



# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations



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## *MEMORANDUM*

TO: Commission Members

FROM: Cliff Lippard *Cliff*  
Executive Director

DATE: 1 December 2021

SUBJECT: Public Chapter 585, Acts of 2021 (State Gold Depository) – Final Report for Approval

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The attached Commission report is submitted for your approval. It was prepared in response to Public Chapter 585, Acts of 2021, which directed the Commission to “study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created one.” Since the draft report was presented at the last meeting, staff have added information regarding the fiscal notes for sales tax exemption bills, added information regarding the effect of sales tax exemptions on state and local sales tax bases, and continued to refine other information in the report. These changes are highlighted in yellow.

Although information was added to clarify all the factors that make storing precious metals in Tennessee less attractive to both institutional and individual investors than storing it in other states, the finding that a state gold depository is not viable remains unchanged from the draft report:

- Stakeholders say that Tennessee’s sales tax on precious metal coins and bullion is one factor that stands in the way of the viability of a depository in Tennessee because Tennesseans can avoid paying sales tax by buying and storing precious metals in states that do not tax the sales. But a sales tax exemption on its own may not generate enough demand to cover the high cost of building and operating a depository. Another factor is Tennessee’s location outside of established markets for gold and silver such as COMEX. In addition, the State Treasury is not authorized, or inclined, to invest in gold. **Given the factors that make storing precious metals in Tennessee less attractive to both institutional**

**and individual investors than storing it in other states, and the fact that no institutional investment funds seem inclined, at this point, to buy or store gold in Tennessee, there does not appear to be enough demand for a state gold depository to be viable.**

The draft report made one recommendation related to a sales tax exemption for precious metal coins and bullion. Although the district court ruled in favor of Kentucky and Tennessee in *Kentucky et al v. Yellen*, the recommendation remains unchanged:

- Delaying enacting a sales tax exemption for precious metal coins and bullion may help ensure that Tennessee does not lose any of the federal funds that it is set to receive through the American Rescue Plan Act. The act includes a provision that requires states to give back federal funds used for “a reduction in the net tax revenue.” If the General Assembly enacts a sales tax exemption that results in a reduction in the net tax revenue of the state before Tennessee spends all of the \$4 billion that it is set to receive through the Act, the state may have to give back some federal funds. In June 2021, Kentucky and Tennessee filed a lawsuit contesting the constitutionality of the provision (*Kentucky et al v. Yellen*). Although the district court ruled in favor of Kentucky and Tennessee, the decision could be appealed. The lawsuit was one of six filed by state attorneys general challenging the provision. Resolution of the lawsuits may provide clarity regarding the effect on federal funds for Tennessee were Tennessee to enact a sales tax exemption. But until then, enacting a sales tax exemption for precious metals may result in Tennessee giving back some federal funds. **For these reasons, the General Assembly could consider a sales tax exemption for precious metal coins and bullion if it becomes clear that the exemption will not violate the American Rescue Plan Act or once all the federal funds have been spent.**