

Some precious-metals bullion dealers recently have been advertising “home storage” as a legal and beneficial option for storing bullion that may be invested in an individual retirement account (IRA).

The “home storage” concept may conflict with the laws that allow for tax-advantaged IRA investments. Purchasing and holding assets in an IRA on a pre-tax basis is a great benefit. To continuously receive that benefit, the IRA assets must be held by a financial institution or an IRS-approved nonbank custodian.

Internal Revenue Code §408 applies to individual retirement accounts and states in pertinent part:

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined for purposes of this subsection, the term “collectible” means—

- (A) any work of art,
- (B) any rug or antique,
- (C) any metal or gem,
- (D) any stamp or coin,
- (E) any alcoholic beverage, or
- (F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion for purposes of this subsection, the term “collectible” shall not include—

- (A) any coin which is—
  - (i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,
  - (ii) a silver coin described in section 5112(e) of title 31, United States Code,

## SYNOPSIS

Investors should be cautioned that investing in a precious metals IRA held in one’s own physical possession (or in a bank safe-deposit box that is not under the custody or control of the bank’s employees) will likely be deemed by the IRS to be a distribution from the IRA in the purchase amount of the bullion resulting in tax consequences and (if under age 59 ½) a 10% early withdrawal penalty. Further, storing IRA assets in your own home may be considered “self-dealing” and treated by the IRS as a prohibited transaction. A prohibited transaction is treated as a distribution of *all* assets held in the IRA, i.e., not just the bullion that is stored at home, including distribution of any taxable gain on an asset.

With its recent guidance, the IRS has sent a clear message to the public and, indirectly, to dealers marketing to the public that bullion held in an IRA may not be stored at home. Dealers who continue to advertise home storage may be putting their customers at risk, and their businesses at risk of confronting legal or regulatory action in the future.

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- (iii) a platinum coin described in section 5112(k) of title 31, United States Code,  
or
- (iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is **in the physical possession of a trustee** described under subsection (a) of this section.

(a) Individual retirement account

(2) **The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.**

(n) Bank

For purposes of subsection (a)(2), the term “bank” means—

- (1) any bank (as defined in section 581),
- (2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and
- (3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

Dealers who advertise “home storage” commonly propose using a “checkbook LLC” to circumvent IRS enforcement of the laws that prevent an IRA owner from possessing IRA assets. “Checkbook LLC” refers to a self-managed limited-liability company that is set up by the IRA owner to purchase and hold bullion in his or her IRA. Dealers sometimes offer the opinion that the IRA’s “indirect investment” in bullion through a checkbook LLC enables the IRA owner to do indirectly what they cannot do directly: store in his or her home because the bullion is a direct investment of the LLC, and not directly owned by the IRA. This “indirect investment” is claimed to dispense with the need to comply with the legal requirement stated above.

The IRS recently provided further guidance on its view of “home storage” and the use of a checkbook LLC to legitimize the home-storage arrangement. On its website<sup>1</sup>, the IRS recently issued the following response to the home-storage question:

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<sup>1</sup> <https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-iras-investments>

### **If my IRA invests in gold or other bullion, can I store the bullion in my home?**

Gold and other bullion are “collectibles” under the IRA statutes, and the law discourages the holding of collectibles in IRAs. There is an exception for certain highly refined bullion *provided it is in the physical possession of a bank or an IRS-approved nonbank trustee*. This rule also applies to an indirect acquisition, such as having an IRA-owned Limited Liability Company (LLC) buy the bullion. IRA investments in other unconventional assets, such as closely held companies and real estate, run the risk of disqualifying the IRA because of the prohibited transaction rules against self-dealing.

“This is a big risk to individual investors. You may face taxes, penalties, and fees on your entire IRA should the IRS decide to call you on your self-storage of precious metals. And, the IRS has the ability to pursue investors doing this at any time. They know it is a violation that they can pursue whenever they want to,” says Jeffrey M. Christian, managing partner of CPM Group and an expert on precious-metals investing. “Some metals dealers are worried that with the deficit projected to soar over the next several years the IRS is likely to turn to such actions in an effort to capture revenues. It also is a giant risk for the entire precious-metals market, as such actions by the IRS could negatively affect investors’ appetites for gold and silver.”

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