Tax News and Industry Updates

2022
Volume 10, Issue 1

Star Taxes and Books
2955 New Center Point #1099
Colorado Springs, CO 80922

719.270.0737

Star Taxes and Books

Inside This Issue

Standard Mileage Rate....1
Inflation Adjusted Amounts....1
IRS Encourages e-File and Direct Deposit....2
IRS Encourages Taxpayers to Get an Identity Protection PIN....3
SALT Deduction Limitation is Constitutional....4
FBAR Penalty is Per-Account, Not Per-Form....5
Self-Directed IRA....6

Standard Mileage Rate

Cross References

- Rev. Proc. 2010-51
- Notice 2021-02
- Notice 2022-03

The IRS has released the 2022 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. The following chart reflects the new 2022 standard mileage rates compared to the 2021 tax year standard mileage rates.

	2022	2021
Business rate per mile*	58.5¢	56.0¢
Medical and moving rate per mile**	18.0¢	16.0¢
Charitable rate per mile	14.0¢	14.0¢
Depreciation rate per mile	26.0¢	26.0¢

* A deduction for unreimbursed employee business travel is suspended for tax years 2018 through 2025, unless the deduction is allowed in determining adjusted gross income, such as members of a reserve component of the Armed Forces, state or local government officials paid on a fee basis, or certain performing artists.

** A deduction for moving expenses is suspended for tax years 2018 through 2025, unless the taxpayer is a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station.

◆ ◆ ◆

Inflation Adjusted Amounts

Cross References

- Rev. Proc. 2021-45
- Notice 2021-61

Each year, a number of provisions in the Internal Revenue Code (IRC) are adjusted for inflation. The IRS recently released the inflation adjusted amounts for 2022. The following chart highlights a number of these adjustments, as they compare to the 2021 amounts.

Tax Provision	2022	2021
Standard deduction – MFJ	$25,900	$25,100
Standard deduction – Single	$12,950	$12,550
Standard deduction – HOH	$19,400	$18,800
Qualifying relative income limit	$4,400	$4,300
Maximum EIC for 3 or more qualifying children	$6,935	$6,728
Maximum EIC for 2 qualifying children	$6,164	$5,980
Maximum EIC for 1 qualifying child	$3,733	$3,618
Maximum EIC for no qualifying children	$560	$1,502
Section 179 expense limit	$1,080,000	$1,050,000
Section 179 investment limit	$2,700,000	$2,620,000
Section 179 SUV limit	$27,000	$26,200
Estates basic exclusion amount	$12,060,000	$11,700,000
Annual exclusion for gifts	$16,000	$15,000
Defined contribution plan contribution limit	$61,000	$58,000
401(k) elective deferral limit for under age 50	$20,500	$19,500

continued on next page

Tax Provision continued	2022	2021
401(k) elective deferral limit for age 50 and older	$27,000	$26,000
SIMPLE elective deferral limit for under age 50	$14,000	$13,500
SIMPLE elective deferral limit for age 50 and older	$17,000	$16,500
IRA deduction limit for under age 50	$6,000	$6,000
IRA deduction limit for age 50 and older	$7,000	$7,000
Key employee definition for top-heavy plans	$200,000	$185,000
Highly compensated employee definition	$135,000	$130,000
Qualified plan compensation limit	$305,000	$290,000
Child Tax Credit (per qualifying child) *	$2,000	3,000/3,600
Refundable portion of child tax credit *	$1,500	3,000/3,600
QBI Threshold Amount – MFJ	$340,100	$329,800
QBI Threshold Amount – Single & HOH	$170,050	$164,900
QBI Threshold Amount – MFS	$170,050	$164,925
Foreign Earned Income Exclusion	$112,000	$108,700
AMT Exemption – MFJ & QW	$118,100	$114,600
AMT Exemption – Single & HOH	$75,900	$73,600
AMT Exemption – MFS	$59,050	$57,300

* For 2021, the Child Tax Credit is increased from $3,000 to $3,600 per child who has not yet attained age 6.

◆ ◆ ◆

IRS Encourages e-File and Direct Deposit

Cross References

• IR-2022-18

The IRS kicked off the 2022 tax filing season by encouraging taxpayers to e-file and request a direct deposit for their refunds. At a news conference, IRS Commissioner Chuck Rettig said: “This could be a very frustrating filing season for both taxpayers and tax professionals.” He noted that the IRS still lacks the resources to meet the needs of taxpayers. He emphasized three steps taxpayers should take.

- File electronically,
- File accurately, and
- Request a direct deposit of refunds.

Note: The IRS has not yet finished processing paper tax returns for 2020. Some taxpayers who filed paper tax returns for 2020 with a balance due are receiving CP80 letters from the IRS showing a credit balance and claiming that the IRS has not yet received their tax return. In other words, the IRS cashed the check but has yet to process the return, even though the check was in the same envelope as the paper tax return. A problem that could have been avoided had the return been e-filed.

The IRS expects more than 160 million individual tax returns for the 2021 tax year to be filed, most before the April 18, 2022 tax deadline. Rettig noted that taxpayers need to take special care this year due to several critical tax law changes that took place in 2021 and ongoing challenges related to the pandemic.

“IRS employees are working hard to deliver a successful 2022 tax season while facing enormous challenges related to the pandemic,” Rettig said. “There are important steps people can take to ensure they avoid processing delays and get their tax refund as quickly as possible. We urge people to carefully review their taxes for accuracy before filing. And they should file electronically with direct deposit if at all possible; filing a paper tax return this year means an extended refund delay.”

For most taxpayers who file a tax return with no issues, the IRS anticipates they will receive their refund within 21 days of when they file electronically if they choose direct deposit—similar to previous years. Last year’s average tax refund was more than $2,800.

Special care for EIP, advance Child Tax Credit recipients. The IRS also encourages caution to those people who received a third economic impact payment or advance Child Tax Credit in 2021. Taxpayers should ensure the amounts they’ve received are entered correctly on the tax return. Incorrect entries when reporting these payments mean the IRS will need to further review the tax return, creating an extensive delay. To help taxpayers, the IRS is mailing special letters about the stimulus payments and advance Child Tax Credit payment amounts. People can also check the amount of their payments in their Online Account available on IRS.gov.

Earned Income Tax Credit or Additional Child Tax Credit refunds. By law, the IRS cannot issue a refund involving the Earned Income Tax Credit or Additional Child Tax Credit before mid-February, though eligible people may file their returns beginning on January 24. The law provides this additional time to help the IRS stop fraudulent refunds from being issued.

Avoid phone delays; online resources best option for help. IRS.gov is the quickest and easiest option for help. IRS assisted phone lines continue to receive record numbers of calls, more than the agency can handle with its limited resources. Avoid delays: check IRS.gov first for refund information and answers to tax questions. Establishing an Online Account on IRS.gov can also help taxpayers get information quickly. The Online Account feature has recently been expanded to allow more people to gain access.

2020 tax return still being processed? Tips to help with filing 2021 tax return. For people whose tax returns from 2020 have not yet been processed, they can still file their 2021 tax returns. For those filing electronically in this group, here's a critical point. Taxpayers need their Adjusted Gross Income, or AGI, from their most recent tax return when they file electronically. For those waiting on their 2020 tax return to be processed, make sure to enter $0 (zero dollars) for last year's AGI on the 2021 tax return.

Note: Or wait and file an extension for 2021 until the IRS finishes processing their 2020 tax return. Entering incorrect information seems like a recipe for inviting more letters from the IRS.

IRS Encourages Taxpayers to Get an Identity Protection PIN

Cross References

- IR-2021-238

The Internal Revenue Service is encouraging taxpayers to get extra protection starting in January by joining the agency's Identity Protection Personal Identification Number (IP PIN) program.

Anyone who can verify their identity can protect themselves against tax-related identity theft by opting into the IP PIN program. More than 5.1 million taxpayers are now participating in the IP PIN program, enabling them to proactively protect themselves against identity theft. The IRS has made recent changes to the program to make it easier for more taxpayers to join. The fastest and easiest way to receive an IP Pin is by using the "Get an IP PIN" tool on the IRS website:

https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin

An IP PIN is a six-digit number assigned to eligible taxpayers to help prevent the misuse of their Social Security Number or Individual Taxpayer Identification Number on fraudulent federal income tax returns.

An IP PIN is known only to the taxpayer and the IRS. Originally designed for confirmed victims of tax-related identity theft, the IP PIN program was expanded in 2021 to include any taxpayer, nationwide, who wants the additional protection and security of using an IP PIN to file tax returns with the IRS.

"When people have this special code, it prevents someone else from filing a tax return in their name," said IRS Commissioner Chuck Rettig. "The fastest way to get an Identity Protection PIN is to use our online tool, but keep in mind people must pass a rigorous authentication process. We must know that the person asking for the IP PIN is who they really say they are."

An IP PIN helps the IRS verify a taxpayer's identity and accept their federal income tax returns, regardless of whether they are filing electronically or on paper. In each subsequent year, any participating taxpayer will then use the tool to obtain a new number.

The IRS urges any IP PIN applicant previously rejected during the identity authentication process to try applying again in 2022. The authentication process has been refined and improved, now enabling many taxpayers screened out in the past to have a better chance of passing the authentication process.

Before applying, keep in mind these key points about the IP PIN program.

- For 2022, the Get an IP PIN tool is scheduled to launch on January 10. It's the fastest and easiest way to get an IP PIN. It is also the only option that immediately reveals the IP PIN to the taxpayer. For that reason, the IRS urges everyone to try the Get an IP PIN tool first, before pursuing other options.
- No identity theft affidavit is required for taxpayers opting in. This means that anyone who voluntarily applies for an IP PIN doesn't need to file Form 14039, *Identity Theft Affidavit,* with the IRS.
- The IP PIN is valid for one year. This means that each January any participating taxpayer must obtain a newly generated IP PIN.
- Be sure to enter the IP PIN on any return, whether it is filed electronically or on paper. This includes any amended returns or returns for prior years. Doing so will help avoid processing delays or having the return rejected by the IRS.
- Anyone with either a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) who can verify their identity is eligible for the IP PIN opt-in program.
- Any eligible family member can get an IP PIN. This includes the primary taxpayer (the person listed first on a tax return), the secondary taxpayer (on a joint return, the person listed second on the return) or any of their dependents.
- With one key exception, never reveal an IP PIN to anyone. The only exception is a taxpayer who uses a trusted tax professional to file their return. Even then, only share the IP PIN with the trusted tax pro when it is time to sign and submit the return. The IRS will never ask for an IP PIN. Remember to watch out: Phone calls, emails and texts requesting an IP PIN are scams.
- Identity theft victims should still fill out an ID theft affidavit. This means that any confirmed victim of tax-related identity theft still needs to file Form 14039 with the IRS if their e-filed tax return was rejected by the agency due to a duplicate SSN filing. The IRS will then investigate their case. Once the fraudulent tax return is removed from their account, the IRS will

automatically mail an IP PIN to the confirmed victim at the start of the next calendar year. Because of security risks, confirmed identity theft victims cannot opt out of the IP PIN program.

Options for people who can't pass the online authentication process. Two options are available for people who cannot pass the IRS online identity authentication process. One involves filing Form 15227 and the other requires a visit to an IRS Taxpayer Assistance Center (TAC). Unlike the online option, both of these options involve, for security reasons, a delay in receiving an IP PIN.

Form 15227. For processing year 2022, individuals with an adjusted gross income of $73,000 or less and those married filing jointly with an AGI of $146,000 or less with access to a telephone can complete Form 15227 and either mail or fax it to the IRS. An IRS representative will then call them to verify their identity with a series of questions. Taxpayers choosing this option who pass the identity authentication process will generally receive their IP PIN in about a month.

IRS Taxpayer Assistance Centers. Any taxpayer who is ineligible to file a Form 15227 may make an appointment to visit an IRS Taxpayer Assistance Center (TAC). Anyone using this option must bring two forms of picture identification. Because this is an in-person identity verification, an IP PIN will be mailed to the taxpayer after their visit. Normally, allow three weeks for delivery. To find the nearest TAC, use the IRS Local Office Locator online tool or call 844-545-5640.

SALT Deduction Limitation is Constitutional

Cross References

- *Yellen,* 2nd Circuit, October 5, 2021

The Court of Appeals for the 2nd Circuit has affirmed a District Court ruling that the limitation on the federal income tax deduction for State and Local Tax (SALT) is Constitutional.

The states of New York, Connecticut, Maryland, and New Jersey filed a lawsuit alleging that the $10,000 limitation for deducting state and local taxes as itemized deductions violates the 10th Amendment because it coerces them to abandon their preferred fiscal policies. The District Court held that the state's claims lacked merit. The 2nd Circuit agreed with the District Court.

The Court noted the ratification of the 16th Amendment in 1913 empowered Congress to "lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states." After the Amendment was ratified, Congress enacted the SALT deduction for all national, state, county, school, and municipal taxes paid during the year. In 1944, Congress made the deduction more difficult or less attractive for taxpayers by introducing the standard deduction. The standard deduction meant that, in practice, the SALT deduction remained relevant for only those taxpayers who chose to itemize their deductions.

In 1964, Congress altered the SALT deduction by providing that only certain enumerated types of state and local taxes were deductible and disallowed deductions for any other state and local taxes.

In 1986, Congress enacted the alternative minimum tax (AMT) which requires high-income taxpayers to calculate their tax liability using both traditional and alternative methodologies, and to pay the greater amount. If the alternative methodology results in a greater tax liability, the taxpayer is prevented from claiming the SALT deduction.

In 1986, Congress also removed sales taxes from the list of deductible state and local taxes.

In 1990, Congress enacted a limitation on taxpayers with adjusted gross incomes exceeding certain specified thresholds, requiring them to reduce the overall amount claimed as itemized deductions, including the SALT deductions, by up to 80%.

In 2004, Congress reinstated the deduction for state and local sales taxes but forced taxpayers to choose between deducting state and local sales taxes and deducting state and local income taxes, thereby reducing the number of taxpayers claiming state and local income taxes.

Finally, in 2017, Congress limited the SALT deduction to $10,000 and increased the standard deduction.

The Plaintiff States argued that the SALT deduction is required by the text of Article I, Section 8 and the 16th Amendment of the Constitution. The SALT deduction cap, they say, effectively eliminates a constitutional mandated deduction for taxpayers. They also argue that the SALT deduction coerces them to abandon their preferred fiscal policies, in violation of the 10th Amendment. They also claim that until 2017, Congress had never eliminated or curtailed the SALT deduction.

The Court disagreed that the Constitution imposes such a constraint. Congress's broad power to tax is limited only by restrictions "expressed in or arising from the Constitution." The 10th and 16th Amendments do not expressly require the SALT deduction or limit Congress's tax power to do away with it. The Plaintiff States failed to plausibly allege that their taxpayers' total federal tax burden is now so high that they cannot fund themselves. And the Plaintiff States pointed to nothing that compels the federal Government to protect taxpayers from the true costs of paying their state and local taxes.

The Court also disagreed with the argument that the SALT deduction limitation coerces the states to abandon their preferred fiscal policies in favor of lower taxes and reduced spending. The SALT deduction limitation does not unconstitutionally infringe on a state's sovereignty. Congress may use its taxing and spending authority to encourage a state to regulate in a particular way, and my hold out incentives to the states as a method of influencing their policy choices. The only limitation to this power is compulsion. Congress does not have the authority to require the states to regulate, directly or indirectly. The Supreme Court has only once deemed a condition unconstitutionally coercive in violation of the 10th Amendment, where Congress threatened to withhold all of a state's Medicaid grants, unless the state accepted new expanded funding and complied with the conditions that came with it.

The Plaintiff States also argued that Congress unfairly targeted them. The Court agreed that members of Congress were aware that the SALT deduction limitation would adversely affect some states more than others. But the SALT deduction limitation is not unlike the countless federal laws whose benefits and burdens are unevenly distributed across the country and among the several states. The Court stated that Congress may use its spending power to create incentives for states to act in accordance with federal policies, as long as pressure does not turn into compulsion. At most, the Plaintiff State's allegations reflect that Congress was focused on the permissible legislative purpose of influencing tax policy. Nothing in the 2017 law requires a state to change its tax policy.

FBAR Penalty is Per-Account, Not Per-Form

Cross References

- *Bittner*, 5th Circuit Court of Appeals, November 30, 2021

Each person with a financial interest in a financial account in a foreign country is required to file with the Secretary of the Treasury a *Report of Foreign Bank and Financial Accounts* (FBAR) on or before June 30 of each year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year. The FBAR report discloses information about each qualifying foreign account. A person who fails to report when required may be subject to a penalty of up to $10,000 for a non-willful violation. For a willful violation, the maximum penalty increases to the greater of $100,000 or 50% of the amount of the transaction, when the violation involves a transaction, or the balance in the account at the time of the violation.

The taxpayer in this case was born in Romania, but immigrated to the United States and was naturalized in 1987. In 1990, he returned to Romania where he became a successful businessman and investor. He maintained dozens of bank accounts in Romania, Switzerland, and Liechtenstein. He was unaware that as a U.S. citizen, he was required to report his interests in certain foreign accounts. Consequently, he never filed FBARs while living in Romania.

He returned to the U.S. in 2011. Upon learning of his reporting obligations, he hired a CPA who filed FBARs for the years 2007 to 2011. Penalties for years prior to 2007 had expired due to the statute of limitations. His FBARs disclosed all foreign bank account information and balances.

In June 2017, the IRS assessed $2.72 million in penalties for non-willful violations, $10,000 for each unreported account from 2007 to 2011 (61 accounts in 2007, 51 in 2008, 53 in 2009, 53 in 2010, and 54 in 2011).

The taxpayer sued the government arguing that his violations were due to reasonable cause and therefore could not be penalized under 31 U.S.C. section 5321, that the maximum penalty allowed for a non-willful reporting violation is $10,000 per annual FBAR form, and that the penalties as assessed violated the excessive fines clause of the 8th Amendment to the U.S. Constitution.

The District Court held that the $10,000 maximum penalty for a non-willful violation applies on a per-form basis. Having thus interpreted the statute, it deemed the 8th Amendment defense moot. The court also rejected the reasonable-clause defense and ordered the taxpayer to pay $50,000 ($10,000 for each year from 2007 to 2011). Both the IRS and the taxpayer appealed the decision to the 5th Circuit Court of Appeals.

The 5th Circuit rejected the taxpayer's reasonable cause defense saying he put no effort into ascertaining and fulfilling his reporting obligations. He testified he never even inquired about them, and when asked why, he answered, "Why should I?" "I didn't feel like it," and "Why? We're in Romania." The Court noted the onus was on the taxpayer to find out what he was supposed to do. Congress intended to place upon the taxpayer an obligation to ascertain the statutory deadline and then meet that deadline. As a sophisticated business professional, he held interests in dozens of companies, negotiated purchases of Romanian government assets, transferred his assets into holding companies, and concealed his earnings in numbered accounts. He even once inquired about tax obligations as a Romanian citizen owning property in Brussels before purchasing investment properties. A reasonable person with this level of sophistication, investments, and wealth would have sought advice regarding his obligation to file an FBAR.

Next, the court considered the IRS's argument that the $10,000 penalty applies on a per account basis rather than a per FBAR form basis. The District Court ruled it applies on a per form basis, meaning the total penalty in this case equals $50,000 ($10,000 for each year from 2007 to 2011).

The 5th Circuit Court of Appeals noted that the law imposes:

1) A statutory requirement to report each qualifying transaction or relation with a foreign financial agency, and
2) A regulatory requirement to file these reports on an FBAR before a certain date each year.

By authorizing a penalty for "any violation of any provision of section 5314 [31 U.S.C.]," the statute refers to the requirement to report each account, not the requirement to file FBARs in a particular manner. The court stated this does not create an obligation to file a "single report," but rather, it gives the IRS discretion to prescribe how to fulfill the requirement of reporting qualifying accounts. For example, the IRS could decide to require multiple FBARs instead of allowing one FBAR to report multiple accounts. Streamlining the process, however, does not redefine the underlying reporting requirement imposed by the statute. It merely honors Congress's desire "to avoid burdening unreasonably a person making a transaction with a foreign financial agency."

The use of the term "violation" in other parts of the statute confirms that the violation is the failure to report an account, not the failure to file an FBAR. For example, under the willful violation penalty, the maximum penalty is the greater of $100,000 or 50% of the amount of the transaction, when a violation involves a transaction, or the balance in the account at the time of the violation, when a violation involves a failure to report the existence of an account. This language plainly describes a violation in terms of a failure to report a transaction or an account, not a violation to file an FBAR. The court noted it is a basic canon of statutory construction that identical terms within an Act bear the same meaning. If a willful violation involves failing to report a transaction or an account, then presumably so too does a non-willful violation.

Similarly, under the reasonable-cause exception, no penalty attaches to a non-willful violation if "such violation was due to reasonable cause" and "the amount of the transaction or the balance in the account at the time of the transaction was properly reported." This language equates a "violation" with failing to report the amount of the transaction or the balance in an account. This exception to the penalty speaks in account-specific terms, not form-specific terms. If violation for purposes of the exception to the penalty is per transaction or per account, then violation for purposes of the penalty is also per transaction or per account.

The taxpayer argued that a per-account reading would lead to absurd results. The court disagreed. An absurd result is a result no reasonable person would intend. But there is no absurdity in this case. Congress's central goal in enacting this law was to crack down on the use of foreign financial accounts to evade taxes. It is not absurd so suppose that Congress would penalize each failure to report each foreign account.

The court ruled that the law imposes a penalty on the failure to report a qualifying account, not the failure to file an FBAR. As a result, the $10,000 penalty cap applies on a per-account, not a per-form basis.

Self-Directed IRA

Cross References

- *Mcnulty,* 157 T.C. No. 10, November 18, 2021

One requirement that must be met for an IRA is that it be administered by a trustee that acts as a fiduciary. An IRA meets this requirement if it is a custodial account that satisfies the requirements of IRC section 408(a).

An IRA trustee must be a bank or such other person who demonstrates that the manner in which it will administer the trust will be consistent with the requirements of IRC section 408. For a person to qualify as a trustee, the person must demonstrate by written application to the IRS that it meets the requirements set forth under Regulation section 1.408-2(e)(1). The applicant must demonstrate in detail its ability to act within the accepted rules of fiduciary conduct.

The trustee must keep separate and distinct records with full information on each IRA. If assets require safekeeping, the trustee must deposit them into an adequate vault and keep a permanent record of deposits and withdrawals from the vault. The IRA asset cannot be commingled with other property except in a common trust fund or common investment fund.

Failure to meet these rules results in the IRA assets being treated as distributed to the IRA owner at fair market value as a taxable distribution.

The taxpayer in this case decided to establish a self-directed IRA. Before doing so she researched self-directed IRAs online including having the IRA invest in American Eagle (AE) coins through an LLC owned by the IRA. The website used by the taxpayer said that an LLC owned by an IRA could invest in AE coins and IRA owners could hold the coins at their homes without tax consequences or penalties so long as the coins

were "titled" to an LLC. There are no certificates of ownership for AE coins or any other documentation that establishes legal title.

Note: An AE coin is usually 1 ounce of either gold or silver bullion, worth what the going rate that gold or silver is trading for per ounce on an exchange for a particular day. Dealers will usually pay "spot price" to a seller (the current rate of gold or silver on that day), and charge a premium over "spot price" when they re-sell the coin to a buyer. AE coins are minted by the U.S. government. In recent years, the U.S. mint also produces platinum and palladium coins for investors to buy and sell. AE gold bullion coins are also available in smaller half-ounce, quarter-ounce, and one-tenth-ounce sizes. The U.S. mint does not sell AE coins directly to the public. They have to be purchased through an authorized dealer.

The online website where the taxpayer got her information helped to establish an LLC, and the taxpayer was appointed as manager of the LLC. The taxpayer's personal residence was the principal place of business for the LLC, and the LLC also opened a bank account in which the taxpayer had signatory authority.

The taxpayer exercised sole control over her IRA investment decisions and funded the IRA through direct transfers from two qualified retirement accounts. The taxpayer did not report any part of the transfers as gross income. The taxpayer then used the funds to purchase AE coins from a coin dealer.

The IRS audited the taxpayer's return and determined that the taxpayer received taxable distributions from her IRA. The IRS argued that the taxpayer received a taxable distribution when taking possession of the AE coins, irrespective of the LLC's existence, her status as its manager, and its purported ownership of the coins.

The taxpayer argued that the AE coins were assets of the LLC and that her physical receipt of them did not constitute taxable distributions from her IRA. The court agreed with the IRS.

The court noted an owner of a self-directed IRA is entitled to direct how her IRA assets are invested without forfeiting the tax benefits of an IRA. However, IRA owners cannot have unfettered command over the IRA assets without tax consequences. It is on the basis of the taxpayer's control over the AE coins that she had taxable IRA distributions.

The court explained that a qualified custodian or trustee is required to be responsible for the management and disposition of property held in a self-directed IRA. A custodian is required to maintain custody of the IRA assets, maintain the required records, and process transactions that involve IRA assets. The presence of such a fiduciary is fundamentally important to the statutory scheme of IRAs, which is intended to encourage retirement savings and to protect those savings for retirement. Independent oversight by a third-party fiduciary to track and monitor investment activities is one of the key aspects of the statutory scheme. When coins or bullion are in the physical possession of the IRA owner, in whatever capacity the owner may be acting, there is no independent oversight that could prevent the owner from invading her retirement funds. This lack of oversight is clearly inconsistent with the statutory scheme. Personal control over the IRA assets by the IRA owner is against the very nature of an IRA.

The taxpayer had complete, unfettered control over the AE coins and was free to use them in any way she chose. This is true irrespective of the LLC's purported ownership of the AE coins and her status as the LLC manager. Once she received the AE coins there were no limitations or restrictions on her use of the coins even though she told the court that she did not use them. While an IRA owner may act as a conduit or agent of the IRA custodian, she may do so only as long as she is not in constructive or actual receipt of the IRA assets.

An owner of a self-directed IRA may not take actual and unfettered possession of the IRA assets. It is a basic axiom of tax law that taxpayers have income when they exercise complete dominion over it. Constructive receipt occurs where funds are subject to the taxpayer's unfettered command and she is free to enjoy them as she sees fit. The taxpayer's possession of the AE coins is a taxable distribution. Accordingly, the court ruled the value of the coins is includible in her gross income. The taxpayer's arguments to the contrary would make permissible a situation that is ripe for abuse and that would undermine the fiduciary requirements of IRC section 408. The taxpayer took possession of the AE coins and had complete control over them. Accordingly, she had taxable distributions from her IRA.