

**STATE BOARD OF EQUALIZATION**

916-445-5550

October 20, 1986

Dear Mr. REDACTED TEXT:

This is in response to your letter dated October 3, 1986 to Tax Counsel Les Sorensen in which you ask whether the sale of American Eagle coins will be subject to sales tax. Your letter states:

“As you know, the United States government is about to issue the new Eagle series of legal tender coins. The gold series consists of four coins, a one ounce coin with a \$50 denomination, a ½ ounce coin with a \$25 denomination, a ¼ ounce coin with a \$10 denomination, and 1/10 ounce coin with a \$5 denomination. They are also minting a new silver dollar. The Federal legislation authorizing the striking of these coins specifically makes them legal tender of the United States of America. The Treasury Department’s press releases have indicated that they are exempt from sales tax due to the fact that they are legal tender coins.

“The coins will be sold to the public through banks, brokerage firms, and coin dealers throughout the United States including California. The question that we present to you is whether the State of California will consider the coins exempt from sales tax.”

DISCUSSION

California Sales and Use Tax Law imposes a tax on retailers on their sale at retail of tangible personal property in this state, unless the sale is specifically exempted or excluded from taxation by statute. (Rev. & Tax. Code § 6051.) Sales and Use Tax Regulation 1599(a)(1) states:

“The transfer of coins for use solely as a medium of exchange, i.e., as legal tender, is not subject to tax even though the transferee pays an amount exceeding the face value. For example, tax does not apply to a transaction where the coin changer returns only 95 cents on a dollar. On the other hand, tax does apply to the sales of coins as collector’s items or as an investment, except as otherwise specified in this regulation.” (Emphasis added.)

As we understand the transaction in question, the coins will not be transferred for use solely as a medium of exchange. For example, the one ounce gold coin having a \$50 face value will be sold for an amount over the market rate for one ounce gold (which is presently well in excess of \$ 300 an ounce). This does not constitute use solely as a medium of exchange but rather is in the nature of an investment. Therefore, sales of these coins are subject to tax except as specified below.

Revenue and Taxation Code section 6355 exempts from sales tax sales in bulk of monetized bullion "which are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange" (Rev. & Tax. Code § 6355(a).) Under subsection (c) of section 6355, American Eagle coins constitute "monetized bullion." (See Reg. 1599(a)(3).) Under subsection (b) of section 6355, a "sale in bulk" has occurred if the amount of monetized bullion sold in the transaction totals, in market value, \$1,000 or more. (See Reg. 1599(a)(3)(A).) Under subsection (d) of section 6355, a sale is substantially equivalent to a transaction in securities or commodities through a national exchange if the sale is by or through a person registered pursuant to the Commodity Exchange Act or not required to be registered under that Act. (See Reg. 1599(a)(3)(B).)

Based on the information you have provided us, a sale of American Eagle coins is subject to sales tax unless it qualifies for the exemption provided in Revenue and Taxation Code section 6355, an important condition of which is that the total market value of the coins sold in a single transaction is \$1,000 or more. However, we have previously concluded that sales of certain other coins were exempt from our sales tax because of the particular circumstances of their sale. For example, with regard to the sale of United States Liberty Coins, we were provided with the contract by which the United States sold those coins through a consignee to the purchaser. We concluded that the sales were by the United States itself and therefore exempt from sales tax under Revenue and Taxation Code section 6352. Our conclusion herein that sales of American Eagle coins are subject to sales tax unless qualifying for the exemption provided in section 6355 is based on the assumption that the sales in question are not by the United States.

Enclosed for your information is a copy of Regulation 1599. If you believe that we would consider the sales in question as being made by the United States, you should forward to us sufficient documentation for us to make a proper determination. If you have further questions, do not hesitate to write us again.

Sincerely,

David H. Levine
Tax Counsel

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Encl.