



STATE BOARD OF EQUALIZATION

May 12, 1965

Gentlemen:

An article relative to coin trading, which appeared in "X", has been brought to my attention. Since the article deals with a subject that I discussed in my recent letter to you, I am taking the opportunity of writing you again in order to clear up any misunderstanding which the article and my letter to you could possibly cause. I am enclosing a copy of "X" for your inspection.

While my letter to you indicates that the purchase and later sale of an option to purchase coins is not taxable, the "X" article assumes that the exercise of the option by its purchaser is only taxable for the price payable on the option, this is incorrect. The nontaxability of a transaction involving an option is limited to the situation in which the option is not exercised, and thus title and possession of the tangible personal property (the coins) does not pass from the buyer to the seller. Where, however, the buyer exercises the option to buy the property, rather than returning or cancelling his option to the seller, the consequent transfer of the coins is a taxable sale. More precisely to the point, the gross receipts arising from the sale are all to be included in the measure of the tax. Thus, the price paid for the option right plus the price paid to exercise the option are both included in the measure of the retailer's gross receipts from the sale. For instance, the measure of the tax in the "X" article would be \$850 plus \$2, or \$852. Thus, the tax is \$34.08 and not merely 8 cents.

The "X" article also says that the Board considers buying and selling coins at the wholesale level a legitimate business; and this is true. Recalling your letter, however, I realized it may have created a mistaken impression on this subject. It stated that, if a buyer is in the business of selling coins, his purchase of coins for the sole purpose of selling them later, after an increase in market price, would not be a purchase at retail. It should be made clear, however, that such a buyer must already be a bona fide dealer in coins. A person whose sole purpose is investment and pleasure is not in the business of reselling coins in the regular course of business, but is purchasing coins at retail. Conversely, a bona fide dealer may purchase coins which are not immediately resaleable at a profit, and still not be considered to be purchasing them at retail.

We are of the opinion that the average "investor" is not a bona fide coin dealer purchasing stock in trade to be resold in the regular course of his business whenever a profitable opportunity occurs. Nor can the investor convert his purchases at retail to purchases at wholesale by applying for a seller's permit. We trust that you will not advise your individual investors to apply for seller's permits.

If you have any further questions, now or in the future, do not hesitate to write to us.

Very truly yours,

Philip R. Dougherty
Assistant Counsel

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