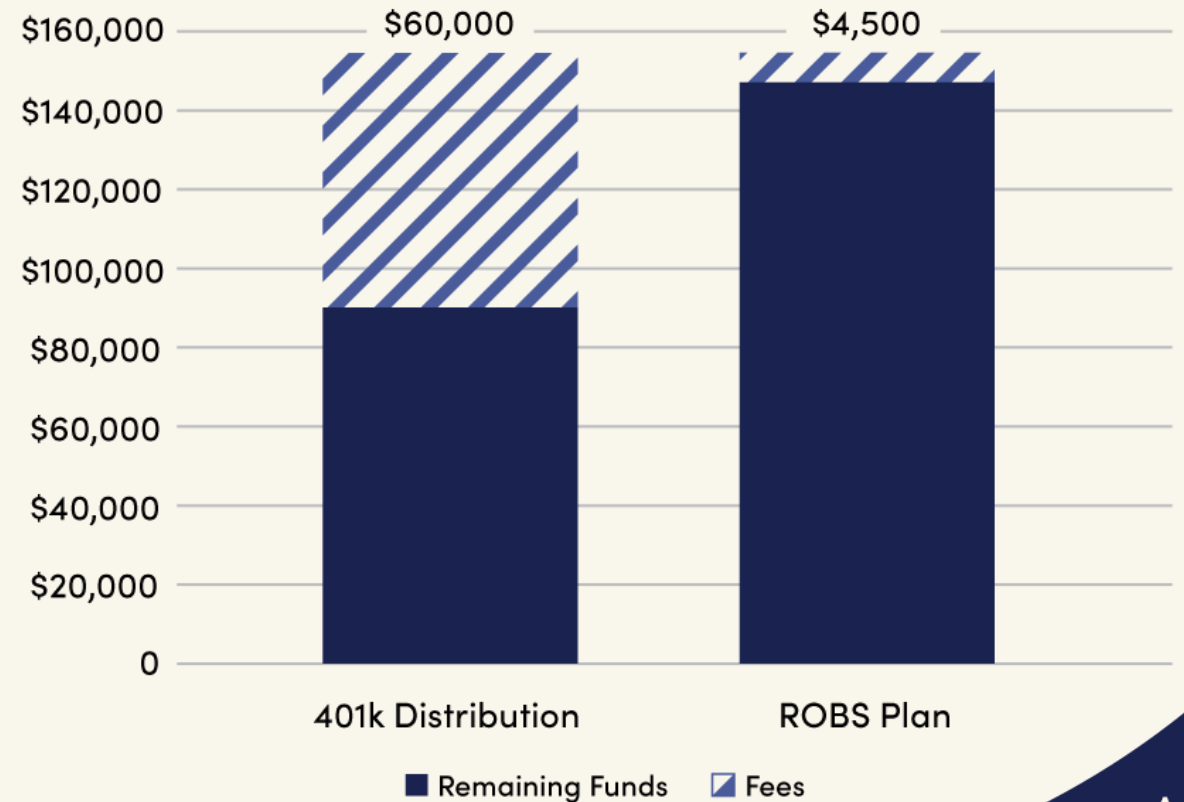
Common or traditional sources of capital include:

- Friends and family
- Home equity loan
- Bank financing
- Credit cards
- Partners
- Personal savings and investments (bootstrapping)
 - Your own IRA or 401(k) or other retirement accounts
 - Distribution
 - Loan
 - **ROBS (bootstrapping with a "k")**



A distribution from your retirement account is a taxable event

- Federal income tax at standard tax rate (24%)
- State income tax at standard tax rate (6%)
- Early withdrawal penalty if under 59 ½ = 10%
- Avoided with a ROBS



Taking a loan from your 401(k) uses valuable cash flow to pay back principal and interest

- Limits on loans - \$50,000 or 50% of vested balance
- Repaid in 5 years
- Quarterly and substantially equal payments

On a \$50,000 loan, approximately \$11,500 in annual payments – cash that is not available to grow your business

- Avoided with a ROBS



What is a ROBS – Rollover for Business Startups

- A method to invest funds from retirement accounts - on a pre-tax basis - into your own business
- The stock of the business becomes an investment option in the retirement plan.



What is a ROBS – Rollover for Business Startups

Why a ROBS could be a good fit

- Start your business debt-free
- No paying taxes or early withdrawal penalties
- Equity investment in your business
 - No repayment required
 - No notes to sign
 - No interest to pay
- Use as equity injection for SBA loan



A ROBS is different from a self-directed IRA

- With ROBS, you can manage your business
- With ROBS, you can pay yourself a salary
- With ROBS, you can own 100% of your business



A roadmap to investing in your business with ROBS



Form a closely held business corporation (C-corp)



Set up new retirement plan for your C-corp (401k/profit sharing)



Rollover existing retirement funds to new retirement plan



Your participant account in the new plan buys stock in your C-corp



Funds transferred from retirement plan to corporate bank account



You now have funded
your corporation and
can go start or buy
a business

Process takes about 2-3
weeks to complete.



Why do I have to use a C-corp?

- IRS/DOL requirement
 - Qualifying Employer Securities - stock of the employer sponsoring the retirement plan
-
- 21% flat tax rate
 - Health insurance & other fringe benefits are 100% deductible
 - Double taxation is generally not an issue—only when dividends are paid



How do I set up a ROBS?

- Use a ROBS provider
- Setup fee usually around \$5000
 - Most require full upfront payment of fee
 - Minimum rollover is \$50k – to make it economically feasible
- Administration of the retirement plan ranges from \$99 to \$150 per month
- Retirement Plan Startup Cost Tax Credit - 3 years
 - 50% of costs to set up and administer the plan
 - \$500 or # of participants x \$250 - per year



The big question—is it legal?

- Yes, ERISA Act of 1974 established the rules for private company retirement plans
- Using **specific exemptions** allowed by IRS code and ERISA, the employer's stock can be an investment option in the plan
- IRS issued a memo in 2008 that provided guidance on steps to ensure compliance



The big question—is it legal?

- IRC 4975(d)(13) and ERISA 408(e): A profit sharing plan can purchase “Qualifying Employer Securities” without being in violation of the prohibited transaction rules.
- IRC 4975(e)(8): Definition of Qualifying Employer Securities includes stock of the Employer.
- ERISA 408(e): A plan’s acquisition of “Qualifying Employer Securities” which is otherwise a prohibited transaction is exempted from ERISA’s prohibited transaction rules and its limitations if certain conditions are met: the acquisition or sale is for “adequate consideration” (ERISA 408(e)(1)); the plan is an “eligible” defined contribution plan (ERISA 408(e)(3)(A)).
- ERISA 407(b)(1): ERISA’s limitation on the acquisition and holding of Qualifying Employer Securities (normally 10% of plan assets) does not apply to “eligible individual account plans” (ERISA 407(b)(1)). In addition, these plans do not violate ERISA’s diversification and, to the extent it requires diversification, prudence requirements (ERISA 404(a)(2)).
- ERISA 407(d)(3): As long as it includes appropriate plan language, a profit sharing plan is an “eligible individual account plan” for purposes of the exemption from the 10% limitation on acquiring and holding employer securities.



What retirement funds qualify for ROBS?

- 401k
- 403b
- 457b
- IRA
- Profit sharing
- SEP
- SIMPLE plans
- Government thrift plans

You do not have to rollover all the funds in your existing account. Only use what you need to start or buy your business.



What accounts can't be transferred to a ROBS?

- Roth IRA
- IRA inherited from a non-spouse



Can I use my 401k from my current employer?

- Most plans require you separate from employment to get access to funds
- There are exceptions. Check with your HR department or custodian.
- Specific question to ask: ***Can I take any portion of my account and transfer it to another qualified plan while I am still working?***
- Referred to as an in-service distribution



What type of business can I start or buy?

- Virtually any type of business that provides goods or services
- Exception is lending to others
 - Direct lending
 - Receivables factoring
 - Passive investing



Examples of Businesses Funded

KS	\$ 63k	Wife and husband purchase existing franchise in Hutchinson
KS	\$131k	Wife and husband start sandwich / coffee shop in rural south-central Kansas
TX	\$492k	Purchase real estate and online business
KS	\$429k	Engineer started residential home building company
TX	\$120k	Business consulting services
MO	\$197k	Imprinting
FL	\$216k	Retail aquarium store
FL	\$102k	Brother & sister purchased barber shop
FL	\$472k	Purchased food distribution company
KS	\$317k	Used \$125k as equity injection along with SBA loan to purchase roofing/exterior business
KS	\$171k	Former Kellogg's executive – consulting to food industry
SC	\$252k	Rental property - Actively managing
MO	\$188k	Used as equity injection along with SBA loan to purchase commercial electrical contractor (generated enough cash within two years to buy the stock back for the retirement plan)



Are there any other requirements to use a ROBS?

- Person rolling funds over must be a bonafide employee of the C-corp and they should receive W-2 compensation from the business
- Compensation must come from revenues of the business, not transferred funds
- The business must refrain from prohibited transactions



What's considered a prohibited transaction?

- These transactions are primarily self-dealing, meaning you cannot do business with yourself or a related entity
- Examples: apartment rental to relatives, doing business with another entity you own
- Talk to your ROBS provider about your unique situation



Can I use a ROBS to capitalize an existing business?

- It's possible, but the business must be a C-corp
- Required to obtain fair market value appraisal from qualified independent appraiser
- Talk with your CPA or advisor about your unique situation



What are my options when setting up my new retirement plan?

- Profit Sharing Plan
 - Employer discretion on annual basis – up to 25% of comp
- 401(k) salary deferral plan
 - Employees defer a portion of salary and company matches up to a fixed %
- All eligible employees will be allowed to participate



What do I need to do to maintain my retirement plan once it's set up?

- Generally, your ROBS provider will provide all the support services to help you maintain your retirement plan, such as:
 - Compliance testing
 - Annual 5500 and 8955-SSA
 - Individual employee benefit statements
 - Summary annual report
 - Distribution and 1099-R processing
 - Other services
- Monthly fee ranging from \$99 to \$150



How do I exit a ROBS?

- Use company or personal funds to buy back stock from the retirement plan
- Sale of the company
 - Usually an asset sale – proceeds belong to company
 - Once company is all cash, company buys stock back from the retirement plan
 - Cash goes into participant's account
 - Transfer out of retirement plan to traditional IRA at custodian of your choice
- Terminate due to insolvency – stock becomes worthless



ROBS Exit Example

- Client used \$102k to start metal/glass fabrication business in 2007
- Business currently valued at \$2.6 million
- Exit strategy
 - Take an in-kind distribution of the stock owned by retirement plan
 - Client then owns the stock personally
 - Taxable event – using a strategy called Net Unrealized Appreciation
 - Only the original investment is currently taxable
 - Unrealized appreciation is taxed only when stock is sold
 - If held over one year, can get capital gains treatment on unrealized appreciation.
- We are not tax advisors so always consult your own tax/legal advisor



Summary

- 1 ROBS is a financing solution that allows business owners to invest their retirement funds in their own business without paying taxes, penalties or taking out a loan
- 2 Specific guidelines must be followed to be compliant
- 3 Work with a ROBS provider for a simple and easy rollover process



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- **ROBS provider - Rollover for Business Startup**
 - ROBS is a funding option that has been around for decades allowing the use of retirement funds to start or buy a business without paying taxes or penalties on a distribution
- **Support business owners nationwide**
- **Provide educational seminars on using retirement funds as startup capital - virtual or in-person**





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*Learn how to use your 401(k) or IRA
to start or buy a business*

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