On Law

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CUMMINGS • MCCLOREY DAVIS & ACHO, P.L.C.
ATTORNEYS AND COUNSELORS AT LAW

Attorney Profiled as *Crain's* American Dreamer

Ronald G. Acho

In many ways, Metro Detroit was built by the hopes and dreams of people from other countries. The June 2, 2014 edition of *Crain's Detroit Business* included an "American Dreamers" feature highlighting local immigrants who have had business success. Ronald Acho, co-founder of the Firm, was nominated and selected to be recognized as one of those people.

Mr. Acho's family fled Iraq when he was four years old to escape religious discrimination against Christian Iraqis and to pursue a better life. At age 20 he watched his family's Detroit grocery store be torched to the ground during the riots of 1967. The devastation left his family penniless, without insurance or building ownership. Ambitious and determined, Mr. Acho worked as a clerk at Ford Motor Company's Rouge Plant while sending himself through college. He went on to earn his law degree and was hired by CMDA in 1975. Since that time, Mr. Acho has helped grow the firm and has spent countless hours giving back to society.

"With opportunities come responsibilities," explained Mr. Acho. "It is important to give back to the community, especially to those who are less fortunate, so they, too, have the opportunity to improve their lives. In the long run, that helps us all."

Crowdfunding Bill Intended to Assist Entrepreneurs and Small Businesses

Robert J. Hahn

On December 30, 2013, Governor Snyder signed into law Public Act 264, Michigan Invests Locally Exemption (MILE), which permits crowdfunding for small business. It is an intrastate exemption from the State of Michigan and Federal securities laws, whereby Michigan residents can invest in Michigan businesses.

Crowdfunding refers to funding a company by selling a small amount of equity to a large number of investors. Michigan is one of the first states to give people the opportunity to support growing local businesses such as restaurants, manufacturers, merchants, and service providers, by helping to fund their startup and growth in exchange for a return on investment. These investments can be made online. If the entire deal stays within the State, the Federal Government does not have jurisdiction, and Federal securities regulations do not apply to the transaction. On signing the bill, Governor Snyder said that the new law will streamline government procedure and eliminate unnecessary regulation.

Raising capital is a challenge all small companies understand. Often small business owners have little access to credit or capital investment and are limited to raising investment or borrowing from family or friends. The crowdfunding process is a new and innovative way for Michigan businesses to gain access to capital to grow and expand, and to create jobs. Because it is less formal than the process of registration of securities, it is important for investors to carefully investigate and evaluate investment opportunities.

The crowdfunding law is intended to allow for more efficient access to capital. It permits a business to raise up to $1,000,000 per year or $2,000,000 per year if the issuer provides audited or reviewed financial statements to the prospective purchas-

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Crowdfunding Bill (cont.)

er. An unaccredited investor having a net worth of less than $1,000,000 can invest up to $10,000 a year per business. Accredited investors, having an income in excess of $200,000 (or $300,000 for a married couple) or a net worth in excess of $1,000,000, can invest an unlimited amount.

On April 5, 2012, President Barack Obama signed into law the Jumpstart Our Business Startups Act (JOBS Act), which authorizes crowdfunding at the national level. Because of broad political support, it is expected that the Securities Exchange Commission and the Financial Industry Regulatory Authority will complete the rule making process this year, although the new laws provisions governing equity crowdfunding have been criticized as unduly cumbersome.

Crowdfunding has potential drawbacks. Costs, including accounting and legal, may be significant. The law permits only limited direct advertising, and requires disclosures to investors and the State of Michigan on a quarterly basis. Investors will have to be careful to avoid fraud and will have to consider the possible difficulty of selling their interests if they wish to get out of an investment.

We will address the issue of liquidity in a second article discussing the recently introduced House Bill 5273, which would permit the creation of local stock exchanges, and would permit investors and entrepreneurs to buy and sell in state stocks.

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Contributing to a Roth IRA through a Backdoor Option

Linda Davis Friedland

Many high income earners believe they cannot contribute to a Roth IRA because of the income limitations imposed by the Internal Revenue Service (IRS). There is a backdoor route high income earners can take, however, to accomplish the same thing as opening a Roth IRA directly.

For 2014, the income and contribution limits for a Roth IRA are as follows:

Filing Status Income	Modified Adjusted Gross	Contribution Limit
MARRIED Filing Jointly	< $181,000	Up to the limit*
	≥ $181,000, but less than $191,000	Phased Out Amount
	≥ $191,000, eligible	Ineligible
MARRIED, Filing Separately	< $10,000	A reduced amount
	≥ $10,000	Ineligible to contribute
SINGLE	< $114,000	Up to the limit*
	≥ $114,000, but less than $129,000	Phased Out Amount
	≥ $129,000	Ineligible to contribute

* The limit on contributions for 2014 for all traditional and Roth IRAs is $5,500.00 ($6,500.00 if age 50 or older).

Despite the flurry of recent tax legislation, the income limits have remained in place for **contributions** to a Roth IRA. However, for **conversions** from a Traditional IRA to a Roth IRA, the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010 has removed these income limits, creating a backdoor for interested investors to utilize. To contribute to a Roth IRA through the backdoor, follow these steps:

Step 1 – Consult with a tax advisor to determine whether a Roth IRA is an appropriate retirement vehicle for you.

Step 2 – Contribute to a non-deductible, Traditional IRA up to the contribution limit.

- Your contribution will most likely be non-deductible given the income limits, however, contributions to a Roth IRA are not tax deductible anyway.
- Your contribution will be your "cost basis" for tax purposes.

Step 3 – Convert your Traditional IRA to a Roth IRA.

- This process will be much easier if both your Traditional IRA and Roth IRA are held with the same custodian, and if the deposit to the Traditional IRA and the conversion to a Roth IRA, are part of one seamless transaction.
- Do not confuse a conversion with a distribution, the latter of which will subject you to a 10% penalty if under age 59 ½.
- The amount of the conversion will be limited to the $5,500.00 (or $6,500.00, if over age 50) assuming that a new Traditional IRA is being opened just for this purpose.
- For those with an existing Traditional IRA, the limit will be the balance of the account. Keep in mind, however, that the amount of the conversion will have to be reported as ordinary income, so it may be best to convert smaller portions of anexisting Traditional IRA over a number of years.
- In determining whether it would be better to convert smaller

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Contributing to a Roth IRA (cont.)

portions of a Traditional IRA over a number of years, consideration should be given to whether the amount of the conversion will result in a bump up to a higher tax bracket.

• More likely than not, if requested, your custodian will leave one penny in your Traditional IRA account so that this process can be repeated every year. (Be sure to ask if interested.)

Step 4 – Make note of any income tax due as a result of the conversion to the Roth IRA.

• The income tax due will be zero or close to zero if the non-deductible deposit into the Traditional IRA is followed by an immediate conversion into a Roth IRA.

• If the conversion results in a higher tax bracket, or more income tax due than the budget allows, then work with your custodian to reverse the process.

Step 5 – Notify the Internal Revenue Service.

Make sure that IRS Form 8606 is filed with the income tax return for each year that a backdoor Roth IRA contribution is made, in order to alert the IRS that the deposit into the Traditional IRA is non-deductible. This will also help maintain records of the cost basis.

Roth 401(k) Plans Offered through Employer

For those who have access to a Roth 401(k) Plan through work, this could be a viable alternative, or addition, to the Roth IRA. A Roth 401(k) has no income limit, but for 2014, the contribution limit is the same as for a regular 401(k): $17,500 ($23,000 if age 50 or over). Contributions can be made to both a Roth 401(k) and a regular 401(k) in the same year, so long as the contribution does not exceed the $17,500/$23,000 limit.

The most noteworthy distinction between a Roth IRA and a Roth 401(k) is that the Roth 401(k) is subject to the same minimum distribution rules as a traditional or regular 401(k) require. Of the three vehicles, the Roth IRA offers the most flexibility in retirement, although contributions are more difficult during the accumulation years for high income earners. The following chart may provide assistance in determining whether a Roth IRA, Roth 401(k), or a traditional or regular 401(k) is the best option for your particular situation:

	Designated Roth 401(k) Account	Roth IRA	Traditional, Pre-Tax 401(k) Account
Contributions	Designated Roth employee elective contributions are made with **after-tax dollars**.	Roth IRA contributions are made with **after-tax dollars**.	Traditional, pre-tax employee elective contributions are made with **before-tax dollars**.
Income Limits	No income limitation to participate.	Income limitation for 2014: • modified AGI married $191,000/single $129,000	No income limitation to participate.
Maximum Elective Contribution	$17,500 for 2014, plus an additional $5,500 for employees age 50 or over.	$5,500 for 2014, plus an additional $1,000 for employees age 50 or over.	Same aggregate limit as Designated Roth 401(k) Account
Taxation of Withdrawals	Withdrawals of contributions and earnings are **not** taxed provided it's a **qualified distribution** (the account is held for at least 5 years) and made: • On account of disability, • On or after death, or • On or after attainment of age 59½.	Same as Designated Roth 401(k) Account and can have a qualified distribution for a first time home purchase. Note: • Contributions may be withdrawn without tax or penalty at any time. • Conversions may be withdrawn without tax, (and without penalty, but only if held for 5 years.)	Withdrawals of contributions and earnings **are** subject to Federal and most State income taxes.
Required Distributions	Distributions must begin no later than age 70½, unless still working and not a 5% owner.	No requirement to start taking distributions while owner is alive.	Same as Designated Roth 401(k) Account.
Source: Internal Revenue Service. This article is not intended to provide tax advice. A tax advisor should be consulted when making a contribution, conversion or withdrawal from any retirement vehicle.			

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To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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