Plan Start Up

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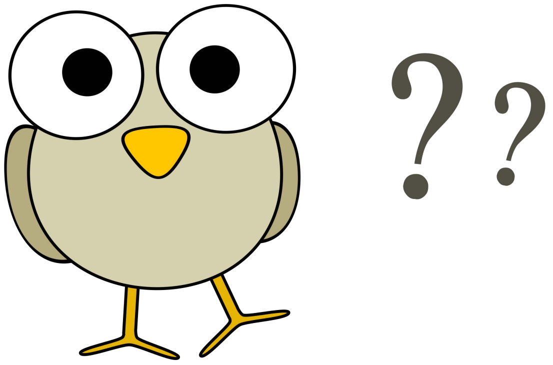
First Questions

Do you want to:

- Start a Business?
- Buy a Business or Franchise?
- Expand an Existing Business?

  or
- Dive into Real Estate?



What Money Can Be Used?

- 401(a): Pensions, Profit Sharing, Thrift & Savings, Stock Bonus, ESOPs
- 401(k), 401(k)Roth Accounts
- 403(b) “Teachers’ Annuities”
- 457 State, County & City
  - (government plans only)
- U. S. Gov. Thrift & Savings
- IRAs:
  - Traditional IRAs
  - Rollover IRAs
  - SEPs & SIMPLEs
- Except – Dead Money
  - Roth IRAs
  - Inherited Non-spouse Accounts

Who Can Use It?

Those No Longer Working:

- Who have or will have terminated employment with 401(k) employer,

Those Still Working:

- Whose employers offer "In Service Distributions"
- Some employer does not want to release the funds (i.e. golden handcuffs),

Pre – age 59½ :

- OK – Employer Match
- OK – Employer Contributions
- Not OK – Salary Deferrals [401(k)]

Are you currently in a 401(k) Plan?

- **No such thing as a “Stand Alone” 401(k).**
- **401(k) refers only to the “Salary Deferral”,**
  - The money withheld from your paycheck.
- **The “Employer Match” is 401(m).**
- **Both are features of a Profit Sharing Plan.**

In-service, Non-hardship, Non-suspension Withdrawals

- **In-service**
  - You still work there.
- **Non-hardship**
  - You cannot rollover "Hardship Distributions"
- **Non-suspension withdrawals**
  - They do not kick you out of the Plan for moving a portion of the money to an outside investment.

It is permissible, but not mandatory, that your employer offer these.

Partial list of companies that allow some form of "in-service, non-hardship, non-suspension withdrawals" (aka "in service distributions") from 401(k) Plans

Abbott Labs
Allstate
American Airlines
Ameritech
Anheuser Busch
AP Amoco
AT&T
BB&T
Belks
Bell Atlantic
Bell South
Black & Decker
Boeing
BP
Caterpillar
CBS/Westinghouse
Delphi Auto
Deluxe Fin'l Services
Dominion Resources
Duke Power
Dupont
Eli Lilly
Equitable
PPG
Erickson
Exxon
First Union
Ford
GM
John Deere
Lowe's
Lucent Techs
Marsh & McLennan
Monsanto
Nationwide
Philips 66
Philip Morris
PPG
Quest Comm
RJR
Sara Lee
Scana
Sears
Sherwin Williams
Southern Company
Southwest Bell
Tiffany's
Toyota
US Steel
Verizon
Whirlpool
Winn Dixie

(Note: since plans can amend, this may not be complete, and some companies listed may have amended to not allow such distributions. Please ALWAYS check the plan document or call the plan administrator for verification.)

Using Retirement Plan Funds Has Always Been in the CODE

- **1939 – about 4 sentences**
  - You be very careful lending money
  - from the Plan to the Employer
- **1954 – Moved to §504**
  - Named Prohibited Transactions
- **1960s – Studebaker**
  - Borrows all the money our of its Plan
  - Goes bankrupt
  - Employees lose pensions

1974

- ERISA Passed by Congress.
  - Loans from Plan to Corporation – Forbidden.
  - Investment in Employer Securities – Continues.
  - "If you have a Corporation and the Corporation sponsors a ERISA Title I Plan, then . . .
  - An Individual may be the Trustee of that Plan . . .
  - Who is the most trust worthy individual you know?
    - Extended to un-incorporated Plans [Keogh] in 1983, but not to IRAs [Individual Retirement Plans].

What About Self Dealing?

The Internal Revenue Code states:

- even though you are self-dealing to beat the band,
- this is not a prohibited transaction if –
- then lists 23 statutory exemptions –
- # 13 – is oddly written –
  - "If you are exempt from section 406 of such Act
  - by reason of section 408(e) of such Act.
  - You need to know that "such Act" means ERISA – Employee Retirement Income Security Act of 1974

Step 1 – The CORPORATION

C–Corp.

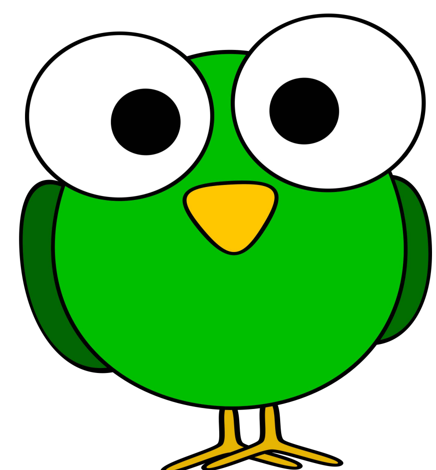
The Law requires you have a Corporation:

- even if you are already doing business as another type of entity,
- a Corporation because ERISA §407 requires "Stock",
- a C–Corp. because Sole Proprietors, Partners and S–Corp Shareholders are Excluded by § 4975(f)(6) and ERISA §408(d),
  - LLC Members are Partners under the Code and
  - LLCs do not have stock as required by ERISA.
- For any pass-through entity this would be too good to be true.

Step 2 – The ERSOP® PLAN

The Law requires a Profit sharing Plan:

- a Profit Sharing Plan because of ERISA §407(d)(3),
  - Eligible Individual Account Plan
  - Individual Directed Investments



Step 2 – continued:
To Defer or not to Defer?
To 401(K) or not to 401(k)?

ERSOP®

Profit Sharing Plan & Trust

- **The Law further states that:**
  - even though it is permissible to have a 401(k) or Salary Deferral Feature
  - it is not part of the "eligible individual account plan"
  - it must be segregated and accounted for separately.
- **We will be pleased to add a 401(k) if you require one**
  - to attract or maintain a certain caliber of employee
  - to continue a pre-existing plan.
- **401(k) plans have significant downsides.**

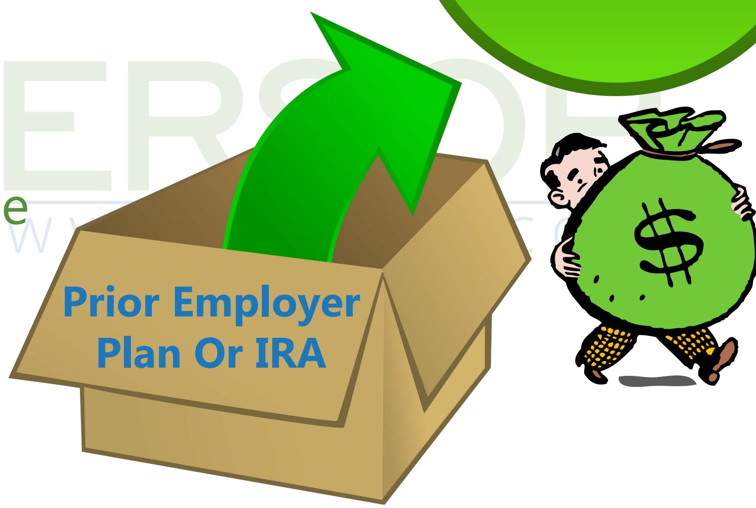
Step 3 – The ROLLOVER

At your favorite bank, YOU establish a checking account for your new C-Corporation and another checking account for the Profit Sharing Plan & Trust.

Step 3 cont.– The ROLLOVER

C–Corp.
Checking
Account

ERSOP®
Profit Sharing
Paln & Trust
Checking Account



- We assist you with the rollover of your accounts from IRAs and 401(k)s into your ERSOP® Profit Sharing Plan & Trust checking account at your favorite bank.

- Still it generally takes just 2 weeks to get the money to move.

We never touch your money!

Step 4 – The FUNDING OF THE CORPORATION
No Taxes, No Penalties, Not a Loan

Minimum $1000 personal stock purchase

Or

Whatever your CPA deems to be your minimum capital requirement.

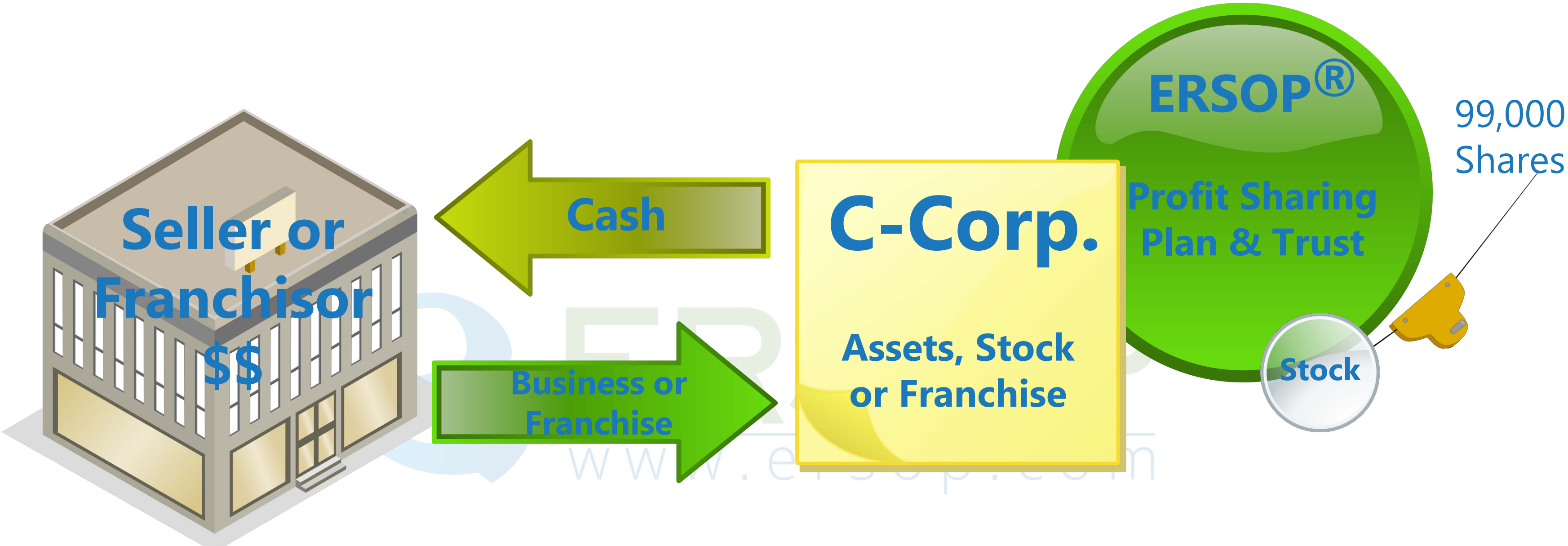
The more the better.

- **You as Trustee** issue from the Trust checking account the first check to be received by the C-Corp checking account.
- **You as President** issue the first stock certificate back to you as Trustee for the benefit of your rollover account.

Step 4 – cont.
100,000 Shares @ $1 per Share

Reimburse yourself for our fees, your attorney's and CPA's fees, and any other cost you have advanced on behalf of the corporation. They are deductible to the Corporation and not deductible to you. The corporation must reimburse you in order for it to take the deduction.

Step 5 – The PURCHASE: Franchise or Business Asset(s)



The C-Corporation, with its initial capital and some additional borrowing if need be, invests in a new or existing business or franchise.

Startup Costs

Corporation

and

ERSOP® Plan

$4,500

Annual Fees

✓ Administration: *$900 ?

- billed at the end of the year
- plus a per participant/account fees in excess of 5 accounts,
- less 50% [limit $500] non refundable tax credit first 3 year.

– Allocations of Trust Gains & Losses

– Allocations of Contributions & Forfeitures

– Discrimination Testing, Class Allocations

– Participant Statements

– Summary Annual Reports

– Summary of Material Modifications

– IRS Form 5500

  – $25 per day, $15,000 max penalty for failure to file

– Exit Planning

– Continuing Situation Reassessment