

# IRALERT

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TO: IRA Group Distribution

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RE: IRS Private Letter Rulings Allow "Indirect" Investment of IRAs in Gold and Silver

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The IRS recently released two noteworthy letter rulings (PLR 200732026 (May 17, 2007) and PLR 200732027 (May 17, 2007)). The rulings effectively allow IRA holders to avoid the prohibition against investing in metals and other collectibles. The rulings are similar to an earlier ruling, PLR 200446032 (Nov. 12, 2004).

Section 408(m) of the Code provides that the acquisition by an IRA (or by an individually directed account under a 401(a) plan) of a collectible will be treated as a distribution in the amount of the cost of the collectible. The term "collectible" is defined to include any metal, which would include both gold and silver; however, there is an exception in section 408(m)(3)(B) of the Code for gold or silver bullion of a certain quality.

Under each letter ruling, a trust was established and structured to qualify as an "investment trust" under Treasury regulations. Shares of the trust will be traded on a stock exchange and expected to mirror to the price of silver or gold on the silver or gold market. The trust will consist primarily of bullion, held in an unallocated account by a custodian. Because the trust will be a grantor trust, investors will be treated as owning a fractional interest in each of the assets held by the trust. However, shareholders do not have any immediate possessory interest in the bullion that the shares represent.

The two rulings are nearly identical, except that PLR 200732026 involves gold and a foreign banking association that provides custodial services to the trust, and PLR 200732027 involves silver and a domestic LLC that provides custodial services to the trust. In both rulings, the IRS determined that, based on the facts provided, acquisition by an IRA or individual account plan under 401(a) of shares of the trusts will not constitute acquisition of a collectible as described in 408(m) of the Code. The IRS noted that a redemption of shares that results in the distribution of silver or gold bullion would be treated as acquisition of a collectible, unless it meets the exceptions described in 408(m)(3).

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An earlier ruling illustrates the importance of the structure of the arrangement, and probably the importance of having your own private letter ruling if you wish to engage in such arrangements. In PLR 200217059 (April 26, 2002), a trustee of individual retirement accounts proposed to utilize the precious metals administration and safekeeping services of two non-bank entities that provide such services to other customers to hold bullion coins and bullion bars that were the assets of the IRAs for which they served as trustee. The IRS held that such bullion coins and bullion bars that are assets of IRAs in the physical possession of those companies would be collectibles within the meaning of section 408(m)(1) of the Code with the result that an investment by an IRA in bullion coins and bullion bars held by those companies would be treated as a distribution from the IRA in an amount equal to the cost to the IRA of such collectible.

Please let us know if you have any questions or need any further information.

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