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Beware the Home Storage IRA

You may have heard radio ads for Home Storage IRAs with sales pitches that use fear tactics such as “Your IRA may be at risk again.” or “What if the market crashes like 2008?” Perhaps you have seen ads that highlight the control of having gold coins in such an IRA, like “Hold your IRA in your hands.” “You have total control.” or “Store them (gold coins) in a safe deposit box at a local bank.” Home Storage IRAs are pitched as a way for individuals to use their IRA money to buy and hold gold and silver coins in their home or in a safe deposit box. There is only one problem with such investment vehicles—it is highly unlikely they are legal under IRS regulations.

Originally allowed after a 1996 court case, these IRAs offer the opportunity to make direct investments with such funds in real estate or a business directly. This type of IRA, a self-directed IRA, requires a special custodian who monitors the investment, files required paperwork and, in some cases, tries to advise against self-dealing, which would invalidate the IRA. A self-dealing example would be buying real estate and using the property yourself or allowing a relative to live on the property. The IRS would treat such a situation as a violation of IRA terms treating the property as a distribution, taxable at individual income tax rates and, if the owner of the IRA is under age 59½, he/she would pay an additional 10% penalty tax, a possible over 50% tax bite depending on your bracket.

Home Storage IRAs attempt to circumvent IRS regulations by having individuals create limited liability corporations (LLC) to buy, own and hold the gold coins. These peddlers then suggest that the coins be held in a safe deposit box where there would be access. Although the IRS has not expressly forbidden this practice, it is highly likely that it will be banned because it runs counter to current regulations. IRS code Section 408(m)(3) allows for ownership of “precious metals” in an IRA established with a financial institution. Typically, American Gold and Silver Eagle coins are allowed. IRS code Section 408(a) requires a trustee to maintain physical possession. What is a trustee by IRS code? A bank, a credit union, a trust bank or another entity that demonstrates to the satisfaction of the Secretary of the Treasury that the manner in which it will administer is legal. A safe deposit box does not count unless you can convince the Secretary of the Treasury that you are as reliable a trustee as your local bank, an almost impossible bar for an individual to cross.

Home Storage IRA web pages typically will provide statements from lawyers (likely getting a kick-back) giving legal opinions that Home Storage IRAs are legal and will also prominently display statements. On nearly every web page operated by such peddlers, there will be a disclaimer that states that they do not provide legal, tax or investment advice and will likely say that any communication should not be relied upon as advice and that you should consult the appropriate legal or tax professional. You will find such disclaimers hidden in small type somewhere on the web page.

What is the worst that can happen? The IRS discovers that you are running an IRA in conflict with regulations; therefore, you are self-dealing and are liable for income and penalty taxes because your disallowed IRA will be treated as a taxable distribution.

Home Storage IRAs should not be confused with conventional precious metal IRAs.

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