

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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Opinion No. 12-110

Sales Tax on Gold and Silver Coins

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**QUESTIONS**

1. Can the State of Tennessee legally collect sales tax on exchanges of gold and silver coins?
2. Does a tax on United States legal tender violate the Commerce Clause of the United States Constitution?
3. Does a tax on foreign legal tender gold, silver, platinum, or palladium coins violate the General Agreement on Tariffs and Trade?

**OPINIONS**

1. The State of Tennessee may legally collect sales tax on exchanges of gold and silver coins when gold and silver coins are exchanged based on their intrinsic value as precious metals or as collectible items, rather than their value as legal tender as set by Congress. Such transactions are considered taxable sales of tangible personal property under the Retailers' Sales Tax Act, codified at Tenn. Code Ann. §§ 67-6-101 to -907.
2. A tax on United States legal tender as legal tender would impinge on Congress's power to establish a uniform legal tender, which is derived primarily from Congress's express power to coin money and regulate the value thereof. Tennessee law does not impose such a tax.
3. The General Agreement on Tariffs and Trade does not prohibit Tennessee from collecting sales tax on exchanges of foreign coins when foreign coins are exchanged based on their intrinsic value as precious metals or as collectible items, rather than their value as legal tender as set by the issuing nation.

**ANALYSIS**

1. The law of Tennessee specifically provides that “[f]or the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state.” Tenn. Code Ann. § 67-6-202(a). “Sale” is defined as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any

means whatsoever of tangible personal property for a consideration.” Tenn. Code Ann. § 67-6-102(80)(A). “Tangible personal property” is defined as “personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.” Tenn. Code Ann. § 67-6-102(91)(A).

In *State v. Sanders*, 923 S.W.2d 540 (Tenn. 1996), the Tennessee Supreme Court addressed the issue of “whether the exchange of gold and silver coins for dollars constitutes the sale of tangible personal property which is subject to sales tax imposed by Tenn. Code Ann. § 67-6-101 *et seq.*” 923 S.W.2d at 541. The defendant insisted that gold and silver bullion and coins were money and that sales tax could not be imposed on the defendant’s exchanges of money for money. *Id.* at 542. The Supreme Court rejected the defendant’s argument and held that the gold and silver bullion and coins were tangible personal property subject to sales tax. *Id.* at 543. The Court found “that the transactions on which the defendant failed to collect and remit sales tax were based on the intrinsic value of the precious metals rather than their representative value as a medium of exchange.” *Id.* According to the Court, the most compelling evidence was trade confirmations provided by the defendant showing “that the value of each coin was based on its weight, not its value as established by the issuing government.” *Id.* The Court determined that its conclusion that the sale of coins is subject to taxation by the State “does not interfere with the constitutional right of the federal government to ‘coin money.’” *Id.* (citing U.S. Const. art. I, § 10).

The Supreme Court’s decision in *Sanders* is consistent with decisions from other jurisdictions holding that gold and silver bullion and coins are tangible personal property subject to sales tax. See *Association of Alabama Professional Numismatists, Inc. v. Eagerton*, 455 So.2d 867 (Ala. Civ. App. 1984); *Revenue Cabinet, Commonwealth of Kentucky v. Saylor*, 738 S.W.2d 426 (Ky. Ct. App. 1987); *Michigan National Bank v. Department of Treasury*, 339 N.W.2d 515 (Mich. Ct. App. 1983); *Northwest Territories Gold & Silver Exchange, Inc. v. Commissioner of Revenue*, 377 N.W.2d 448 (Minn. 1985); *Scotchman’s Coin Shop, Inc. v. Administrative Hearing Commission*, 654 S.W.2d 873 (Mo. 1983); *Losana Corp. v. Porterfield*, 236 N.E.2d 535 (Ohio 1968); *Thorne and Wilson, Inc. v. Utah State Tax Commission*, 681 P.2d 1237 (Utah 1984). This Office has likewise opined that the sale of gold and silver bullion and coins is subject to sales tax in Tennessee. See Op. Tenn. Att’y Gen. 81-476 (Aug. 26, 1981).

Based on the foregoing authorities, when gold and silver coins are exchanged for legal tender based on the representative value of the coins as a medium of exchange established by the issuing government, the transaction is not a taxable sale of tangible personal property. When gold and silver coins are exchanged for legal tender based on the intrinsic value of the coins as precious metals, however, the transaction is a taxable sale of tangible personal property. For example, the exchange of a U.S. quarter for two dimes and a nickel would not be a taxable sale of tangible personal property; however, the exchange of a U.S. quarter for a \$100 bill because the quarter contains precious metals having an intrinsic value of \$100 would be a taxable sale of tangible personal property.

Certain coins will also have an intrinsic value that exceeds their designated value as legal tender due to factors other than the coins’ precious metal content, such as coins that are valued for their scarcity or appearance (*e.g.*, minting defect or commemorative design). If such coins

are exchanged for more than their designated value as legal tender, the transaction will likewise be considered a taxable sale of tangible personal property. *See Michigan National Bank*, 339 N.W.2d at 517; *Losana Corp.*, 236 N.E.2d at 537.

2. The Constitution grants to Congress the power to establish a uniform legal tender and to prohibit all other forms of currency exchange. In *Norman v. Baltimore & Ohio R. Co.*, 294 U.S. 240 (1935), the United States Supreme Court explained Congress's broad power over the national currency as follows:

The broad and comprehensive national authority over the subjects of revenue, finance, and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several states, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers. ...

The Constitution 'was designed to provide the same currency, having a uniform legal value in all the States.' It was for that reason that the power to regulate the value of money was conferred upon the federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the states. The states cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress.

294 U.S. at 303 (citations omitted).

Pursuant to its authority to establish a uniform legal tender, Congress has decreed that "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts." 31 U.S.C. § 5103. The Secretary of the Treasury is authorized to mint and issue the following coins:

- (1) a dollar coin that is 1.043 inches in diameter.
- (2) a half dollar coin that is 1.205 inches in diameter and weighs 11.34 grams.
- (3) a quarter dollar coin that is 0.955 inch in diameter and weighs 5.67 grams.
- (4) a dime coin that is 0.705 inch in diameter and weighs 2.268 grams.
- (5) a 5-cent coin that is 0.835 inch in diameter and weighs 5 grams.
- (6) except as provided under subsection (c) of this section, a one-cent coin that is 0.75 inch in diameter and weighs 3.11 grams.

(7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.

(8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.

(9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.

(10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.

(11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.

(12) A \$25 coin of an appropriate size and thickness, as determined by the Secretary, that weighs 1 troy ounce and contains .9995 fine palladium.

31 U.S.C. § 5112(a). The Secretary is also authorized to mint and sell silver and gold coins to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins. 31 U.S.C. § 5112(e), (f), and (i).

The coins minted and issued by the Secretary of the Treasury are legal tender of the United States. *See* 31 U.S.C. §§ 5103 and 5112(h). Only Congress has the power to establish the value of the legal tender of the United States. *See Norman*, 294 U.S. at 303. The value of gold and silver coins as legal tender is the value denominated by Congress, not the market value of the coins based on their gold or silver content. The State cannot tax exchanges of gold and silver coins for other legal tender that are based on the value of the coins set by Congress, because doing so would impermissibly regulate the value of United States legal tender. For example, the State could not apply the sales tax to a transaction in which two \$50 gold coins are exchanged for a \$100 bill, because doing so would reduce the value of the gold coins as legal tender set by Congress.

Tennessee does not tax exchanges of gold and silver coins for other legal tender that are based on the value of the coins set by Congress. As the Tennessee Supreme Court explained in *Sanders*, exchanges of gold and silver coins for other legal tender that are based on the coins' value as legal tender set by Congress are not taxable sales of tangible personal property under the Retailers' Sales Tax Act. 923 S.W.2d at 543. When gold and silver coins are exchanged for other legal tender based on the intrinsic value of their gold or silver content, however, the transaction is a taxable sale of tangible personal property. This is not a tax on United States legal tender. If a \$50 gold coin is exchanged for \$300, the gold coin is not being used as legal tender; instead, it is being sold as an item of tangible personal property based on its value as a precious metal, rather than its legal tender value of \$50.

3. The General Agreement on Tariffs and Trade ("GATT") is an agreement among several nations consisting of "reciprocal and mutually advantageous arrangements directed to the

substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.” Preamble, General Agreement on Tariffs and Trade, available at [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm). GATT “prohibits discriminatory treatment of exports and imports between the signatory nations.” *Association of Alabama Professional Numismatists, Inc. v. Eagerton*, 455 So.2d 867, 870 (Ala. Civ. App. 1984). In *Association of Alabama Professional Numismatists*, the Alabama Court of Civil Appeals held that imposing sales tax on sales of foreign coins did not result in discriminatory treatment in violation of GATT. The Court explained that just as the states cannot initially tax gold coins minted and sold by the United States, so too the states cannot tax foreign coins so long as they retain their character as imported goods. Subsequent transactions of both U.S. gold coins and foreign gold coins are nevertheless subject to sales tax. The Court held that application of Alabama’s sales tax to sales of foreign coins did not violate GATT because sales of foreign coins were taxed once the coins had entered domestic commerce and were no longer imports subject to GATT. *Id.* Tennessee’s sales tax likewise does not apply to the importation of foreign coins; rather, it applies to the sale of foreign coins after they have lost their character as imports.

Furthermore, Tennessee does not impose a tax on transactions by which foreign coins are exchanged for their equivalent in U.S. dollars. Such transactions are not taxable sales of tangible personal property, provided that the value of the foreign coins is based on their value as legal tender as established by the issuing government. When foreign coins are exchanged for U.S. dollars based on the coins’ value as precious metals or collectible items, however, the transaction is a taxable sale of tangible personal property. In *Sanders*, the Tennessee Supreme Court found that the defendant’s exchanges of Kruggerands for dollars were not valued according to an exchange rate between dollars and Krugerrands, but instead were valued based on the weight of the Krugerrands—*i.e.*, their value as precious metals, not their value as legal tender set by the issuing government. 923 S.W.2d at 543. Accordingly, the transactions were taxable sales of tangible personal property.

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