

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: August 1, 2008

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83



Subject : Regulation 1599, *Coins and Bullion*
Chief Counsel's Rulemaking Calendar
Board Meeting—August 19-20, 2008

Revenue and Taxation Code (RTC) section 6355 and Regulation 1599, *Coins and Bullion*, provide an exemption from the sales and use tax for sales in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins that are substantially equivalent to transactions in securities. Currently, a "sale in bulk" is defined as having a market value of one thousand dollars (\$1,000) or more. As mandated by RTC section 6355, the Board of Equalization is required to index the coins and bullion bulk sale exemption threshold for inflation, based on the (June to June) California Consumer Price Index (CCPI), by September 1st each year. When the cumulative inflation adjustment equals or exceeds five hundred dollars (\$500), the coins and bullion bulk sale exemption threshold automatically increases to the next nearest multiple of \$500, effective January 1st of the succeeding calendar year.

Attached is a schedule that shows the cumulative adjustment from 1994 through 2008. While the cumulative inflation adjustment did not exceed \$500 in the past, it did so this year. As indicated in the schedule, the cumulative adjustment in 2008 totals \$533.24, which exceeds the \$500 amount that automatically triggers the increase in the operative bulk sale threshold. Therefore, by statute, the coins and bullion bulk sale exemption threshold will increase to \$1,500 effective January 1, 2009.

To make the increased exemption threshold explicit, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1599 on the Chief Counsel's Rulemaking Calendar on August 19-20, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because the change to the regulation is mandated by a California statute.

Attached is the ~~strikeout~~ and underlined version of the regulation and a schedule that shows the cumulative adjustment from 1994 through 2008.

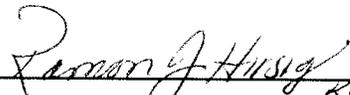
If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

- cc (all with attachments):
- Ms. Randie L. Henry (MIC 43)
- Mr. Randy Ferris (MIC 82)
- Ms. Jean Ograd (MIC 82)
- Ms. Diane Olson (MIC 80)
- Mr. Tim Treichelt (MIC 82)
- Ms. Windie Scott (MIC 85)
- Mr. Jeffrey L. McGuire (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Ms. Lisa Andrews (MIC 50)

**Rev. & Tax. Code Section 6355
Coins and Bullion Adjustment**

	A	B	C	D	E
	(1)	(2)	(3)	(4)	(5)
Year	CCPI Index	CCPI % Change	Tentative Bulk Sale Adjustment	Yearly Increase	Cumulative Adjustment
1993	148.9		1000.00		\$0.00
1994	150.7	1.209%	1000.00	12.09	\$12.09
1995	154.2	2.322%	1012.09	23.51	\$35.59
1996	156.6	1.556%	1035.59	16.12	\$51.71
1997	160.0	2.171%	1051.71	22.83	\$74.55
1998	163.6	2.250%	1074.55	24.18	\$98.72
1999	167.8	2.567%	1098.72	28.21	\$126.93
2000	174.0	3.695%	1126.93	41.64	\$168.57
2001	183.2	5.287%	1168.57	61.79	\$230.36
2002	185.9	1.474%	1230.36	18.13	\$248.49
2003	189.9	2.152%	1248.49	26.86	\$275.35
2004	195.8	3.107%	1275.35	39.62	\$314.97
2005	201.3	2.809%	1314.97	36.94	\$351.91
2006	210.9	4.769%	1351.91	64.47	\$416.38
2007	217.4	3.082%	1416.38	43.65	\$460.03
2008	228.3	5.014%	1460.03	73.20	\$533.24

- (1) The factor used is the California Consumer Price Index as determined by the FTB pursuant to RTC section 17041. The CCPI is available at the Department of Finance website at www.dof.ca.gov.
- (2) $\frac{\text{Current Year (A)} - \text{Prior Year (A)}}{\text{Prior Year (A)}}$
- (3) Prior Year (C) + Prior Year (D).
The base rate in 1993 was \$1,000.
- (4) (B * C)
The base rate was multiplied by the CPPI percentage (%) change in 1994 to determine the tentative bulk sale adjustment for the succeeding year.
Each year thereafter, the tentative adjustment is multiplied by the CPPI % change.
- (5) Prior Year (E) + Current Year (D)
A new operative bulk sale threshold is reached when the cumulative adjustment equals or exceeds \$500.

Notes

- ** By September 1st each year, the Sales and Use Tax Department Regulation Coordinator computes the RTC section 6355 tentative adjustment for bulk sales of Coins and Bullion.
- ** The exemption threshold is indexed for inflation.
- ** When the cumulative adjustment equals or exceeds \$500, the exemption threshold automatically increases to the nearest multiple of \$500, beginning January 1st of the following year.

Proposed Amendments to Regulation 1599

Regulation 1599. COINS AND BULLION.

Reference: Sections 6007, 6008, 6009, 6011, 6354, and 6355, Revenue and Taxation Code.

(a) GENERAL.

(1) SALES OF COINS. The transfer of coins for use solely as a medium of exchange, i.e., as legal tender, is not subject to tax even though the transferee pays an amount exceeding the face amount. For example, tax does not apply to a transaction whereby a coin changer returns only 95 cents on a dollar. On the other hand, tax does apply to sales of coins as collector's items or as an investment, except as otherwise specified in this regulation.

(2) SALES OF GOLD OR SILVER BULLION. Tax applies to sales of gold or silver bullion except as provided in subdivision (a) (3) below.

(3) SALES IN BULK OF MONETIZED BULLION, NONMONETIZED GOLD OR SILVER BULLION, AND NUMISMATIC COINS. Sales in bulk of "monetized bullion", nonmonetized gold or silver bullion, and numismatic coins which sales are substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange, are exempt from both the sales tax and the use tax. The exemption for sales in bulk of nonmonetized gold or silver bullion and numismatic coins is effective with respect to sales occurring on and after January 1, 1986.

"Monetized bullion" means 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 medium of exchange must have had a legal status equivalent to legal tender.

Effective September 28, 1983, "monetized bullion" includes gold medallions struck under authority of the American Arts Gold Medallion Act (Title IV of Public Law 95-630).

Nonmonetized bullion means gold or silver which has been smelted or refined and has a value dependent primarily upon its gold or silver content and not upon its form.

Neither the sales tax nor the use tax applies to sales of "monetized bullion", nonmonetized gold or silver bullion, and numismatic coins provided the following conditions are met:

(A) The sale is in bulk amount. For sales occurring on or before December 31, 2008, A sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$1,000 or more. For sales occurring on or after January 1, 2009, a sale in bulk occurs if the total market value of the monetized bullion, nonmonetized gold or silver bullion, and numismatic coins sold in a single transaction is \$1,500 or more, or is equal to or exceeds the adjusted amount as computed by Revenue and Taxation Code Section 6355. For purposes of this regulation, market value means sales price as defined in Section 6011 of the Sales and Use Tax Law.

(B) The sale is by or through a person registered pursuant to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not required to be registered under the Commodity Exchange Act.

(4) SALES OF COMMEMORATIVE "CALIFORNIA GOLD" MEDALLIONS. Effective September 27, 1985, tax does not apply to the sale of or the storage, use, or other consumption in this state of commemorative "California Gold" medallions produced and sold in accordance with Chapter 25 (commencing with Section 7551) of Division 7 of Title 1 of the Government Code.

(b) APPLICATION OF TAX TO SPECIFIC TYPES OF TRANSACTIONS.

(1) OPTIONS TO BUY. "Options to buy" are contracts in which the seller agrees to sell specified property, usually at a predetermined price, while the buyer obtains the right but not the duty to purchase the property. Accordingly, the "buyer" has the option to purchase the property but may decide not to purchase without breaching the contract. A sale happens if the buyer exercises his or her option to purchase the property and tax applies at the time the option is exercised unless the sale is otherwise exempt. On the other hand, if the option is not exercised, no sale happens and no tax applies.

(2) OPTIONS TO SELL. "Options to sell" are contracts in which the buyer agrees to buy specified property, usually at a predetermined price, while the seller obtains the right but not the duty to sell the property. A sale happens if the option is exercised and tax applies unless otherwise exempt.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Amendments to Regulation 1599

(3) **FUTURE SALES AND PURCHASES.** A contract to sell and buy goods in the future obligates the seller to sell and the buyer to buy goods at a particular time in the future. The price of the goods is usually set at the time of contracting, but neither the title nor possession of the goods is then transferred. If the title (or the possession in lieu of title) is later transferred, the sale happens, and tax applies unless the sale is otherwise exempt. However, the seller and the buyer or their assignees may agree to cancel the contract before performance. If they do so, no sale happens and no tax applies. "Future" sales do not include present sales of tangible personal property for future delivery.

(4) **PRESENT SALES FOR FUTURE DELIVERY.** A present sale for future delivery is a contract in which the title is intended to pass from seller to buyer at the time the contract is entered but the seller is not obligated to deliver possession of the goods until some future date. The sale happens when title passes and tax applies unless the sale is otherwise exempt.

(5) **CREDIT TRANSACTIONS.** When a consumer makes a down payment and enters a contract for the purchase of coins, the parties may regard it as a credit transaction. But the sale may or may not happen at the time the "credit" is extended.

In some instances, the buyer receives a loan of the balance of the purchase price, and the title to the coins is transferred to the buyer. But the creditor, who may be the buyer's broker or the seller, retains possession of the property owned by the buyer as collateral for the loan to him or her. The buyer's creditor has the power to sell the buyer's property and pay off the loan if the market price of the property falls and approaches the amount of the loan. Often the broker or seller has power to repledge the property to his or her creditor to secure a loan to him or her. In any event a sale of tangible personal property to the consumer happens and tax applies unless otherwise exempt. These transactions are usually referred to as "margin" or "margined" purchases.

In other instances, the contract conditions the passage of title to the goods to the buyer on his or her payment of the full purchase price (conditional sales contract). The seller does not deliver possession of the goods until the payment of the full purchase price. Under this arrangement neither title nor possession in lieu of title can pass until full payment, and so a sale cannot happen until then. The seller and the buyer can agree to cancel the contract before title passes to the buyer and so no sale may ever happen under the contract. But if the title does pass after full payment, the sale happens and tax applies unless otherwise exempt. Because the seller may hold goods for the buyer, and the market price of the goods may fluctuate, the seller may regard the contract as an extension of credit to the buyer or may refer to the transaction as a "margin" or "margined" purchase.

Other "credit" arrangements are possible. Each transaction must be examined to determine if or when a sale or purchase happened.

(6) **FEES.** "Fees" charged by a seller for services in connection with the sale of coins, silver and gold bullion, or other precious metals are a part of the sales price of the property with the exception of insurance, interest, finance and carrying charges as provided in Regulation 1641 (18 CCR 1641) with respect to credit sales.

(7) **INTERSTATE SALES.** The same rules with respect to interstate sales that are applicable to sales and purchases of other tangible personal property also apply to sales of coins, silver and gold bullion, and other precious metals.

(c) PURCHASE OF COINS AND BULLION AS INVESTMENT. Purchases of coins and bullion as investments are purchases at retail. It is immaterial that a gain, benefit, or advantage may not be realized until the resale of the coins and bullion. A resale certificate may not be issued for purchases for this purpose.

A person purporting to hold coins or bullion solely for resale in the regular course of business must be able to prove that they actively engage in business as a seller of coins and bullion. The following are some examples of relevant evidence:

- (1) The number, scope, and character of the person's purchases and sales of coins or bullion.
- (2) Evidence of the person's continuing efforts to advertise and sell coins or bullion.
- (3) Evidence that the person held out to the public that they were engaged in business as a seller of coins or bullion at an identified place of business.
- (4) The manner in which income from transactions in coins or bullion was reported by that person for income tax purposes.

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Proposed Amendments to Regulation 1599

(5) Whether a local business license was issued to that person to engage in sales of coins or bullion.

Seller's permits may be held only by persons actively engaged in the business of selling tangible personal property.

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