



STATE BOARD OF EQUALIZATION

916-445-2641

January 16, 1985

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[X]:

This is in reply to your letter dated December 5, 1984 asking our opinion on whether the exemption from California sales and use tax provided in Section 6355 of the California Revenue and Taxation Code (all section or subsection references hereinafter are to Section 6355) for sales of "monetized bullion" applies to sales for \$1,000 or more of the new Mexican Libertad silver coin.

As agreed in our telephone conversation of December 7, 1984, you sent me a brochure describing the Libertad as Mexico's annually dated, non-restrike, one ounce, legal tender, silver coin. The Libertad is .999+ pure silver but does not have a face amount.

Section 6355(a) exempts from the sales and use tax the sales in bulk of monetized bullion which are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange.

Subsection (b) states that a sale in bulk shall be deemed to have occurred if the amount of monetized bullion sold in the transaction totals, in face amount, the sum of \$1,000 or more or its equivalent. In Alan Van Vliet Enterprises Inc. v. State Board of Equalization, 65 Cal.App.3d 964, the Court of Appeals decided that a sale of foreign coins was "a sale in bulk" if the price paid for the foreign coins was \$1,000 or more, without any further inquiry into the face amount or face value of the foreign coins. Therefore, for the exemption in Section 6365 to apply, the sale of Libertads in question must be for a selling price of \$1,000 or more.

(Subsection (c), as relevant, defines "monetized bullion" to mean "...coins or other forms of money manufactured of gold, silver or other metal and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation." The Libertad, as a silver coin satisfies the first part of this definition. If there is any doubt as to whether the Libertad qualifies as "monetized bullion", it would be as to whether the Libertad is "...used as a medium of exchange under the laws of..." Mexico. But, Mexico has declared the Libertad to be legal tender. In the past, the Board staff has equated the status of legal tender with

“...used as a medium of exchange...”, without further inquiry into the actual use of the legal tender as a medium of exchange. Therefore, Libertads are “monetized bullion” for purposes of Section 6355.

Subsection (d) states that a sale of monetized bullion shall be deemed to be substantially equivalent to a transaction in securities or commodities through a national securities or commodities exchange, if the sale is by or through a person registered pursuant to the Commodity Exchange Act (7 USC Sec. 1 et. seq.) or not required to be registered under the Commodity Exchange Act. Therefore, for the exemption in Section 6355 to apply, [X] must be registered pursuant to the Commodity Exchange Act or not required to be so registered.

In summary, [X]’s sale of Libertads for a selling price of \$1,000 or more is exempt from California sales and use tax under Section 6355, if [X] is registered pursuant to the Commodity Exchange Act, or is not required to be so registered.

If you have further questions, feel free to write us.

Very truly yours,

Donald J. Hennessy
Tax Counsel

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bc: Hollywood - District Administrator