



ED SLOTT'S IRA ADVISOR

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TAX & ESTATE PLANNING FOR YOUR RETIREMENT SAVINGS

IRA Owner's Attempt to Circumvent Custodian's Direct Real Estate Investment Prohibition Backfires

Guy M. Dabney, et ux. v. Commissioner TC Memo 2014-108, Docket No. 14566-12 June 5, 2014

The Tax Court ruled that an individual was taxed on an IRA distribution when he tried to get around his custodian's policy of not allowing real estate as an IRA investment. The Court said the custodian didn't have to offer real estate as an investment, even though the tax code allows it. As a result, the individual was not acting as an agent for the custodian when he bought a property with his IRA money and tried to title it in the IRA custodian's name.

Facts of the Case

Guy Dabney rolled over IRA funds into an existing self-directed IRA he had with Charles Schwab & Co, Inc. He wanted to invest a portion of those funds in some undeveloped land in Utah that was for sale at a bargain price. This property was known as the Brian Head property. Dabney did some research on the internet and determined that IRAs can, in fact, invest in real estate. He called

up Schwab's general customer service line to talk about having his IRA buy the land and spoke to a customer service representative who told him that Schwab did not allow that type of alternative investment inside an IRA.

Dabney also called his CPA and asked about buying the real estate in his IRA. While at first his CPA told him that he didn't have any training in retirement accounts and didn't know whether an IRA could invest in real estate, after looking over Dabney's internet research, his CPA agreed that it would be possible for his Schwab IRA to buy the land.

At this point, Dabney arranged what he believed to be a way for his Schwab IRA to buy the land. Instead of finding an IRA custodian who would allow real estate as an investment, his idea was to have the money wired from his Schwab IRA to the seller and have the property titled in the name of his IRA at Schwab.

In February 2009, Dabney signed a contract to buy the land. A month later, he initiated a \$114,000 IRA distribution by filling out an IRA distribution form.

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