

# SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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## **Can an E-2 Investment be from a Gift or Loan?**

An E-2 Visa is an investor visa that requires an entrepreneur to invest a certain amount of capital in the United States to either start a business or purchase one. The entrepreneur must be from certain countries and the amount of the investment depends on the type of business being set up. For some service oriented businesses, the investment amount could be as low as \$50,000. One question that often comes up about the investment is whether or not the money invested had to “belong” to the investor. That is, can an E-2 investor rely on a gift or a loan to start their enterprise. This article summarizes the requirements in this area.

### **Can an E-2 Investor rely on a Gift?**

The clear answer here is yes as E-2 visa regulations clearly state that a gift is permissible. That being said, the reason for the gift has to make sense. For example, gifts from immediate family members are quite plausible given the close connection. In addition, a gift that will be used for an E-2 visa could come from a close friend and the close ties between the investor and the friend could be explained in the supporting documentation. The further removed the gift giver is though, the more chance that the examiner will question the legitimacy of the gift. There is no hard and fast rule here but one should use common sense to assess what a 3<sup>rd</sup> party reviewer would think about the reasons for the gift.

### **Can an E-2 Investor rely on a Loan?**

The short answer is yes but a loan is trickier than a gift for two reasons. First, the loan cannot be secured by assets from the business as the investment amount must be at risk. If the loan is secured by personal assets (such as your home), that is fine but you should be prepared to show the government a promissory note that lists the personal security. Unsecured loans are permitted but can be risky. While they are not prohibited, the government could claim that you do not have anything at risk as you could walk away from the loan. Moreover, in the EB-5 context, the government used to accept unsecured loans as investments but in the last few years we have seen that USCIS requires that for EB-5 investments, the loan MUST be secured. Many of the EB-5 concepts in time get ported over to E-2 and you should understand that you run a risk of questions if your loan is unsecured.

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Second, a large loan could make an examiner feel that the investor is too highly leveraged and would not be in a position to repay the loan given the demands of a start up. As such, you may encounter marginality/viability issues with a loan.

## **How does an E-2 Gift or E-2 Loan impact Source of Funds?**

Another key issue when looking at both gifts and loans is the E-2 source of funds requirement. The source of funds requirement requires the investor to show that the funds he/she is investing came from a legitimate source. If the amount came from savings, the investor should show tax returns for 3 years. If the amount came from the sale of a home or personal property, the documents and money transfers related to the sale should be provided.

If the Money does not come from the Investor, but from a gift or loan, the EXACT SAME REQUIREMENT that applied to the investor now applies to the person who gave the money. As such, if a parent provided a gift, that parent would have to show documentation to show where they obtained the money (eg. tax returns). This can be a particularly difficult requirement given the gift or loan giver's potential sensitivity to their personal information.

For more practical or legal advice contact [Scott Legal Services, P.C.](#). We offer services in a number of business areas including, Immigration, New Business set up, Contract review and development and entrepreneurial support. Call 212-223-2964 or email [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com) for a consultation.

*Ian E. Scott is a Harvard Law School Graduate, lawyer and author of [Law School Lowdown: Secrets of Success from the Application Process to Landing Your First Job](#). Mr. Scott worked as a corporate litigator in the law firm Cleary Gottlieb and currently runs his own law firm [Scott Legal Services, P.C.](#) specializing in Immigration Law & New Business set-up.*