WHEN A SELF-DIRECTED IRA INVESTS IN GOLD COINS, POSSESSION MATTERS AND MISAPPLYING THE RULES CAN RESULT IN A TAXABLE DISTRIBUTION

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Is it permissible for a taxpayer's self-directed IRA to be invested in certain gold coins? Yes, under the right circumstances. Is it permissible for a taxpayer's self-directed IRA to use a single member LLC, where the IRA is the sole member, to make the investment in gold coins? Yes, subject to strict adherence to relevant legal and tax rules.

What if the taxpayer is the manager of the LLC and the LLC is then used by the taxpayer's self-directed IRA to buy gold coins that the taxpayer ultimately received and stored in a safe in her personal (and thus were not held in trust)? Now the taxpayer has a tax problem. As part of an audit of a taxpayer's return, the IRS examined the investment of the taxpayer's self-directed IRA in gold coins under those circumstances and determined the taxpayer, in effect, had received a taxable IRA distribution equal to the value of the gold coins. For good measure, the IRS imposed penalties for under-reporting taxable income. Possession matters. The case went to the Tax Court, and the bottom line is that IRA assets must be held in trust (i.e., in an account with a bank or qualified non-bank custodian). When the taxpayer took physical possession of IRA assets (in this case, gold coins) and exercised personal control over those assets, the Tax Court concluded the taxpayer received a taxable distribution of the IRA assets.

The Tax Court also upheld the IRS imposition of accuracy-related penalties. There might have been a basis for waiving the penalty had the taxpayer made a reasonable attempt to comply with the tax law (e.g., consulted and received the advice of a CPA or other tax professional). The fact that the taxpayer failed to do so, and relied largely on information and marketing materials gleaned from internet research, did not provide a sufficient basis for a waiver of the penalties.

Self-directed IRA owners who are seeking to make nontraditional investments would be well advised to exercise caution and seek the guidance of a tax professional before making those investments. Missteps in making nontraditional investments, no matter how well intentioned those investments might be, can result in unwanted tax consequences. *(McNulty v. Commissioner,* Tax Court 2021)

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