

M e m o r a n d u m**168.0285**

To: Honorable Richard Nevins

Date: September 20, 1983

From: Gary J. Jugum

Subject: Olympic Commemorative Coins

This is in response to your memorandum of August 9, 1983 requesting our opinion on whether the sale or purchase of Olympic Commemorative Coins (Coins) is subject to California sales or use tax. In our opinion, the retail sale or purchase of such Coins is subject to California sales or use tax in all but three factual situations. The first situation is if the sale is by the United States. The second situation is if the sale or purchase satisfies the requirements for exemption stated in Revenue and Taxation Code Section 6355 for sales or purchases in bulk of "monetized bullion" [Regulation 1599(a) (4)]. The third situation is if the Coins are sold or purchased solely for use as a medium of exchange [Regulation 1599 (a) (1)].

As background here we note the following: The "Olympic Commemorative Coin Act," P.L. 97-220 (text appears after 31 USCA 5112), as signed by President Reagan on July 22, 1982, authorized the Secretary of the Treasury (Secretary) to have the U.S. Mint issue three coins with designs emblematic of the Summer Olympic Games to be held in Los Angeles in 1984. Two of the coins are of \$1 face value and are 90% silver. The third coin is of \$10 face value and is 90% gold. Such coins are to be sold by the Secretary at a price equal to face value, plus the cost of issuing such coins, and subject to a surcharge of not less than \$10 for each coin of \$1 face value and not less than \$50 for each coin of \$10 face value. The Secretary is to distribute 50% of the surcharge to the U.S. Olympic Committee to be used to train U.S. Olympic athletes, to support local or community amateur athletic programs, and to erect facilities for the training of such athletes. The remaining 50% of the surcharge is to be distributed by the Secretary to the Los Angeles Olympic Organizing Committee to be used to stage and promote the 1984 Los Angeles Olympic Games. Section 2 (d) of the Olympic Commemorative Coin Act specifically provides that:

"All coins issued under this Section shall be legal tender as provided in Section 102 of the Coinage Act of 1965 (now USCA 5103)."

The first exempt factual situation stated above, i.e., the sale of the Coins by the United States, will be the usual situation and should occur frequently. You enclosed a copy of an order form to be used in purchasing the Coins directly from the Bureau of the Mint. No sales tax can

be imposed on the United States and the purchase of the Coins will be exempted from use tax by Section 6402.

The second exempt factual situation stated above, i.e., the sale of the Coins in bulk as “monetized bullion”, is less likely to occur because to be considered a sale “in bulk”, since these are U.S. Coins, the sale must be in “face amount” of \$1,000. This means that, to be “in bulk”, the sale or purchase must be of 1,000 \$1 Coins, 100 \$10 Coins, some combination of the two totaling \$1,000 in “face amount”, or the aggregate of the face amount of the Coins together with the market value of foreign coins sold as part of the same transaction must be \$1,000 or more [see Regulation 1599 (a)(4)(A)].

We considered here the possibility that the Coins do not constitute “monetized bullion” because they are not “... heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation” [Section 5355(c)]. This was the result we reached in Current Legal Digest 447 as to the American Arts Gold Medallions (Medallions). But as quoted above, the statute here specifically gives the Coins the status of legal tender, which was not so with the Medallions. In the past, we have 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. In reviewing the question again, we still believe this is the right interpretation and have applied it here.

The third exempt factual situation stated above, i.e., the Coins are sold for use solely as a medium of exchange, is unlikely to occur because of the precious metal content of the Coins and the resultant market value of the Coins. When these Coins are sold for an amount exceeding their face amount, the sale is of the Coins as collector’s items or as an investment and tax will apply unless the sale is by the United States or is within the exemption for sales of monetized bullion as above discussed. This must be distinguished from nontaxable transfers of coins for an amount exceeding their face amount when the difference between the face amount and the selling price is only a charge for providing the service of exchanging money, e.g., the coin changer example in Regulation 1599 (3)(1). In such example, the amount (5¢) paid which exceeds face amount is only a service charge. When the Coins are sold, the amount (cost of issuance plus a surcharge) paid which exceeds face amount is due to the Coin’s value as collector’s items or investments.

On another subject relating to the Olympics, we are enclosing a copy of our June 25, 1982 opinion to First Interstate Bank of California (FICAL) deciding that the entire amount that must be paid to FICAL to obtain an Olympic Pin is subject to sales tax even though a specific portion may be designated a “donation” and is paid over by FICAL to the U.S. Olympic Committee.

Honorable Richard Nevins

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If we may be of further assistance on these matters, contact me at your convenience.

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Enclosure

cc: Mr. Douglas D. Bell
Mr. J. D. Dotson