



STATE BOARD OF EQUALIZATION

October 17, 1969

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[X]:

This is with reference to the above-referenced petition and the hearing held on the matter last September 22 in San Diego.

A review of the facts surrounding the various silver dime coin transactions in which petitioner was involved leads us to the following conclusions:

1. The sale of silver dimes to "X", identified as item A in the analysis of the measure of the tax liability, was not a sale of tangible personal property, i.e., \$50,000 in silver dimes, since Petitioner had no title or possession of the dimes to pass on to "X". All he had to his arrangement with the bank was an option to purchase that many dimes from the bank if he decided to do so. For this option, he was paying the bank what amounted to 6 percent interest on the face value of the silver dimes the bank was holding and making available for purchase.

Accordingly, the transaction with "X" was a sale of part of his rights to \$96,000 in silver dimes. "X" never received title to or possession of any dimes. All he received was petitioner's right to purchase \$50,000 in silver dimes for \$50,000 if he ever decided to do so. For this right he paid petitioner \$5,650 and he agreed to pay the bank 6 percent on \$50,000 annually, in return for the bank's promise to retain the 50 bags of silver dimes and not put them into circulation.

2. It is our opinion that, with respect to item C in the analysis of the measure of tax, the transaction was a sale of silver dimes, and was taxable. In this instance, petitioner actually went out and purchased dimes, sorted them and turned them over to customers. In substance, this is the same as if a customer came into the coin shop and purchased \$1,000 worth of silver dimes for \$1,100. There is no difference in the tax aspects on the way the transaction was carried off than there would be if petitioner had, with his own money, purchased some dimes and resold them with a 10 percent markup to cover the cost of sorting and screening services.

On the other hand, if the customer came to the coin shop and asked the petitioner to get \$1,000 in dimes, and the customer then sorted the dimes and asked petitioner to hold them until such time that he decided to buy them, and in return for holding them agreed to pay petitioner 6 percent of their value annually, we would have essentially the same circumstances as the transaction

discussed in 1 above, and there would be no sale until such time that the customer elected to pay for and receive the dimes.

Summarily, we will recommend a reaudit with the following adjustments:

Item A - delete from the measure of the tax.

Item C - no adjustment.

Item D - delete that portion of item D which relates to item A, the charge to "X" for the release of petitioner's right to purchase \$50,000 in silver dimes from the bank and the transfer of that right to "X." This was stated to have been \$5,650.

If, after considering our recommendation and the reasons why we are making it, your client wishes to have a hearing before the Board, please notify us in writing within 3 weeks.

Very truly yours,

Robert H. Anderson
Tax Counsel

RHA/vs