

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

September 12, 1986

Mr. [M]
XXXXX --- ---
--- ---, -- XXXXX

Dear Mr. [M]:

This is in response to your letter dated August 14, 1986. You ask whether the sale of U. S. Liberty Coins are subject to sales tax. You indicate that [K] charged sales tax on your purchases of the coins, while [S] did not.

Sales tax is a tax on retailers (e.g., [K] and [S]) on their sales at retail in this state of tangible personal property, unless the sale is specifically exempted or excluded from taxation by statute. (Revenue and Taxation Code §6051.) Although the sales tax is a tax on retailers, they may collect sales tax reimbursement from their customers if they do so in conformity with the provisions of Civil Code section 1656.1. This sales tax reimbursement is what you paid to [K].

We understand that U.S. Liberty Coins are sold by the U.S. Department of the Treasury under agreements entitled "Consignment Agreement United States Liberty Coins." We assume that [K] and [S] have each entered into such a consignment agreement having terms mentioned below.

The consignment agreement provides that the participating consignee is an "agent" of the U.S. Mint for purposes of making retail sales of the coins. The consignee orders a number of coins or sets of coins, and agrees to hold them "in trust" as property of the United States. Title to the coins "remains in the U.S. Mint" until they are sold at retail. The retail selling price is set by the United States and the consignee has no authority to charge a higher or lower amount. The agreement does not authorize the addition of sales tax reimbursement or use tax to the selling price. The consignee is not required to pay for any coin prior to the retail sale. Rather, each day the consignee is to deposit the proceeds from that day's sales, less a discount, into a special deposit account for the United States Liberty Coin Program. We assume the discount is intended solely to cover the costs of sale and provides no profit to the consignee. Every 30 days, all funds in the special account are to be remitted to the --- Bank.

In our opinion, despite the use of the word "agent" in the consignment agreement, the consignees are not agents of the United States Government. (See United States v. New Mexico (1982) 455 U.S. 720, 735-737.) Rather, they are consignees who have the power to pass title to the coins.

As a general rule, consignees with the power to pass title are sellers and retailers subject to tax. (Sales and Use Tax Reg. 1569.) However, sales by the United States are not subject to sales tax. (Rev. & Tax. Code § 6353.) Under the facts of this case, we have concluded that the exemption for sales by the United States takes precedence over the general rule for consignees. In reaching this conclusion, we rely on the following facts, among others: title to the coins remains in the United States, and the consignees hold the coins in trust for the United States; the United States sets the retail selling price and the consignees have no authority to raise or lower the price; the United States has not authorized the consignees to collect tax or tax reimbursement from the customers; the consignees make no profit on the transactions, retaining only a discount to cover the costs of sale; and all unsold coins must be returned to the United States by a specific date.

Accordingly, we conclude that sales tax does not apply to sales of the coins to you. However, this conclusion is expressly conditioned on the accuracy of the assumptions made herein. If elements of the agreement under which [S] or [K] sells the coins differ from the elements set forth above, our conclusion as to the application of sales tax may differ. If you have further questions, feel free to write us again.

Sincerely,

David H. Levine
Tax Counsel

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