

Are 'Home Storage' Precious Metal IRAs Legit?

Law360, New York (May 29, 2015, 12:36 PM ET) --

Americans have over \$23,000,000,000,000 (that is, \$23 trillion (with a “t”) dollars) in retirement savings — primarily in 401(k), individual retirement (IRA), pension and other investment accounts.[1] While America’s savings rate is often derided, in fact, Americans increase their retirement savings hundreds of billions of dollars each year — again, mostly in tax-deferred retirement accounts.[2] These funds are primarily invested in stocks and bonds and other traditional assets, including gold and silver.

America weathered the 2009 economic crisis and is prospering again. But the Great Recession, like the Great Depression, left a lasting impact on many, including fears of bank runs and failures, including among institutions previously viewed, like the Titanic, as unsinkable. In 2008, no one would have guessed that Lehman Brothers or AIG could fail (or require massive government bailouts to survive), or that Bernie Madoff was a fraud. And, today, no one knows who is or might be next.



Seth E. Pierce

Global and institutional uncertainty has led many investors to crave more security and control. If and when the next economic or technological catastrophe arrives, they do not want their hard-earned money and retirement savings to disappear with the crash of a server, or to be locked up hundreds or thousands of miles away, with no ability to access or use it. These investors want direct and personal control over their retirement assets.

A number of investment companies have sprouted to meet this nascent demand — promising “home storage” precious metals IRAs (among other alternative control strategies). These companies purport to help investors set up a limited liability company in their home, which can then hold their retirement funds. Sounds great. No banks. No fees. Immediate access. But is it legit?

The short answer is “no” — while not impossible, it is the rare investor who can meet the applicable IRS rules for creating such a structure (discussed below). And if you don’t satisfy the IRS rules, transferring your assets to a “home storage” IRA is treated as a distribution, stripping your retirement investment of its tax-deferred status. This means you have to pay income taxes on the current value of your retirement assets as well as a penalty of 10 percent if you are under age 59 1/2. This could mean a tax bite of 35 percent or more of your retirement’s value. Ouch!

Still interested? Not yet deterred? Thinking about gambling 35 percent of your retirement account on the legality of a “home storage” IRA? Then read on ...

Precious Metals IRAs

Investing in gold or other precious metals (with IRA funds) is perfectly legitimate, within certain limitations (see Internal Revenue Code, Section 408(m)(3)), but typically involves setting up a specialized “precious metals” IRA with an established custodian/financial institution, such as a self-directed IRA (SDIRA). These companies act like traditional IRA custodians, such as Wells Fargo or Bank of America, but specialize in holding physical assets, such as gold, which require specialized security and handling.

Home Storage IRAs

Home storage IRA providers, however, go much further. Playing on fears of the next global collapse, they recommend a very nontraditional (and seemingly highly risky) investment structure. For example, one provider — which shall remain nameless — states the following on the first page of its website:

“What if markets crash like 2008? And what if your IRA custodian becomes bankrupt?”

“The [REDACTED] Home Storage Gold IRA is different — YOU have total control. As sole manager, you decide what to buy and when. You don’t pay depository fees — or most other ‘service’ fees”

“Best of all, you can keep approved gold, silver and platinum coins in your home safe, or store them in your safety deposit box at a local bank — no far-off depository needed”

In tiny print, however, the website notes — “*See disclaimer for details.” When you eventually locate the disclaimer, in tiny print, at the bottom of the website, the company announces that it does not provide legal or tax advice and that, you, the investor are completely on your own:

*Disclaimer: [The company] does not provide legal, tax, or investment advice ... All statements in the website related to home storage gold IRAs are the opinions of an attorney retained by [the company] and are not the statements or opinions of [the company] ... [The company] encourages each individual to consult with his or her tax attorney prior to opening a home storage gold IRA and subsequently investing in precious metals to be stored in your home or safety deposit box.

Indeed, the website’s 11-page transaction agreement, which all customers are apparently required to sign, goes further, expressly disclaiming any responsibility for, well, anything to do with creating this account:

[REDACTED] is not qualified to offer tax and legal advice, and it does not offer such advice. Creating a Home Storage Gold IRA is Client’s decision based on Client’s own research and advisement from tax and legal professionals of Client’s choice regarding self-directed IRA LLCs and the types of metals Client is allowed to store at home and in a safety deposit box. Client acknowledges and agrees that Client is not relying on any opinion issued by [REDACTED] or its attorney and that Client is instead relying on Client’s own opinions or those of Client’s own tax and legal professionals.

Client acknowledges and assumes full responsibility for maintaining compliance with all IRS regulations with respect to all investment procedural activities of the LLC, and holds [REDACTED] Precious Metals harmless for decisions taken by Client.

But therein lies the rub; the company makes absolutely no promise that any of this is legal. And the old adage is true, if it sounds too good to be true, it probably is.

Are Home Storage Precious Metals IRAs Permitted?

The Internal Revenue Code permits IRA funds to be invested in certain precious metals if, but only if, such metals are placed in the physical possession of a “trustee” — as that term is described in Internal Revenue Code Section 408(a).

The Internal Revenue Code defines a “trustee” as a:

- Traditional bank (for example, your local Wells Fargo) or an insured credit union or another financial institution subject to regulation by state or federal bank regulators; or
- “Such other person who demonstrates to the satisfaction of the Secretary [of the U.S. Treasury] that the manner in which such other person will administer the [IRA] will be consistent with the requirements of this section.”

It is this second provision that “home storage” IRA providers latch on to in hawking their services; but like the organizations and entities that tell you income taxes are unconstitutional, so you don’t need to pay them, buyer beware.

Any entity wishing to comply, such as the LLC set up to hold your “home storage” precious metals, must complete a written application with the IRS demonstrating that the applicant satisfies a long list of requirements specified in the applicable regulations, including requirements relating to fiduciary ability, fiduciary experience, capacity to account, fitness to handle retirement assets, bonding, audits and net worth. Moreover, the applicant cannot act as a trustee until the IRS provides notice that the application has been approved. This reality is in stark contrast to the 1-2-3 step process promoted by some of the companies in this field, which promise that opening such an account is easier than “buying a car.”

If the U.S. government wanted to let people keep direct physical control over their retirement savings, it could have easily done so. It did not — it imposed the trustee requirement. This was not accidental; the government wants an independent trustee holding the assets to make sure the funds or coins are actually held and that any distributions are reported to the government. If you are holding your own assets, even under the guise of an LLC (that you own and control, by the way), it is fair to say you are going to have a difficult time “satisfying” the secretary of Treasury of anything.

“Home storage” IRA providers typically “recommend” various strategies to bolster the claim that the purchaser is administering the IRA consistent with the requirements of this section. For example, and these are only examples, they assist the purchaser in setting up a limited liability company or other corporate entity to physically hold the coins, since they cannot be held directly by the purchaser. Then they recommend that the LLC, not the purchaser, rent a safety deposit box in the name of the LLC to store the coins. I could go on, but the strategy is clear — try to make the structure look as good and independent as possible. But that is all the purchaser is doing — making appearances. At the end of the day, in most instances, the purchaser is setting up an LLC under the purchaser’s (or his or her immediate family members’) direct control, and all actions, including processing, storing, borrowing against, and liquidating/distributing the coins, are taken by the purchaser himself or herself. Whatever the appearance, the reality is lost on no one — including the IRS.

Listen, I never say never. With sufficient legal expertise and advice, and depending on the exact structure created, it might be possible to convince the IRS that your “home storage” IRA satisfies the applicable regulations. But let’s be realistic, we are talking about the IRS. Which is more likely — the IRS accepting this structure or rejecting it? The answer is obvious. You are gambling with your retirement on a structure that the gold companies hawking this structure won’t even guarantee.

What are the Consequences?

If your precious metals are not held by a trustee, the purchase is treated as a taxable distribution from your retirement account. Your IRA assets will lose their tax-deferred status and be subject to immediate taxation (at current applicable rates), plus, if you are under age 59 1/2, you face a 10 percent penalty for early withdrawal in addition to any taxes owed. Some states impose additional early-withdrawal penalties.

What is the Bottom Line?

If you want to gamble, go to Vegas. Opening a “home storage” precious metals IRA is a lot more risky and a lot less fun.

—By Seth E. Pierce, Mitchell Silberberg & Knupp LLP

Seth Pierce is a partner in Mitchell Silberberg & Knupp's Los Angeles office.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

LCI is a seller and purchaser of Precious Metals, nothing more. LCI is not an investment advisor, financial advisor, or retirement account fiduciary, and does not provide legal or tax advice, retirement planning or retirement specific opinions/information.

LCI makes no representations regarding the tax consequences of holding Precious Metals as an investment in an IRA. Customer expressly acknowledges that Customer has been advised to seek independent tax advice, from a qualified professional, regarding the tax consequences of such an investment.

[1] <http://www.pionline.com/article/20140326/ONLINE/140329919/us-retirement-assets-reach-23-trillion-8212-ici>

[2] http://www.ici.org/research/stats/retirement/ret_14_q4

All Content © 2003-2015, Portfolio Media, Inc.