

Special Announcement: PENSCO Trust Hires President & COO Scott Rosebrook

We are very pleased to share this important news with you about a management addition to the PENSCO Trust team!

Tom W. Anderson, CEO and Founder of the PENSCO Trust Company, announces the hiring of Scott K. Rosebrook who joins the Company as President and Chief Operating Officer, effective July 2, 2007. Reporting to Anderson, Rosebrook will be responsible for the Company's daily operations. Anderson said "PENSCO Trust is rapidly growing as one of the leaders in the self-directed IRA and retirement account industry. Scott's broad financial services experience and demonstrated leadership in business origination, operations, and strategy will help us more quickly implement our growth initiatives, including the development of strategic relationships that will be essential to our continued success in our dynamic market segment. I look forward to working with Scott in his new role at PENSCO Trust as we continue to grow the Company with our unique product offering, providing knowledge, integrity and premier service to our clients."

'CHECKBOOK CONTROL' AND LLCs

By Tom Anderson, PENSCO Trust CEO and Founder

Often I get questions from people asking about the term 'checkbook control' in relation to self-directed IRAs. Since there is a lot of discussion on the Internet about 'checkbook control,' and there are companies advocating this type of arrangement, I want to shed some light on the topic. Below is one example of this type of question:

Q: *I recently attended a PENSCO Trust seminar, which was very educational. I am convinced that I need to start my own self-directed IRA. I am a bit confused about what a custodian does and what is involved with having 'checkbook control.' I hear this term in reference to self-directed IRAs but I am not clear why I would want this or what is involved. From the seminar it seems like there is more responsibility for me to have my own 'checkbook.' Would you please explain it to me in layman's terms?*

A. Here is how I respond to these questions: First, there is a lot of talk about 'checkbook control' in cyberspace. In fact, we have information on our web site (www.PENSCOTrust.com) that details the responsibilities of a custodian and a blog entry that discusses 'checkbook control.' (www.TomAndersonBlog.com)

To recap these discussions, I'd like to use the most common example of achieving 'checkbook control,' which is by investing through an LLC. An LLC is a Limited Liability Company. When you run a company, there are certain responsibilities, which vary by state. In most cases, the general responsibilities are to pay an annual tax, file K-1 reports (a CPA should be hired to do this), keep books and records, bank accounts etc., particularly when your IRA is the sole member. That's because there is the potential for a prohibited transaction if you don't do things



correctly, which can invalidate your IRA, resulting in taxes and, if you are under age 59 ½, potential penalties. This is one likely reason why the tax laws require that IRA assets be held by an approved IRA custodian or trustee (e.g. to help protect the consumer).

LLCs can serve as valuable vehicles for certain IRA investment scenarios. First, if there are multiple investors going into a single deal, the LLC can facilitate the acquisition and disposition of assets by allowing a single member (e.g., the managing member) to sign all documents for the other members. Otherwise, if you have multiple investors going in on an undivided property as co-tenants (e.g. without an LLC), they would all need to sign at the closing. Another attribute of an LLC or 'C' corporation structure is that both provide an element of asset protection by virtue of the fact that creditors can't pierce the "corporate veil," in most cases. This means that your exposure as an investor is your stake in the LLC, not your personal assets or any remaining assets in your IRA(s). On the other hand, you could accomplish the same thing by dividing up your IRA into multiple IRAs and using a separate IRA for each investment.

The attribute that is touted most frequently by promoters of the use of LLCs for IRA investing is 'checkbook control'; that is, the ability of the managing member (which may be the IRA owner if

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the IRA owner's IRA is the only member or 'C' corporation stockholder) to write checks directly to fund investment purchases, without having to go through the IRA custodian. While it is very true that this is possible, it is also a cause for concern amongst custodians, IRA regulators and professionals who serve investors who have employed the 'checkbook control' approach. Why? Because many of them feel that there is significant risk of the IRA owner(s) creating a prohibited transaction or that IRA assets will not be properly tracked through the 'checkbook control' mechanism.

I believe 'checkbook control' tends to be oversold by companies who are not custodians and whose only business is to establish LLCs for people, charging fees ranging from \$2,000 (plus annual maintenance fees) to \$10,000. There is even a company that I understand charges clients \$2,000 on top of custodian fees and the LLC fees to handle the 'checkbook.' To me, that's sort of like having a teenager pay his parents to drive him around on a date. Because of all the opportunities for investors with self-directed IRAs, many companies are trying to get in on the industry. Therefore be sure to keep their costs in mind, when you make a decision to form an LLC (actual costs may vary):

- Legal fees for formation and ongoing support (generally \$2,000-\$10,000)
- Annual state franchise taxes, if applicable (\$200-\$1,000)
- K-1 preparation for multi-member LLCs (\$1,000-\$3,000)
- Maintenance of bank account(s), and books and records (N/A)

Those who advocate 'checkbook control' will say that you are free from the custodian and, therefore, you can do whatever you want. Well, at PENSCO Trust, that isn't quite true. You can do anything legal with us, and unless you want to do something illegal with an LLC, there is no advantage other than the reduction of transaction fees. For example, we charge \$100 per real estate purchase and sale. Thus, unless you are buying and selling 20 times a year, you will not save any money with the LLC structure (and that's just considering the cost to establish it). In addition, we keep all the records, and you can contact us when you have any questions about potential prohibited transactions for no additional charge. Furthermore, even if you don't ask us about a prohibited transaction, if you ask us to do something that we believe may be a prohibited transaction, we will let you know.

Our staff is constantly being trained in the details of self-directed IRAs and we share our knowledge at no additional cost as part of our service. We have thousands of clients that have used LLCs as a vehicle and thousands that haven't. In conclusion, unless you are involving a lot of investors together on a deal, doing dozens of transactions per year, want to learn all the intricacies of prohibited transactions, need some unusual level of asset protection, and are willing to be responsible for all the administration of a legitimate company, there is probably no need for an LLC. ■

What's Online at www.PENSCOTrust.com

1. **Articles on Self-Directed IRAs**
2. **Your Account's Assets** - Listed with current value
3. **Your Account's Activity** - Including up-to-date transactions
4. **eStatements** - Download past quarterly statements
5. **Update Your Profile** - Change your address, email address, and log-in password
6. **Educational Events** - View our calendar for upcoming events

Do We Have Your Email Address?

Here are three great reasons why we should:

1. **Account Email Notification** - Receive instant information on transactions in your account
2. **eStatement Email Notification** - Receive notification that your eStatement is available
3. **'What's New' eNewsletter** - Receive monthly email newsletter

Please provide us with your email address by contacting Client Services at: 800-969-4472 or emailing clients@pensco.com.



Tom's Column

Q. *If I invest my IRA into a new LLC that I create, can that LLC then invest in an LLC that I already own?*

A. Not if your ownership in the existing LLC is 50% or more, including any ownership of direct relatives (e.g., ascendants, descendants, spouses of descendants, etc.).

The new LLC will be considered as non-existent under the rules, as 100% of the LLC is owned by the IRA. So the transaction between the new LLC and the one you currently own is considered to be prohibited because it is a transaction between a plan (the LLC that is 100% IRA-owned), and a disqualified person (the 50% or more owned existing LLC) under IRC 4975 regulations.

Q. *I have a 401(k) from a former employer and I want to bring those funds to a self-directed IRA to start investing in real estate. Is that OK?*

A. Of course. Rollovers are a viable source of assets for new IRAs.

Q. *I own a house in Panama and I want to buy the lot in front with my IRA to protect my view. I want to keep it as raw land and sell it down the line. Can I do this?*

A. No. The purpose of your IRA's investment as stated constitutes self-dealing. You (the IRA owner and a disqualified person) are receiving a personal benefit (the view that you enjoy) as a by-product of your IRA's investment. If, however, your IRA was purchasing the lot because it was a good investment for your IRA, and nothing more, you would not be creating a prohibited transaction. :-)