

## Funding a New Business With a 401(k)

"Take Two" is an ongoing series about first-time business owners over 50 by Angus Loten <sup>1</sup>, a small-business reporter for the Wall Street Journal.

**After a year caring** for his wife and his elderly mother, Steve Weinrich felt like he could be running his own home-care service – literally. Unemployed at the time, the 56-year-old software engineer had spent most of his 30-year career at corporate giants like Microsoft, Sprint and Bloomberg, and he was ready to work for himself. There was only one hitch: Launching a home-care franchise costs up to \$80,000, and Weinrich simply didn't have access to that kind of cash. Or so he thought.

With a little-known and somewhat controversial tax move, Weinrich was able fund his enterprise with a \$150,000 from an old 401(k) account, without paying early-withdrawal penalties. Such a move is called a Rollover as Business Startup, or ROBS, and a small but growing number of older workers are taking the opportunity, according to the Internal Revenue Service. A recent report by the Treasury Inspector General for Tax Administration found that, overall, about 15% of participants have withdrawn cash before age 60, up from 12.3% three years ago, and led by 40- to 50 year-olds. And while the economic slump has certainly prompted to some of those early withdrawals, some of the growth is due to increased interest in RBOS.

The financing move has gotten popular enough to draw the attention of the Internal Revenue Service, which has suggested that these kinds of rollovers "seek to exploit the generous tax benefits enjoyed by qualified retirement plans," according to IRS guidelines issued in October 2008. The agency has called for added scrutiny on firms that use them – that last thing any new owner wants. "It reminds me of the 1970s when tax shelters were really hot, then years later people were hit with huge tax bills," says Barbara Weltman, a small-business tax expert based in New York.

Not true, says David Nilssen, co-founder of Guidant Financial Group Inc., a small business financing firm based in Bellevue, Wash., that specializes in rolling over retirement plans for business capital. About 5,000 of its clients have used 401(k) savings to start new businesses, including 1,600 new clients this year alone—a 30% increase over 2010. Nilssen says the IRS has never called these kinds of rollovers non-compliant, only that it would watch firms funded by 401(k) rollovers more closely: "We've had clients audited as part of this effort and none of them have had any further action taken against them," he says, adding that Guidant pays for an outside accounting firm to help any client with an ROBS-related audit. The bigger risk, he says, may be on the investing side: If the business goes south, the retirement savings disappear too. But at the same time, he says these new business owners also benefit from being debt free.

With Guidant's help, Weinrich says he followed the typical steps: He formed a corporation with its own 401(k) plan, then rolled over his old 401(k) into the new plan, and used those funds to purchase stock in his new corporation. With the retirement account holding stock in his company, Weinrich then had cash to finance his franchise, including a one-time \$40,000 franchise fee among other costs.

So far, Weinrich's not worried. Like Nilssen, he points out that rollover financing is perfectly legal, though he admits it can be nerve-racking for a small-business owner to keep a 401(k) plan in compliance without help – one reason he pays Guidant \$1,200 a year for its services. With his new funds, Weinrich launched a Home Helpers franchise, which provides in-home, non-medical care for older people, such as assistance preparing meals, housekeeping and grocery shopping. The Cincinnati-based company has more than 600 franchisees across the country, but Weinrich's was the first in the Kansas City area, where he and his family lived.

Working together from their home, Weinrich and his wife manage a team of about a dozen part-time employees with the kind of hands-on approach he rarely saw in the corporate world. Despite plenty of competition, they were able to add three new clients within the first three months of the year, growing the business by 30%. And he doesn't see the growth ending soon. "Baby boomers are hitting age 65 at a rate of 10,000 a day, and these are just the children of our clients. It's really a growing market," he says. Besides, he's happy to have escaped the corporate grind, even if it means gambling with his old-age security: "Everything in the home-care business is about people. There's no inventory, there's no equipment, there's no deliveries. Just people that need your help



**Name :** Steve Weinrich  
**Age :** 56

**Old Job :** Software Engineer, Bloomberg L.P. (New York, NY)  
**Employees :** 12, 900  
**Locations :** 166

**New Job :** Co-owner of Home Helpers (Kansas City, MO)  
**Employees :** 12  
**Locations :** 1

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<sup>2</sup><http://www.smartmoney.com/personal-finance/employment/how-small-businesses-can-beat-deadbeats-1299258760321/>

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