

**STATE BOARD OF EQUALIZATION**

916/445-6557

June 6, 1984

Mr. H--- B---

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Dear Mr. B---:

This is in reply to your letter of June 4, 1984, regarding certain distributions of gold and silver Olympic coins by financial institutions. For the reasons expressed below, and with one exception, we have concluded that the financial institutions will incur no California sales or use tax liability with respect to the described transactions.

We understand that the Olympic coins are legal tender in the United States. The silver coins have a face value of one dollar and the gold coins have a face value of ten dollars. The coins are sold through depository financial institutions (banks or savings and loans) under "Consignment Agreements" with the United States Mint.

The Consignment Agreements provide that the participating financial institution is an "agent" of the U.S. Mint for purposes of making retail sales of the coins. The institution 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 at \$32.00 for each silver coin and \$352.00 for each gold coin. The financial institution has no authority to charge a higher or lower amount. Nor is there any authority to add sales tax reimbursement or use tax to the selling price, although some institutions have apparently done so on their own initiative.

The institution is not required to pay for any coin prior to the retail sale. Rather, each day the institution is to deposit the proceeds from that day's sales, less a discount, into a special Olympic Coin Deposit Account. The discount, \$3.50 per silver coin and \$22.75 per gold coin, is intended solely to cover the costs of sale and provides no profit to the institution. Every 30 days, all funds in the special account are to be mailed to the Federal Reserve Bank in San Francisco.

The consignment agreements expire on January 31, 1985. All unsold coins must be returned at the institution's expense within five days of that date. The institution bears full risk of loss, and must pay for all coins which are unsold but not returned to the United States.

In our opinion, despite the use of the word “agent” in the Consignment Agreement, the financial institutions are not agents of the United States Government. (See United States v. New Mexico et al., 445 U.S. 720.) 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. (See Rev. & Tax. Code, §6352.) 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 factors, among others. Title to the coins remains in the United States, and the institutions hold the coins in trust for the United States. The United States sets the retail selling price and the institutions have no authority to raise or lower the price. The United States have not authorized the institutions to collect tax or tax reimbursement from the customers. The institutions make no profit on the transactions, retaining only a discount to cover the costs of sale. All unsold coins must be returned to the United States by a specified date, and the institutions must bear the risk of loss.

Accordingly, we conclude that sales tax does not apply to the sales of the coins. For the same reasons, we also conclude that the purchasers are not liable for use tax (Rev. & Tax. Code §6402), so the institutions have no duty to collect use tax.

Where amounts represented as tax or tax reimbursement are or have been collected from customers, the collecting institution should take the following steps. If the tax has not as yet been paid over to the Board, the institution should return it directly to the customer. If the tax has already been paid to the Board, the institution should file a claim for refund. Refund to the institution will be conditional upon the institution’s return of the money to the customer.

Any amounts collected from the customers as tax or tax reimbursement, which are not returned to the customers, must be paid to the Board. With this exception, the institutions participating in the Consignment Agreements are not liable for sales or use tax with respect to the Olympic coins.

Very truly yours,

James E. Mahler
Tax Counsel

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