



STATE BOARD OF EQUALIZATION

December 15, 1964

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Dear Mr. [X]:

This is in reply to your letter of August 25 in which you inquire about the tax liability under the California Sales and Use Tax Law in several situations which may arise in the numismatic trade when customers buy an interest in coins for personal investment purposes.

We have considered the problem you have presented with great interest and we think that it may be helpful for us to give you a few general comments on the application of the Sales and Use Tax Law. We are enclosing a pamphlet copy of the Sales and Use Tax Law for your ready reference.

We should say at the outset that the sale of coins to an ordinary investor, who purchases them with the hope or expectation that their market value will rise, is a tangible retail sale. A "retail sale" means a sale for any purpose other than resale in the regular course of business (§ 6007). A person who occasionally purchases coins as a personal investment is not regarded as holding them for resale in the regular course of his business. Likewise, coins held solely as a personal investment are being stored, used, or otherwise consumed within the meaning of § 6202, which imposes liability for the use tax. It is not necessary for tangible personal property to be physically depleted for it to be "consumed" within the meaning of the Sales and Use Tax Law. In fact, "use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, excepting only sales in the regular course of business (§ 6009). It is the exercise of dominion over the goods which is important. In this regard the possession of a broker as agent for the owner is regarded as the possession of the owner.

In the first situation your letter poses, we interpret the facts as follows: An investor purchases a quantity of coins from a dealer in another state by having his order transmitted by a teletype broker in California. The coins are shipped directly to the investor, who pays the out-of-state seller directly and pays a commission or fee to the teletype broker for the transaction of the message. In this situation the sale is, apparently, made in interstate commerce, and for that reason the sales tax does not apply (see ruling 55, copy enclosed). But, the use tax will apply to the purchase if the buyer purchases the coins for use, storage, or consumption in California. The purchase will be considered for such use if it is not for resale in the regular course of business of the buyer. The use tax, paid by the buyer, is measured by the selling price of the coins. The fee

the buyer pays to the broker for placing his order would not be included in the measure of the tax because it is not part of the amount for which the coins are sold.

It may be possible, however, that the buyer is, in fact, in the business of selling coins (in addition to any other businesses or occupations he may engage in). If such is the case, then his purchase of coins for the sole purpose of selling them later, after an increase in market price, to realize a gain or profit will not be considered a purchase for storage, use, or consumption in this state. Under those circumstances no use tax would be due on his purchase of coins for such a purpose. Of course if the buyer engages in the business of selling coins, he is required to hold a seller's permit (fee: \$1), file returns, and pay the sales tax on all his California retail sales of coins.

In the second situation which your letter poses, we interpret the facts as follows: the investor contracts with a teletype coin broker for the purchase of a certain roll of coins. The broker purchases the coins from another dealer, who may be within or without California, and has them shipped to his office. The teletype broker holds the coins in his vault and then gives the investor a certificate of ownership of the coins. In all likelihood the investor will later direct that the coins be sold, and he will receive a check from the broker for the sale price less the broker's commission. On the other hand if the buyer wishes, he may receive possession of the coins from the broker upon payment of the sales tax involved. Because the broker is investing the buyer with title, he is considered the seller and liable for the sales tax at that time despite the agreement with the buyer which contemplates reimbursement for the sales tax at the time the buyer takes physical possession of the coins.

In the third situation you pose, the buyer purchases an option to buy coins at a set price at a future date. The option is never exercised but is later redeemed by the dealer. Because the buyer of the option never purchases the coins, there is no purchase or sale of tangible personal property. The option to buy is an intangible, contract right, and is not subject to sales or use taxation.

As we understand the facts in the fourth situation you pose, an investor engages a broker to find a buyer for a roll of coins which the investor owns. Both buyer and seller are private parties, not coin dealers. An agreement on price is reached, and one or both parties pay the broker a commission for "consummating the sale." The question arises whether the broker had the power to transfer title to the coins to the buyer and exercised it. If so, then the broker is the seller and must pay the sales tax if the transaction is a retail sale in California. If, on the other hand, the broker merely locates a buyer for the owner, who then transfers title to the buyer himself, then the broker is not regarded as the seller and is not responsible for the sale or use taxes which may be due on the transaction between the original owner and the buyer. In this second instance the broker's commission would not be included in the measure of the tax.

Mr. [X]

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In this letter we may not have covered all the possible situations which may arise; so, if you have any further questions, please do not hesitate to write to us again.

Very truly yours,

E. H. Stetson
Tax Counsel

By: Phillip R. Dougherty

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Enclosures

cc: Santa Ana – Subdistrict Administrator