

## **Summary and Recommendations: A bullion depository is not feasible in Tennessee, but the state should consider a sales tax exemption for precious metal coins and bullion.**

Tennesseans purchase precious metals for a variety of reasons, and all buyers of precious metals need a way to store them. The options for storage include home safes, safe deposit boxes in a bank, and purpose-built depositories, which can offer additional services beyond storage. Presently, there are no depositories in Tennessee, so Tennessee residents who want to store precious metals in a depository must do so out of state.

Stakeholders say that the advantages for an in-state depository include offering protection for the State of Tennessee and its residents during severe economic downturns, creating a revenue source for the state from storage/transaction fees, and providing additional services to its customers such as facilitating transactions by depositors. Additionally, they say a depository could serve as a first step towards the creation of a state-backed currency. Public Chapter 585, Acts of 2021, directs TACIR to “study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created one.” The first and only state bullion depository in the United States is the Texas Bullion Depository. In addition, there are at least a dozen private depositories located in other states. Studying these, the Commission finds that because of high costs, a lack of demonstrated demand, and the fact that precious metals are not exempt from sales taxes in Tennessee, a state depository is not feasible. While exempting precious metals from the sales tax would not in itself make a depository feasible, there are other reasons for the state to consider this option.

### **Building and operating a state depository would be costly.**

According to depository officials in other states, building a new depository would have substantial upfront costs, potentially costing millions or tens of millions of dollars. The cost is high because a depository requires specialized design features, like high-quality vault doors and full-time surveillance, and because sewer pipes could be a point of entry, the pipes would have to be too small to crawl through. Many of these security features are required for insurance purposes, according to a Lloyd’s of London broker with experience insuring depositories. Measures would also need to be taken to prevent counterfeiting, money laundering, ransomware attacks, and other criminal activity.

In a state-run depository, the state would cover these costs. Alternatively, the state could enter into a partnership with a private entity, as was done in Texas, but the state would still need to ensure adequate administration and oversight—a director, auditors, security, and legal staff. Although state oversight would be an attractive feature for some depositors, it could cost the state a few hundred thousand dollars per year or more.

In Texas, the state entered into a public-private partnership for the construction and operation of its state depository with the goal of the private partner covering the up-front cost. But the State of Texas and local governments in Texas do bear some costs. The state appropriated an average of \$175,000 for fiscal year 2019-20 through fiscal year 2022-23 for security and administrative oversight, and recently authorized a bond to buy the depository and lease it back to the private partner. Costs to local governments where the private partner agreed to locate the depository include a \$4 million incentive package by the city and property tax rebates provided by the county. Some stakeholders have suggested that, instead of constructing a new depository in Tennessee, an existing bank vault might be used. But banks have not expressed much interest in this idea, and some depositors would see having their deposits inside the banking system as a negative.

Regardless of whether the state depository is state-run or a public-private partnership, the state would bear reputational risk of ensuring the viability of the depository. In particular, for a public-private partnership, if the partner fails to perform per the agreement, the state may have to either temporarily manage the depository or begin the process of contracting with another partner.

Tennessee would face challenges for attracting enough deposits to make a depository financially viable. Revenue sources from a depository include storage fees and fees for assisting transactions, account set-up, withdrawal, customer room usage, transporting the precious metal, in-person pick-up, etc. Of these, storage fees are most important, and the value of the deposits determines much of a depository's revenue. Depository officials say that, to make enough revenue from storage fees to cover costs, a depository would probably need about \$1 billion in deposits, and without a large initial deposit, it could take many years to reach that amount.

*The deposits held by the Texas Bullion Depository are less than what was anticipated and are currently not enough for the depository to break even.*

Officials of the Texas Bullion Depository say that the value of its deposits has increased to as much as \$130 million, but that is not enough for the depository to break even. Initially, Texas officials anticipated that the University of Texas endowment would

deposit its \$763 million in gold in the Texas Bullion Depository. Instead, believing that systemic risks were falling, endowment officials sold the gold over a multi-year period, selling the last of the gold in August 2020. Before they sold the gold, endowment officials said that they wouldn't move the endowment's gold from New York City to Texas unless storage was cheaper and unless the Texas Bullion Depository became a member of COMEX (a market for gold and other precious metals). COMEX provides liquidity (the ability to buy or sell) and facilitates derivatives (futures and options) trading that could be a source of revenue for a depository. The Texas Bullion Depository applied to become a member of COMEX but has not yet been approved, in part because it is more than 150 miles from New York City—the maximum distance for a depository to be considered for membership under COMEX's current rules.

For a state depository in Tennessee to reach enough in deposits to be viable, it would probably need deposits from both individual investors and institutional investment funds. But it seems to be rare for large investment funds like university endowments to invest in gold. For example, the University of Tennessee endowment, which manages \$1 billion, does not currently invest in gold. If a university endowment did invest in gold, they would likely want to store it at a depository that is part of COMEX, as was the case with the University of Texas endowment. Like Texas, a gold depository in Tennessee would be too far from New York City.

The state treasury of Tennessee manages \$85.8 billion in investments; however, as is the case in all 50 states, Tennessee state law does not authorize the treasury to invest in gold. Moreover, Tennessee's treasury funds have boards of trustees whose policies also do not authorize the treasury to invest any of its funds in gold. The treasurer said that it would take an appropriation by the General Assembly for the treasury to invest in gold. The appropriation may even need to specify that the treasury store it in Tennessee because otherwise investment managers could decide to store it elsewhere. In addition to not being authorized to do so, state treasuries do not invest in gold because holding gold does not generate any revenue; you'd have to sell some of the gold to get the revenue to pay pensioners, for instance. Proponents of a state depository say that, in a crisis, it could help keep the state solvent, but the State of Tennessee has a AAA bond rating and has won awards for strong financial management.

Although individual investors and collectors can currently store their precious metals at home, in a safe deposit box, or in an out-of-state depository, some individuals may want to store their precious metals in a state depository located in Tennessee. The fact that there is no private depository in Tennessee to meet this demand suggests the demand is not high enough to support one, which raises the question as to whether there are other factors that make Tennessee a less attractive location for a depository.

**Stakeholders say that Tennessee’s sales tax makes buying and storing gold in Tennessee less attractive than in states that do not tax the sales.**

Tennessee is one of only eight states—of the 45 states with a sales tax—that does not exempt any of the sales of precious metal coins and bullion. Of the 37 states with an exemption, 26 exempt all sales of precious metal coins and bullion. The other 11 states have exemptions that tend to be aimed at exempting sales of precious metals bought as an investment while keeping the sales tax for other purchases.

The trend in recent years is that more states are exempting sales of precious metal coins and bullion. In the past 10 years, 12 states have added an exemption for at least some purchases. Eight of the 12 states exempted all sales of precious metal coins and bullion, and the other four enacted partial exemptions.

Anyone buying and storing precious metals in Tennessee must pay Tennessee’s sales tax, and state and local rates combined can be as high as 9.75%. And the states’ authority to enforce collections was expanded by the 2018 US Supreme Court decision *South Dakota v. Wayfair*, which enabled states to require out-of-state sellers to collect and remit sales tax. In light of this requirement, some out-of-state dealers and depositories instruct their customers to avoid paying sales tax by storing the precious metals in a state that does not tax the sales. For instance, the Texas Bullion Depository website says that “by buying and keeping their precious metals in Texas, investors can avoid paying a sales tax on the purchases.”

Stakeholders say that Tennessee’s sales tax on precious metal coins and bullion stands in the way of the viability of a depository in Tennessee, since Tennesseans can avoid paying sales tax by buying and storing precious metals in states that do not tax the sales. **Because Tennessee’s sales tax makes buying and storing gold in Tennessee unattractive to both institutional investment funds and individuals, in combination with 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.**

**Beyond its effect on the prospects of a depository, stakeholders say that Tennessee’s sales tax on precious metals has other negative consequences for the state.**

Stakeholders say that the sales tax makes Tennesseans, regardless of their storage plans, less likely to purchase precious metals from in-state dealers. Stakeholders also say that the sales tax leads to less tourism dollars in Tennessee by discouraging coin shows from locating in the state, which if they did, could lead to increased sales of other merchandise that is subject to the sales tax and increased hotel tax revenue, potentially

offsetting any decreases in state and local sales tax revenue from the exemption. The Tennessee Department of Tourist Development estimates that the average daily expenditures per traveler to a coin show would be \$132.40, including transportation, and some coin shows can attract as many as 10,000 attendees. Stakeholders also point out that purchases of precious metals are often investments, and Tennessee does not apply the sales tax to other types of investments like stocks and bonds.

In the near term, any consideration of a tax change in the states that affects state revenue must account for the American Rescue Plan Act, passed in 2021. 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*). The lawsuit is one of six filed by state attorneys general challenging the provision. Resolution of the lawsuits may provide clarity regarding the effect of enacting a sales tax exemption on federal funds for Tennessee. But until then, enacting a sales tax exemption for precious metals may be in violation of federal law. **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 of the federal funds have been spent.**

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## **Analysis: A bullion depository is not feasible in Tennessee, but the state should consider a sales tax exemption for precious metal coins and bullion**

Tennesseans purchase precious metals for a variety of reasons including coin collecting or as investments in precious metals in hopes they can be sold later at a higher price.<sup>1</sup> Some invest in gold and other tangible assets because they can also serve as a hedge against inflation,<sup>2</sup> which has become a concern for many as the economy recovers from the pandemic and recession.<sup>3</sup> Others treat precious metals as safe-haven assets, which they believe could protect the State of Tennessee and its residents during severe economic downturns, natural disasters, and other catastrophes.<sup>4</sup> Still others want to use gold and silver as currency as was done for thousands of years, and the US dollar had links to gold as recently as 1971.<sup>5</sup> Regardless of the reason, all buyers of precious metals need a way to store them. Options for storage include home safes and safe deposit boxes, and purpose-built depositories, which can offer additional services beyond storage.<sup>6</sup>

Home safes are the most accessible of all of the storage options but can be expensive. Safes that are fireproof and waterproof and are too heavy to be carried away can cost hundreds or thousands of dollars.<sup>7</sup> Insuring precious metals in a home safe is

<sup>1</sup> Interview with Pete Dodge, Founder of Nashville Coin Gallery, on June 16, 2021. Wallace 2020 (<https://www.wsj.com/articles/why-gold-prices-high-warren-buffet-11597691966>). Commodities Futures Trading Commission 2021 (<https://www.cftc.gov/sites/default/files/idc/groups/public/@cpfraudawarenessandprotection/documents/file/cppreciousmetalsfraudbrochure.pdf>).

<sup>2</sup> Emmrich and McGroarty 2013.

<sup>3</sup> Sindreu 2021.

<sup>4</sup> Pullen, Benson, and Faff 2014.

<sup>5</sup> Hogan, Smith, and Aguiar-Hicks 2019.

<sup>6</sup> Alterman 2011 and Braff 2020.

<sup>7</sup> Nashville Safehouse 2021. <https://thesafehousestore.com/product-category/home-safes/>

expensive and subject to limits.<sup>8</sup> A floater may need to be added to a homeowners' insurance policy to ensure adequate coverage.<sup>9</sup>

Safe deposit boxes in a bank are only accessible during bank hours but are more secure than home storage.<sup>10</sup> Customers pay an annual fee to rent the safe deposit box, and safe deposit boxes are not covered by the bank's insurance policy or backed by the Federal Deposit Insurance Corporation, so customers must buy their own insurance to cover the contents of their safe deposit box.<sup>11</sup> But because of the bank's security, insuring gold stored in a safe deposit box is generally cheaper than insurance for home storage.<sup>12</sup>

Another precious metal storage option is a purpose-built depository, which can offer additional services beyond storage.<sup>13</sup> Although a depository could be even less accessible than a safe deposit box, it would offer the highest level of security, and as a result, the cheapest insurance, which is typically provided by the depository and included in the storage fees.<sup>14</sup> Some depositories provide additional services including facilitating transactions between customers based on the value of gold on deposit, and stakeholders say that a depository could serve as a first step towards the state creating an alternate currency.<sup>15</sup> Gold that is part of an individual retirement account (IRA) must be stored in a qualified bullion depository.<sup>16</sup> Currently, there are no public or

<sup>8</sup> Braff 2020.

<sup>9</sup> Kagan 2020.

<sup>10</sup> Carrns 2018.

<sup>11</sup> Egan and Denise 2021 and Carrns 2018.

<sup>12</sup> Safe Deposit Box Insurance Coverage 2021 (<https://safedepositboxinsurance.com/>). Carrns 2018.

<sup>13</sup> Delaware Depository 2021. <https://www.delawaredepository.com/about-us/our-services/ira-services/> and United Precious Metals Association 2021 <https://upma.org/upma-visa-faqs>.

<sup>14</sup> Telephone Interviews with Texas Bullion Depository, Brinks Company, and Delaware Depository on July 6, 2021.

<sup>15</sup> United Precious Metals Association 2021 <https://upma.org/upma-visa-faqs>. Murphy 2015, Mosher 2017, and Eaton 2018

<sup>16</sup> Interview with Hugh Bromma, Chief Executive Officer and Founder, Entrust Group, on June 22, 2021. See also Entrust 2017 and Entrust 2018 (<https://www.theentrustgroup.com/blog/choosing-a-depository-for-your-precious-metals-investment>).

private depositories in Tennessee, so Tennessee residents desiring to store precious metals in a depository must do so out of state (see table 1).<sup>17</sup>

**Table 1. Options for Storing Precious Metals (Bullion, Coins, or Jewelry)**

Option	Storage Cost	Insurance Cost and Coverage
Home Safe	Approx. \$100 to \$10,000 depending on size and quality of safe	Homeowners' insurance may provide some coverage; however, coverage may be limited by a category limit, for instance, \$200; a floater may be required. Cost of floater is approximately 1-2% of the value insured.
Safe Deposit Box	\$42 to \$300 per year, depending on bank and size of box	Individual may purchase insurance for approx. 0.2% to 0.5% of the value insured, up to \$500,000.
Depository	0.25% to 1.5% of deposit value per year	Yes. Insurance is provided by the depository and is included in the cost (no coverage limit).

Source: Nashville Safehouse 2021. Moon 2020. Safe Deposit Box Insurance Coverage 2021. TACIR staff survey of depository fee schedules (see Appendix B).

Public Chapter 585, Acts of 2021, directs TACIR to “study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created one.” The first and only state bullion depository in the United States is the Texas Bullion Depository.<sup>18</sup> In addition, there are at least a dozen private depositories located in other states. Studying these, the Commission finds that because of high costs,<sup>19</sup> a lack of demonstrated demand, and the fact that precious metals are not exempt from sales taxes in Tennessee,<sup>20</sup> a state depository is not feasible. While exempting precious metals from the sales tax would not in itself make a depository feasible, there are other reasons for the state to consider this option.

<sup>17</sup> Interview with Pete Dodge, Founder of Nashville Coin Gallery, on June 16, 2021. Interview with Hugh Bromma, Chief Executive Officer and Founder, Entrust Group, on June 22, 2021.

<sup>18</sup> Texas Bullion Depository 2021 (<https://www.texasbulliondepository.gov/>)

<sup>19</sup> Interview with Delaware Depository on June 25, 2021.

<sup>20</sup> Tennessee Code Annotated, Section 67-6-101 et seq.

Proponents of a Tennessee depository say it could provide services in addition to storage, such as facilitating in-kind transactions in precious metals between account holders.<sup>21</sup> Some depositories in other states have offered this service. The Delaware Depository and the United Precious Metals Association in Utah, for instance, facilitate transfers between account holders.<sup>22</sup>

Stakeholders contend that a state depository could also serve as a first step towards the state creating its own alternate currency, backed by the bullion held in the state depository. But a state currency may not be constitutional. According to Article I, Section 10 of the US Constitution: “no State shall . . . coin Money . . . [or] make any Thing but gold and silver Coin a Tender in Payment of Debts.”<sup>23</sup> The Tennessee treasury has also pointed out that the treasury can’t issue a currency based on other people’s gold, so the state would have to own the gold, and to match the amount of US currency currently in circulation in Tennessee, the state would need to own and hold reserves in the state depository worth hundreds of billions of dollars.<sup>24</sup> Senate Joint Resolution 98 by Ketron (107<sup>th</sup> General Assembly) would have created a special joint committee to study the feasibility of Tennessee adopting an alternative currency in the event of a breakdown of the Federal Reserve System, but the resolution did not pass.

Although the US Constitution forbids states to coin money, the US mint does currently produce gold and silver coins, and three states—Arizona, Oklahoma, and Utah—have enacted legal tender acts to make those coins useful for everyday transactions.<sup>25</sup> However, these legal tender acts seem to be largely symbolic. Businesses in these states do not have to accept gold or silver US coins as payment, and none of those states commonly accept gold or silver US coins as payment for taxes. In Tennessee, Senate Bill 978 by Southerland, House Bill 1323 by Eldridge (111<sup>th</sup> General Assembly) would have provided that certain gold and silver coins and certain refined gold or silver bullion are

<sup>21</sup> Delaware Depository 2021. <https://www.delawaredepository.com/about-us/our-services/ira-services/> and United Precious Metals Association 2021 <https://upma.org/upma-visa-faqs>.

<sup>22</sup> “Internal Transfer” <https://www.delawaredepository.com/about-us/our-services/storage-transfer/>; “Member to merchant transaction fee” <https://upma.org/resources/fee-schedule>

<sup>23</sup> US Constitution, Article 1, Section 10.

<sup>24</sup> Interview with Tennessee Department of the Treasury on June 15, 2021.

<sup>25</sup> Utah H.B. 317 (2011) (<https://le.utah.gov/~2011/bills/hbillenr/HB0317.pdf>); Arizona H.B. 2014 (2017) (<https://www.azleg.gov/legtext/53leg/1R/laws/0316.pdf>); Oklahoma S.B. 862 (2014) ([http://webserver1.lsb.state.ok.us/cf\\_pdf/2013-14%20ENR/SB/SB862%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2013-14%20ENR/SB/SB862%20ENR.PDF))

legal tender of this state if issued by the US government or if a court declares that states may declare such as legal tender, but the bill did not pass.

And stakeholders say that a state-backed, in-state depository could create a revenue source for the state, primarily through storage fees.<sup>26</sup> The state could own and operate the depository itself, or the state could enter into a public-private partnership that includes a revenue-sharing agreement. The State of Texas entered into a net income-sharing agreement with its private partner, but the depository has not generated any net income to share with the State of Texas.<sup>27</sup>

### **Building and operating a state depository would be costly.**

According to depository officials in other states, building a new depository would have substantial upfront costs, potentially costing millions or tens of millions of dollars.<sup>28</sup> The cost is high because a depository requires specialized design features, like high-quality vault doors.<sup>29</sup> Vault dealers recommend that gold vaults have vault doors and modular panels that can withstand an “attack by common mechanical tools, electric tools, cutting torches, or any combination of these means” for at least 2 hours—also known as a Class 3 vault.<sup>30</sup> Other possible means of penetrating a vault include burning bars (i.e. thermal lances) and explosives.<sup>31</sup> In addition to a secure vault, other depository security features include full-time surveillance, and because sewer pipes could be a point of entry, the pipes would have to be too small to crawl through.<sup>32</sup>

Many of these security features are required for insurance purposes, according to a Lloyd’s of London broker.<sup>33</sup> Lloyd’s of London provides unique and specialized insurance, and their brokers appear to be the only insurance providers for bullion

<sup>26</sup> Interview with Texas Bullion Depository on June 2, 2021.

<sup>27</sup> Interview with Texas Bullion Depository on June 2, 2021.

<sup>28</sup> Interview with Delaware Depository on June 25, 2021.

<sup>29</sup> Interview with Delaware Depository on June 25, 2021.

<sup>30</sup> E-mail from Johanna Chapman, Sales Manager, International Vault, on July 2, 2021. Underwriters Laboratory 2017.

<sup>31</sup> Ibid.

<sup>32</sup> Interview with Delaware Depository on June 25, 2021.

<sup>33</sup> Interview with Price Forbes & Partners Ltd on July 19, 2021.

depositories.<sup>34</sup> Before they would insure a depository, they would require external alarm monitoring, rapid response time, recording and backing up everything on close-circuit television, having a back-up power supply, and measures to prevent unauthorized access into the security system.<sup>35</sup> Measures would also need to be taken to prevent counterfeiting, money laundering, ransomware attacks, and other criminal activity, which is not without precedence.<sup>36</sup> For instance, an estimated \$30 million in cash, metal bullion and valuable coins vanished from a Bullion Direct vault in Austin, Texas in 2016.<sup>37</sup> A business owner of a South Florida company that “transported gold, cash, and other valuables by armored truck, both domestically and internationally” was charged in 2021 with “facilitating a \$140 million transnational illicit gold smuggling operation aimed at laundering cash with alleged ties to criminal activity.”<sup>38</sup>

In a state-run depository, the state would cover the all the costs of securing and operating the depository.<sup>39</sup> Alternatively, the state could enter into a partnership with a private entity, as was done in Texas, but the state would still need to ensure adequate administration and oversight.<sup>40</sup> The State of Texas employs a part-time director and attorney along with full-time auditing and security staff.<sup>41</sup> Although state oversight would be an attractive feature for some depositors,<sup>42</sup> it could cost the state a few hundred thousand dollars per year or more.<sup>43</sup>

<sup>34</sup> Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021.

<sup>35</sup> Interview with Price Forbes & Partners Ltd on July 19, 2021.

<sup>36</sup> Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021 and proposals and responses to RFP218h for Services Related to the Texas Bullion Depository 2016.

<sup>37</sup> Dexheimer 2018 (“Downtown Austin vault of precious metals turns up mostly empty”).

<sup>38</sup> US Department of Justice 2021.

<sup>39</sup> Engel Fischer and Galetovic 2008.

<sup>40</sup> Agreement for Services Related to the Texas Bullion Depository Between Comptroller of Public Accounts and Lone Star Tangible Assets, LP.

<sup>41</sup> Email from Jaime Resendez, Compliance Analyst, Texas Comptroller of Public Accounts, on June 21, 2021.

<sup>42</sup> Interview with JT Dominick, Managing Partner, 9dots Capital, on May 21, 2021.

<sup>43</sup> Texas Legislative Budget Board 2021. (Senate Bill 1, as Passed 2<sup>nd</sup> House Eighty-seventh Legislature 2022-23 Biennium)

In Texas, the state entered into a public-private partnership for the construction and operation of its state depository with the goal of the private partner covering the up-front cost.<sup>44</sup> But the State of Texas and local governments in Texas do bear some costs. For fiscal year 2019-20 through fiscal year 2022-23, the Texas Legislature has appropriated average of \$175,000 per year for the Texas Bullion Depository.<sup>45</sup> Recently, the state authorized a \$20 million bond to buy the depository and lease it back to the private partner.<sup>46</sup> The private partner was also given a \$4 million incentive package by the city in Texas where they agreed to locate the depository.<sup>47</sup> The city of Leander provided \$1.5 million in reimbursements for infrastructure and up to \$2.5 million in tax rebates over 10 years.<sup>48</sup> Williamson county also provided a 5-year rebate of 50% of real property tax, and a 100% rebate of personal property tax.<sup>49</sup>

Some stakeholders in Tennessee have suggested that, instead of constructing a new depository, an existing bank vault might be used.<sup>50</sup> But banks have not expressed much interest in this idea, and some depositors would see having their deposits inside the banking system as a negative.<sup>51</sup>

According to Tennessee Department of Treasury officials, regardless of whether the state depository is state-run or a public-private partnership, the state would bear

<sup>44</sup> Interview with Texas Bullion Depository on June 2, 2021 and Mulverhill 2017.

<sup>45</sup> Legislative Budget Board 2021.

[https://www.lbb.state.tx.us/Documents/GAA/General\\_Appropriations\\_Act\\_2020\\_2021.pdf](https://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2020_2021.pdf)

[https://www.lbb.state.tx.us/Documents/Appropriations\\_Bills/87/Conference\\_Bills/87R-SB1.pdf](https://www.lbb.state.tx.us/Documents/Appropriations_Bills/87/Conference_Bills/87R-SB1.pdf)

The Texas Legislature does biennial budgeting once every two years and appropriated \$350,000 for both fiscal year 2019-20 and fiscal year 2020-21 and \$350,000 for fiscal year 2021-22 and fiscal year 2022-23 (an average of \$175,000 per year).

<sup>46</sup> Texas Senate Bill 2230 (2021) and Herman 2021.

<sup>47</sup> Austin Chamber of Commerce 2021.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Interview with Tennessee Department of the Treasury on June 15, 2021 and Representative Hulsey, House Finance Ways and Means Subcommittee on March 22, 2017.

<sup>51</sup> Interview with Amy Heaslet, General Counsel, Tennessee Bankers Association, on June 2, 2021. Interview with Tennessee Department of the Treasury on June 15, 2021.

reputational risk of ensuring the viability of the depository.<sup>52</sup> In particular, for a public-private partnership, if the partner fails to perform per the agreement, the state may have to either temporarily manage the depository or begin the process of contracting with another partner.<sup>53</sup>

**Tennessee would face challenges for attracting enough deposits to make a depository financially viable.**

Revenue sources from a depository include storage fees and fees for assisting with transactions, account set-up, withdrawal, customer room usage, transporting the precious metal, in-person pick-up, etc. Of these, depository officials say that storage fees are most important, and the value of the deposits determines much of a depository's revenue. They say that to make enough revenue from storage fees to cover costs, a depository would probably need about \$1 billion in deposits, and without a large initial deposit, it could take many years to reach that amount.<sup>54</sup> If, for instance, storage fees were set to 0.5%, \$1 billion would generate \$5 million in revenue per year. Storage fees are typically set to give discounts as deposits increase in value. For example, a \$5,000 deposit might be charged 0.5%, while \$50 million deposit is charged 0.25% (see appendix B for examples of depository fee schedules).

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Officials of the Texas Bullion Depository say that the value of its deposits has increased to as much as \$130 million, but that is not enough for the depository to break even.<sup>55</sup> Initially, Texas officials anticipated that the University of Texas endowment would deposit its \$763 million in gold in the Texas Bullion Depository.<sup>56</sup> Instead, believing that systemic risks were falling, endowment officials sold the gold over a multi-year

<sup>52</sup> Interview with Tennessee Department of the Treasury on June 15, 2021.

<sup>53</sup> Interview with Tennessee Comptroller of the Treasury on June 1, 2021 and Interview with Tennessee Department of Financial Institutions on June 4, 2021.

<sup>54</sup> Interview with JP Cortez, Policy Director, and Stefan Gleason, Director, Sound Money Defense League on July 29, 2021.

<sup>55</sup> Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021 and proposals and responses to RFP218h for Services Related to the Texas Bullion Depository 2016.

<sup>56</sup> Email from The University of Texas/Texas A&M Investment Management Company on May 27, 2021.

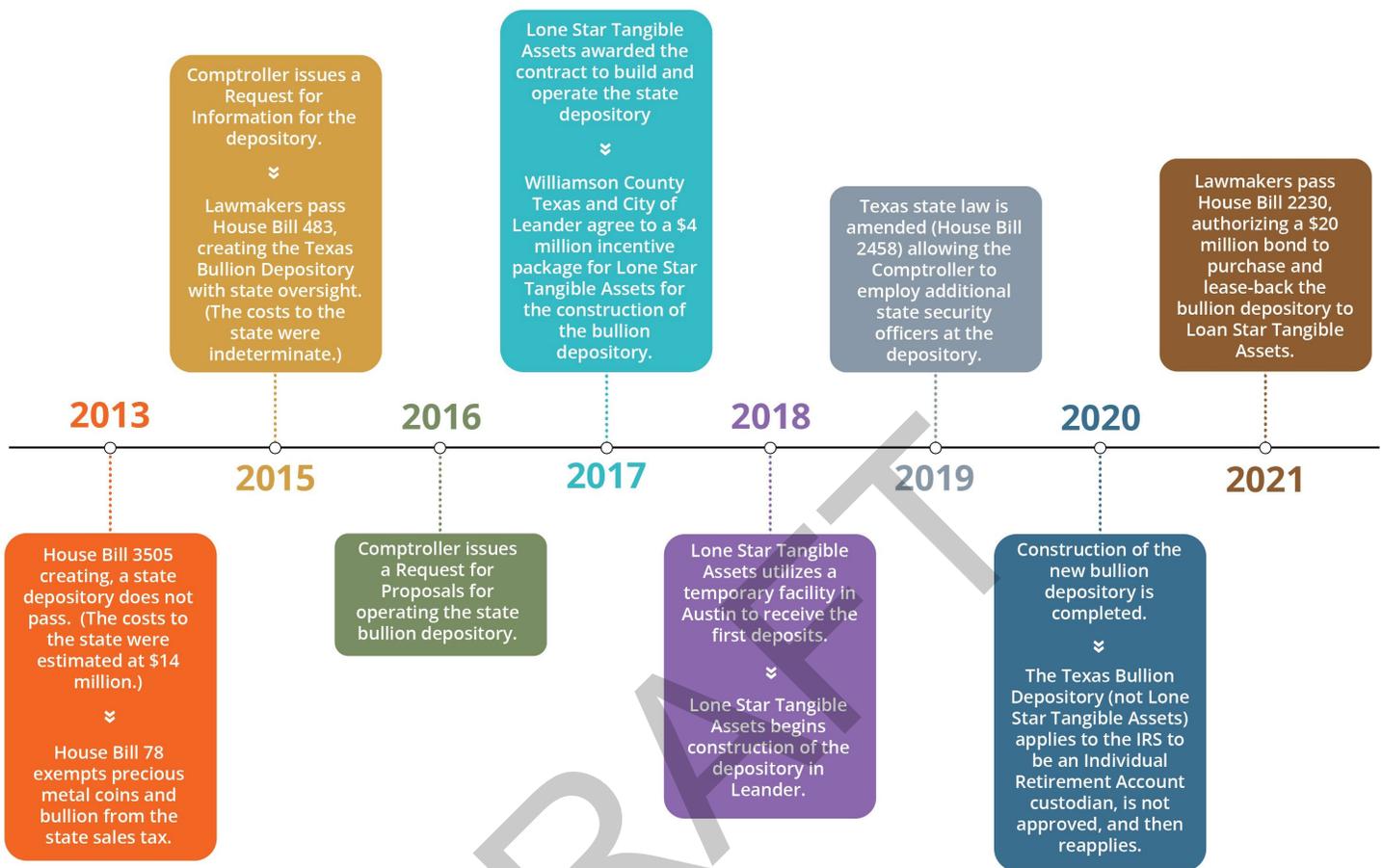
period, selling the last of the gold in August 2020.<sup>57</sup> Before they sold the gold, endowment officials said that they wouldn't move the endowment's gold from New York City to Texas unless storage was cheaper and unless the Texas Bullion Depository became a member of COMEX (a market for gold and other precious metals). COMEX provides liquidity (the ability to buy or sell) and facilitates derivatives (futures and options) trading that could be a source of revenue for a depository. The Texas Bullion Depository applied to become a member of COMEX but has not been approved, in part because it is more than 150 miles from New York City—the maximum distance for a depository to be considered for membership under COMEX's current rules (see figure 1).<sup>58</sup>

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<sup>57</sup> Email from The University of Texas/Texas A&M Investment Management Company on May 27, 2021.

<sup>58</sup> Interview with Joann Arena, Senior Director of Research and Product Development, CME Group, on June 18, 2021.

**Figure 1. Timeline of Texas Bullion Depository**



Source: Interview with Texas Bullion Depository on June 2, 2021. Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021. Austin Chamber of Commerce 2021. Texas House Bill 3505 (2013). House Bill 78 (2013). Texas House Bill 483 (2015). Texas House Bill 2458 (2019). Texas House Bill 2230 (2021).

For a state depository in Tennessee to reach enough in deposits to be viable, it would probably need deposits from both individual investors and institutional investment funds.<sup>59</sup> But it seems to be rare for large investment funds like university endowments to invest in precious metals.<sup>60</sup> Even if they do, there are several alternatives to buying precious metals for storage in a depository, including:

- shares of exchange-traded funds that purchase and store precious metals (e.g. SPDR Gold Shares, GLD, and iShares Gold Trust, IAU),

<sup>59</sup> Interview with Texas Bullion Depository on June 2, 2021.

<sup>60</sup> Christensen 2014 and Gleason 2020.

- stocks of precious metals mining companies, and
- precious metals derivatives (i.e. futures and options).<sup>61</sup>

Endowments of universities in Tennessee (public and private) totaled \$10.4 billion in fiscal year 2019-20 (see table 2).<sup>62</sup>

**Table 2. Endowments of Tennessee Universities (Public and Private), Fiscal Year 2019-20**

<b>Endowments of Tennessee Universities</b>	<b>Endowment Funds Fiscal Year 2019-20</b>
Vanderbilt	\$ 6,917,371,000
University of Tennessee	1,335,066,000
The University of the South	419,515,000
Rhodes College	341,178,000
Belmont University	260,087,000
The University of Memphis Foundation	220,771,000
Meharry Medical College	156,719,000
University of Chattanooga Foundation	147,097,000
East Tennessee State University	130,080,000
Middle Tennessee State University Foundation	108,889,000
Lipscomb University	81,026,000
Tennessee Technological University Foundation	74,110,000
Tennessee State University Foundation	63,020,000
Freed-Hardeman University	62,428,000
Southern Adventist University	49,005,000
Pellissippi State Community College Foundation	11,875,000
<b>TOTAL</b>	<b>\$ 10,378,237,000</b>

Source: National Association of College and University Business Officers 2020.

The University of Tennessee endowment, which manages \$1.3 billion, does not currently invest in gold.<sup>63</sup> If a university endowment did invest in gold, they would likely want to store it at a depository that is part of COMEX, as was the case with the

<sup>61</sup> Emmrich and McGroarty 2013, COMEX 2021 (<https://www.cmegroup.com/company/comex.html>), and Interview with Tennessee Department of Treasury on June 14, 2021.

<sup>62</sup> National Association of College and University Business Officers 2020.

<sup>63</sup> National Association of College and University Business Officers 2020. Interview with Rip Mecherle, Chief Investment Officer, University of Tennessee Endowment, on May 27, 2021.

University of Texas endowment.<sup>64</sup> Like Texas, a gold depository in Tennessee would be too far from New York City.

The state treasury of Tennessee manages \$85.8 billion in investments (see figure 2); however, as is the case in all 50 states,<sup>65</sup> Tennessee state law does not authorize the treasury to invest in gold.<sup>66</sup> Moreover, Tennessee's treasury funds have boards of trustees whose policies also do not authorize the treasury to invest any of its funds in precious metals. The treasurer said that it would take an appropriation by the General Assembly for the treasury to invest in gold.<sup>67</sup> The appropriation may even need to specify that the treasury store it in Tennessee because otherwise investment managers could decide to store it elsewhere. In addition to not being authorized to do so, state treasuries do not invest in gold because holding gold does not generate any revenue; you'd have to sell some of the gold to get the revenue to pay pensioners, for instance.<sup>68</sup> As introduced, Senate Bill 973 by Niceley, House Bill 777 by Hulsey (110<sup>th</sup> General Assembly), would have required the state treasurer to invest 40% of the amounts in the reserve for revenue fluctuations (i.e. the rainy-day fund) in gold bullion or other precious metal bullion, but the bill did not pass. The rainy-day fund totaled \$1.45 billion in 2021, and 40% of that would have been \$580 million. Proponents of a state depository say that it would improve the state's solvency, but the State of Tennessee has a AAA bond rating and has won awards for strong financial management.<sup>69</sup>

<sup>64</sup> Victoria Advocate Editorial Board 2018.

<sup>65</sup> Review of 50 states' laws by National Conference of State Legislatures and National Association of State Treasurers.

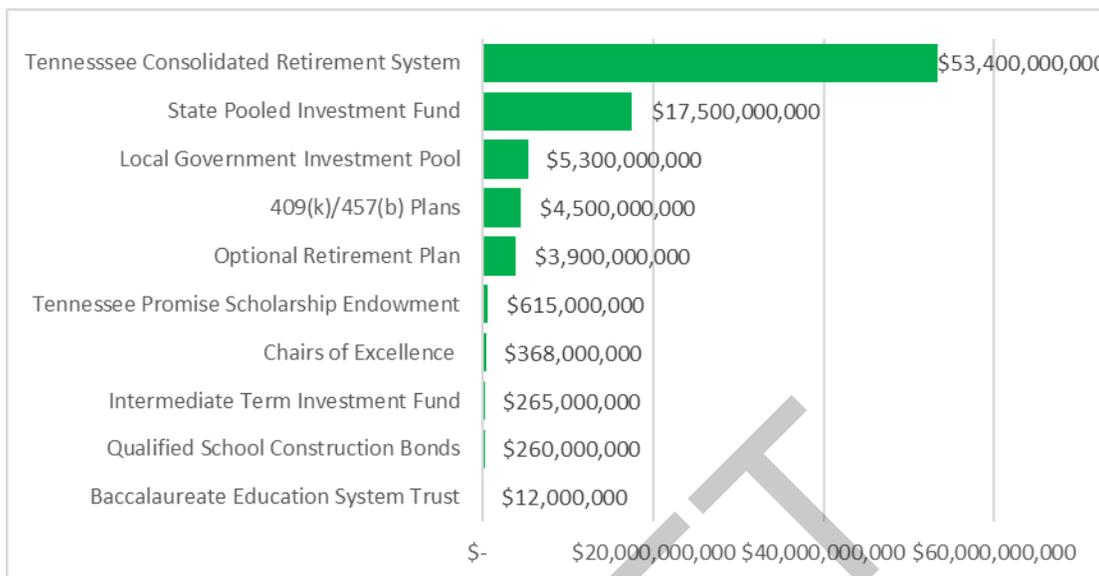
<sup>66</sup> Tennessee Code Annotated, Sections 8-37-104 (pensions) and 9-4-602 (state funds).

<sup>67</sup> Interview with Department of Treasury on June 14, 2021 and David Lillard, State Treasurer, House Finance Ways and Means Subcommittee on March 22, 2017 (House Bill 777),

<sup>68</sup> Interview with Department of Treasury on June 14, 2021 and David Lillard, State Treasurer, House Finance Ways and Means Subcommittee on March 22, 2017 (House Bill 777),

<sup>69</sup> Fitch 2021. Tennessee Department of Finance and Administration 2021.

**Figure 2. Tennessee Treasury Funds  
Fiscal Year 2019-20**



Source: Tennessee Department of the Treasury 2021.

Although individual investors and collectors can currently store their precious metals at home, in a safe deposit box, or in an out-of-state depository, some individuals may want to store their precious metals in a depository located in Tennessee.<sup>70</sup> The fact that there is no private depository in Tennessee to meet this demand suggests the demand is not high enough to support one, which raises the question as to whether there are other factors that make Tennessee a less attractive location for a depository.<sup>71</sup>

**Stakeholders say that Tennessee’s sales tax makes buying and storing gold in Tennessee less attractive than in states that do not tax the sales.**

Anyone buying and storing precious metals in Tennessee owes Tennessee’s sales tax, and state and local rates combined can be as high as 9.75%.<sup>72</sup> States’ authority to enforce collections was expanded by the 2018 US Supreme Court decision *South Dakota v. Wayfair*, which enabled states to require out-of-state sellers to collect and remit sales

<sup>70</sup> Alterman 2011 and Braff 2020. Interview with Representative Hulsey, Tennessee District 2, on May 13, 2021.

<sup>71</sup> Interview with Tennessee Department of the Treasury on June 15, 2021.

<sup>72</sup> Tennessee Code Annotated, Sections 67-6-202 and 67-6-702.

tax.<sup>73</sup> Before *Wayfair*, Tennessean's could buy from out-of-state dealers with no physical presence in the state who were not required to collect and remit Tennessee's sales tax, even if they shipped the metal to Tennessee. After *Wayfair*, sellers shipping the metal to Tennessee are required to collect and remit sales tax:

- Public Chapter 759 (111<sup>th</sup> General Assembly) requires sellers without a physical presence in Tennessee but with greater than \$100,000 in sales to Tennessee to collect and remit sales tax beginning October 1, 2020.
- Public Chapter 646 (111<sup>th</sup> General Assembly), also effective October 1, 2020, requires marketplace facilitators (e.g. Amazon, eBay, and Etsy) to collect and remit Tennessee sales tax on sales made through its marketplace.

Because of the requirement to collect and remit sales tax, some out-of-state dealers and depositories instruct their customers to avoid paying sales tax by storing the precious metals in a state that does not tax the sales. For example, the Texas Bullion Depository website states that "by buying and keeping their precious metals in Texas, investors can avoid paying a sales tax on the purchases."<sup>74</sup>

Stakeholders say that investors are less likely to buy precious metals in states that tax the sales than in states that do not because the price of gold would have to increase enough to offset the tax for them to break even.<sup>75</sup> They also point out that Tennessee does not apply the sales tax to other types of investments like stocks and bonds.<sup>76</sup> Stakeholders say that Tennessee's sales tax on precious metal coins and bullion stands in the way of the viability of a depository in Tennessee, since Tennesseans can avoid paying sales tax by buying and storing precious metals in states that do not tax the sales.<sup>77</sup>

<sup>73</sup> South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018).

<sup>74</sup> Texas Bullion Depository 2021 (<https://www.texasbulliondepository.gov/no-sales-tax-in-texas>)

<sup>75</sup> Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021.

<sup>76</sup> Tennessee Code Annotated, Section 67-6-101 et seq.

<sup>77</sup> Interview with David Crenshaw, Executive Director, National Coin and Bullion Association; Terry Hanlon, President, Dillon Gage Metals; and Terri Hewitt, Director of Sales, Dillon Gage Metals, on June 1, 2021. Interview with Matt Ferris, President, Lone State Tangible Assets, on June 10, 2021. Interview with Tennessee Department of the Treasury on June 15, 2021.

Tennessee is one of only eight states<sup>78</sup>—of the 45 states with a sales tax—that does not exempt any of the sales of precious metals and bullion.<sup>79</sup> Of the 37 states with an exemption, 26 exempt all sales of precious metal coins and bullion.<sup>80</sup> The other 11 states have exemptions that tend to target exempting sales of precious metals bought as an investment while keeping the sales tax for other purchases.<sup>81</sup> Of the 11 states with a partial exemption, seven exempt sales greater than a dollar threshold that is likely intended to act as a proxy for investments.<sup>82</sup> California exempts single transactions that are greater than \$1,500 (i.e. the threshold is \$1,500).<sup>83</sup> For five states, the threshold is \$1,000, and Florida’s threshold is \$500.<sup>84</sup> Tax administrators in these states say that the exemptions do not make administering the tax more difficult.<sup>85</sup>

Four other states have partial exemptions. Rather than exempt sales greater than a threshold as in the other states with a threshold, Louisiana exempts coin sales that are less than \$1,000 or that are purchased at a “multi-parish numismatic trade show.”<sup>86</sup> Two similar bills were introduced in Tennessee but did not pass. Senate Bill 1893 by Gresham, House Bill 1915 by Gant (110<sup>th</sup> General Assembly), Senate Bill 333 by Gresham, House Bill 212 by Gant (111<sup>th</sup> General Assembly), would have exempted sales that are less than \$10,000 and the sale of numismatic coins at a national, statewide, or multi-county trade show. Minnesota exempts bullion but not coins.<sup>87</sup> New Jersey exempts bullion (not coins) that are traded on a commodities market or other board of trade or exchange licensed by the Federal Commodity Futures Trading Commission,<sup>88</sup> and Indiana’s exemption is for individual retirement account (IRA) qualified bullion

<sup>78</sup> Hawaii, Kentucky, Maine, Mississippi, New Mexico, Tennessee, Vermont, and Wisconsin.

<sup>79</sup> TACIR staff review of other states’ laws. See appendix C.

<sup>80</sup> TACIR staff review of other states’ laws. See appendix C.

<sup>81</sup> TACIR staff review of other states’ laws. See appendix C.

<sup>82</sup> TACIR staff review of other states’ laws. See appendix C.

<sup>83</sup> California Revenue and Tax Code, Section 6355; 18 California Code of Regulations, Section 1599.

<sup>84</sup> Connecticut, Maryland, Massachusetts, New York, and Virginia. Florida Annotated Statutes, Section 212.08(7)(ww) and 212.05(1)(j) and Florida Administrative Code, Section 12A-1.0371.

<sup>85</sup> Telephone interviews with staff of departments of revenue.

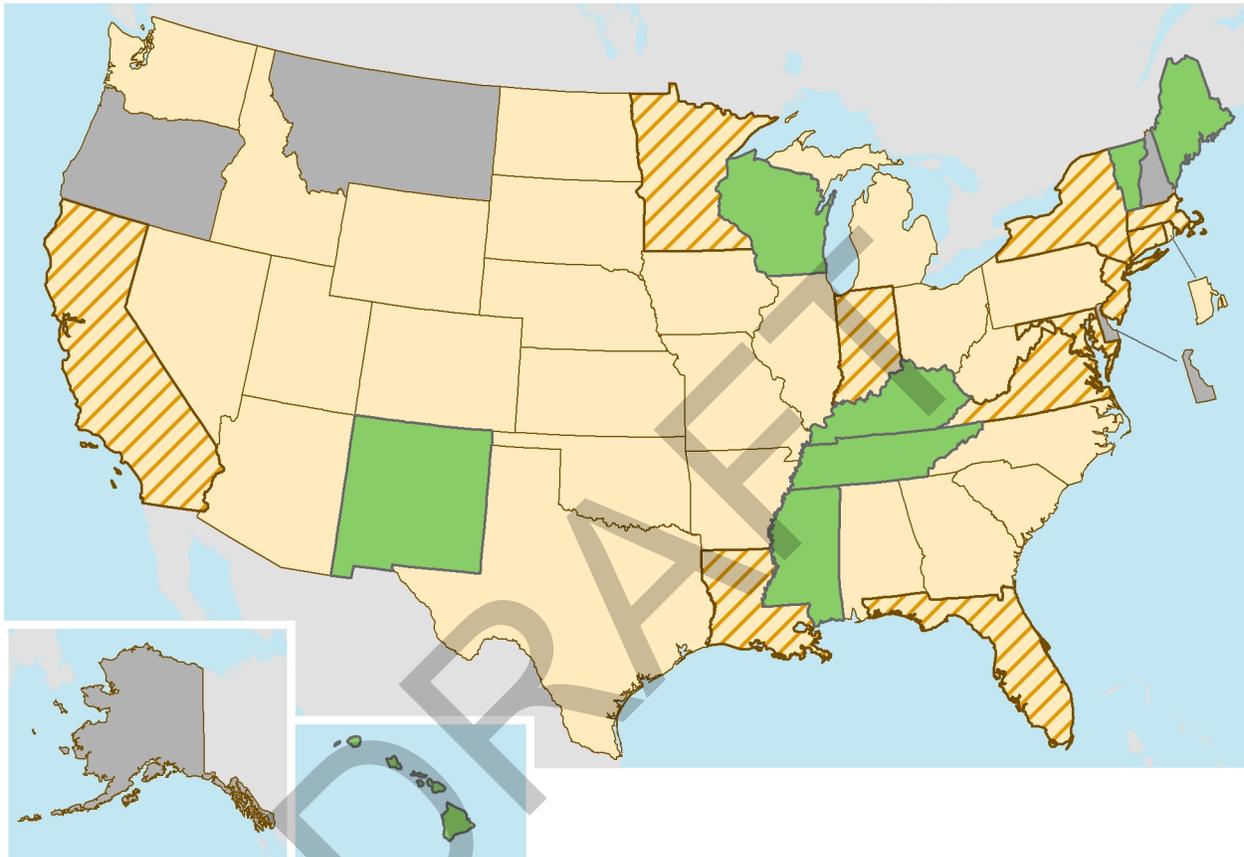
<sup>86</sup> Louisiana Statute, Sections 47:302(AA)(32) and 47:302(BB).

<sup>87</sup> Minnesota Statute, Section 297A.67.34.

<sup>88</sup> New Jersey Revised Statutes, Section 54:32B-8.32.

and coin.<sup>89</sup> Although most of the states with a partial exemption say that administration of the tax is not difficult, administering Indiana’s exemption has been challenging because in some cases, for two similar items, one is taxed, and one is not (see map and appendix C).<sup>90</sup>

**Map. Sales Tax Exemptions for Precious Metals Coins and Bullion**



**Sales Tax Exemptions for Precious Metals by State**

- State Has No Sales Tax (5)
- Coins and Bullion Exempted (26)
- No Exemption for Coin and Bullion (8)
- Partial Exemption (11)

Source: TACIR staff review of state laws (see Appendix C).

<sup>89</sup> Indiana Code, Section 6-2.5-5-47.

<sup>90</sup> Telephone Interview with Collin Davis, Director of Tax Guidance, Indiana Department of Revenue, on July 29, 2021.

The trend in recent years is more states are exempting sales of precious metal coins and bullion. In the past 10 years, 12 states have added an exemption for at least some purchases. Eight of the 12 states exempted all sales of precious metal coins and bullion,<sup>91</sup> and the other four enacted partial exemptions.<sup>92</sup> Since 2011, 14 bills have been introduced in the Tennessee General Assembly to exempt sales of gold and silver bullion from state and local sales tax, but none of the bills passed (see table 3).

**Table 3. Precious Metal Coins and Bullion Sales Tax Exemption Bills, 107<sup>th</sup> to 112<sup>th</sup> General Assemblies**

General Assembly	House Bill* Number	House Sponsor	Senate Bill* Number	Senate Sponsor	Fiscal Note	
					Decrease in State Revenue	Decrease in Local Revenue
107	469	Carr J	612	Campfield	\$3,282,671	\$1,172,383
107	2677	Carr J	2574	Campfield	\$2,862,600	\$1,209,400
107	3202	Niceley	3361	Campfield	\$2,983,200	\$1,260,300
108	104	Carr J	none	none	\$2,891,900	\$1,180,100
108	111	Carr J	301	Niceley	\$3,098,300	\$1,264,300
108	120	Carr D	469	Niceley	\$3,229,100	\$1,317,700
109	1518	Terry	1662	Tracy	\$2,023,000	\$825,500
109	1627	Hulsey	1610	Niceley	\$2,488,700	\$1,015,600
110	342	Hulsey	350	Niceley	\$360,800*	\$117,800*
110	1008	Holt	666	Roberts	\$305,900	\$99,600
110	1915	Gant	1893	Gresham	\$360,800	\$117,800
111	212	Gant	333	Gresham	none	none
111	992	Gant	457	Stevens	\$360,800	\$117,800
112	514	Gant	870	Stevens	\$360,800	\$117,800

Source: Tennessee General Assembly 2021.

\*Starting in the 110<sup>th</sup> General Assembly, Fiscal Review began using a 2016 survey by the Industry Council for Tangible Assets as part of its calculations for fiscal notes for bills that exempt precious metals from sales tax, resulting in lower estimates for decreases in state and local revenue.

Of the 14 bills, 11 would have exempted both coins and bullion. House Bill 104 by Representative Joe Carr (108<sup>th</sup> General Assembly) and House Bill 1518 by Terry, Senate Bill 1662 by Tracy (109<sup>th</sup> General Assembly), would have exempted bullion but not coins. House Bill 111 by Representative Joe Carr, Senate Bill 301 by Niceley (108<sup>th</sup> General Assembly) would have exempted coins but not bullion.

<sup>91</sup> Alabama, Arkansas, Kansas, Nebraska, North Carolina, Ohio, West Virginia, and Wyoming

<sup>92</sup> Virginia, Indiana, Louisiana, and Minnesota.

*Which precious metals do states exempt from the sales tax?*

States with a sales tax exemption for precious metal coins and bullion vary by the types of metals included in the exemption. Of the 37 states with an exemption, 33 states exempt gold and silver,<sup>93</sup> 27 states exempt platinum, 18 states exempt palladium, five states exempt rhodium,<sup>94</sup> Idaho and Rhode Island exempt chromium, and New York exempts iridium and ruthenium. Another four states do not specify which precious metals are exempted.<sup>95</sup> Of the 14 sales tax exemption bills introduced in Tennessee from the 107<sup>th</sup> to 112<sup>th</sup> General Assemblies, all 14 would have exempted gold and silver, nine would have exempted platinum, and three would have exempted palladium.

Precious metals are sometimes mixed together to give them desirable qualities such as hardness. Of the nine states that exempt combinations of exempted precious metals, eight states exempt both bullion and coins,<sup>96</sup> and one state (Kansas) exempts combinations for bullion but not coins.

Definitions for what is considered a precious metal vary. The federal government and states have their own definitions for tax and other purposes. Code of Federal Regulations Section 1027.100(d), which addresses rules for dealers in precious metals, defines precious metals as “gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and an alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals.” Although Tennessee state law does not include a definition of precious metals, under definitions of kinds of insurance within the Tennessee Code Annotated it does define property insurance as “insurance against loss of or damage to . . . gold, silver and other precious metals.”<sup>97</sup> COMEX facilitates trading of gold, silver, platinum, and palladium.

*What are the other ways that states exempt precious metals from sales tax?*

States have other criteria for applying sales tax exemptions for precious metals besides the type of metal. Eight states exempt precious metals that are used as a medium of

<sup>93</sup> Illinois exempts gold and silver coins but does not specify the precious metals that are exempted for bullion.

<sup>94</sup> Arizona, Idaho, New York, Rhode Island, and Washington

<sup>95</sup> Maryland, Nevada, North Carolina, and North Dakota.

<sup>96</sup> Alabama, Florida, Georgia, Iowa, Nebraska, South Carolina, South Dakota, and Virginia.

<sup>97</sup> Tennessee Code Annotated, Section 56-2-201(5)(B).

exchange.<sup>98</sup> Nevada further requires that bullion is not sold for a premium and coins are not sold for more than 50% greater than their face value.<sup>99</sup> Of the 14 sales tax exemption bills introduced in Tennessee from the 107<sup>th</sup> to 112<sup>th</sup> General Assemblies, eight would have exempted precious metals used as a medium of exchange.<sup>100</sup>

Massachusetts does not exempt “precious metal that has been processed or manufactured for industrial, professional, or artistic uses”<sup>101</sup> Similarly, Oklahoma does not exempt “fabricated metals that have been processed or manufactured for artistic use or as jewelry” or “other accessory items such as belt buckles and money clips.”<sup>102</sup>

*What would be the effect of a sales tax exemption for precious metal coins and bullion?*

Stakeholders say that a sales tax exemption could make it more likely that Tennesseans would purchase precious metals from in-state rather than out-of-state dealers.<sup>103</sup> Proponents of the sales tax exemption say it would lead to more tourism dollars in Tennessee by attracting coin shows, which could lead to increased sales of other merchandise that is subject to the state and local sales tax and increased local hotel tax revenue, offsetting decreases in state and local sales tax revenue from the exemption.<sup>104</sup> But organizers of coin shows have said that they do not locate in Tennessee because of its sales tax.<sup>105</sup> The Tennessee Department of Tourist Development estimates that the average daily expenditures per traveler to Tennessee would be \$132.40, including

<sup>98</sup> Alabama, Arizona, Arizona, Idaho, Maryland, Nevada, Texas, and Washington.

<sup>99</sup> Nevada Administrative Code, Section 372.170.

<sup>100</sup> TACIR staff review of 50 states’ bills.

<sup>101</sup> Annotated Laws of Massachusetts, Section 64H-6(II).

<sup>102</sup> Oklahoma Administrative Code Section 710:65-13-95(c).

<sup>103</sup> Interview with Pete Dodge, Founder of Nashville Coin Gallery, on June 16, 2021.

<sup>104</sup> Industry Council for Tangible Assets 2016. (survey)

<sup>105</sup> Phone interview with Whitman Expo on August 5, 2021. Steven Ellsworth, Governor, American Numismatic Organization, Tennessee Senate Finance, Ways and Means Revenue Subcommittee on March 12, 2019.

transportation,<sup>106</sup> and some stakeholders say that coin shows can attract as many as 10,000 attendees.<sup>107</sup>

### *The American Rescue Plan Act of 2021*

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.”<sup>108</sup> 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 estimated \$4 billion that it is set to receive through the Act, the state may have to give back some federal funds.<sup>109</sup>

In June 2021, Kentucky and Tennessee filed a lawsuit contesting the constitutionality of the provision (*Kentucky et al v. Yellen*). The states say that they “are entitled to make taxing decisions based on their own views of sound public policy and without being forced to consider whether their policy choices align with the views of federal policymakers.”<sup>110</sup> However, the US Department of Justice said that “even if a state chooses to make changes that result in a reduction in net tax revenue, the act bars a state only from using Rescue Plan funds—as opposed to other means—to offset that reduction.”<sup>111</sup> The lawsuit is one of six filed by state attorneys general challenging the provision.<sup>112</sup> Resolution of the lawsuits may provide clarity regarding the effect of enacting a sales tax exemption on federal funds for Tennessee. But until then, enacting a sales tax exemption for precious metals may be in violation of federal law.

<sup>106</sup> Email from Adam Mansell, Statistical Research Specialist, Tennessee Department of Tourist Development, on August 19, 2021.

<sup>107</sup> Steven Ellsworth, Governor, American Numismatic Organization, Tennessee Senate Finance, Ways and Means Revenue Subcommittee on March 12, 2019.

<sup>108</sup> American Rescue Plan Act of 2021.

<sup>109</sup> US Department of the Treasury 2021 (state allocations).

<sup>110</sup> Plaintiff’s Motion for Summary Judgement filed June 23, 2021, *Kentucky et al v. Yellen*.

<sup>111</sup> Defendant’s Motion to Dismiss filed July 21, 2021, *Kentucky et al v. Yellen*.

<sup>112</sup> Loricchio 2021 (State Tax Notes, DOJ Argues for Dismissal of ARPA Challenge by Kentucky, Tennessee, July 26, 2021).

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# APPENDIX A



## *State of Tennessee*

### **PUBLIC CHAPTER NO. 585**

**SENATE BILL NO. 279**

**By Rose**

Substituted for: House Bill No. 353

By Hulsey, Gary Hicks

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 9; Title 12; Title 45; Title 47; Title 48; Title 56 and Title 67, relative to a gold depository.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The Tennessee advisory commission on intergovernmental relations (TACIR) shall, within existing resources, study the feasibility of creating a state gold depository, including whether other states or jurisdictions have created a gold depository. TACIR shall report its findings and recommendations to the speaker of the senate, the speaker of the house of representatives, and the legislative librarian no later than January 1, 2022.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 279

PASSED: May 4, 2021

  
RANDY McNALLY  
SPEAKER OF THE SENATE

  
CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 27<sup>th</sup> day of May 2021

  
BILL LEE, GOVERNOR

## Appendix B. Depository Fee Schedules

**APMEX**  
**(Citadel Global Depository Services) -**  
**Fee Information**

Portfolio Value	Storage Rate
Up to \$1 million	0.55%
Up to \$10 million	0.50%
Over \$10 million	0.45%

Note: Minimum monthly fee is \$15.

Source: APMEX Website (accessed on 9/1/2021). See <https://www.apmex.com/storage/storage-fees>.

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**Brink's Global Services USA - Storage Fees**

Service Charges			
Commodity	Size	Daily Storage Charge	Withdrawal Charge
BARS			
Gold Bars/Grain Bags - AU	0.03215 oz (1 gram)	\$ 0.0175	\$ 4
	1 oz	\$ 0.0375	\$ 4
	5 oz	\$ 0.0600	\$ 4
	10 oz	\$ 0.0900	\$ 5
	32.15 oz (1 kilo)	\$ 0.0120	\$ 6
	100 oz	\$ 0.0225	\$ 8
	400 oz	\$ 0.0435	\$ 15
Silver Bars - AG	5 oz	\$ 0.0250	\$ 5
	10 oz	\$ 0.0300	\$ 5
	100 oz	\$ 0.0500	\$ 10
	1,000 oz	\$ 0.1100	\$ 15
Silver Coin Bags - AG	\$1,000 FV or Part	\$ 0.1200	\$ 15
	90% & 80% Bags	\$ 0.1200	\$ 15
Platinum Bars - PT	1 oz	\$ 0.0500	\$ 4
	10 oz	\$ 0.1200	\$ 5
	50 oz	\$ 0.2250	\$ 7
	150 oz	\$ 0.2750	\$ 9
Palladium Bars - PD	1 oz	\$ 0.0500	\$ 4
	10 oz	\$ 0.12	\$ 5
	50 oz	\$ 0.23	\$ 7
	100 oz	\$ 0.28	\$ 8
PGM Sponge/Grain	1 oz	\$ 0.04	\$ 1
	5 oz	\$ 0.04	\$ 2
	10 oz	\$ 0.06	\$ 3
	100 oz	\$ 0.22	\$ 7
	250 oz	\$ 0.27	\$ 9
	500 oz	\$ 0.32	\$ 12
	1,000 oz	\$ 0.51	\$ 15
Rhodium Sponge/Grain	1 oz	\$ 0.04	\$ 3
	5 oz	\$ 0.07	\$ 4
	10 oz	\$ 0.12	\$ 5
Services	Unit		Price
Mail Packing	Per Package		\$ 25

**Brink's Global Services USA - Storage Fees (continued)**

COINS			
Gold Coins (Rates per Coin)	1 oz	\$ 0.08	\$ 0.06
	1/2 oz	\$ 0.06	\$ 0.05
	1/4 oz	\$ 0.06	\$ 0.05
	1/10 oz	\$ 0.03	\$ 0.03
Full Boxes	Monthly/Per box	\$ 13.75	\$ 15.00
Silver Coins (Rates per Coin)	1 oz	\$ 0.06	\$ 0.06
	5 oz	\$ 0.07	\$ 0.06
Full Boxes	Monthly/Per box	\$ 8.75	\$ 15.00
Platinum Coins (Rates per Coin)	1 oz	\$ 0.08	\$ 0.06
	1/2 oz	\$ 0.06	\$ 0.05
	1/4 oz	\$ 0.06	\$ 0.05
	1/10 oz	\$ 0.04	\$ 0.03
Palladium Coins - PD (Rates per Coin)	1 oz	\$ 0.08	\$ 0.06
Full Boxes		\$ 10.00	\$ 15.00
Services	Unit		Price
Sort by Year	Per 100 Coins or Part thereof		\$ 10.00
Mail Packing	Per Package		\$ 25.00
<b>MINIMUM STORAGE FEE - \$70 PER MONTH</b>			

Source: Email from Brink's Global Services, Precious Metals Vault Services.

**Dakota Depository Company - Storage Fee Schedule  
Standard Segregated Custody Account**

Discount Tiers		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6
Average Account Value		≥\$100,000	≥\$250,000	≥\$500,000	≥\$1,000,000	≥\$2,500,000	≥\$5,000,000
Metals	Base Rate	15% Disc	20% Disc	27.5% Disc	37.5% Disc	45% Disc	50% Disc
Gold Platinum Palladium	60 Basis Pts (BPS) (.0060)	51 BPS (.0051)	48 BPS (.0048)	44 BPS (.0044)	38 BPS (.0038)	33 BPS (.0033)	30 BPS (.0030)
Silver	75 Basis Pts (BPS) (.0075)	64 BPS (.0064)	60 BPS (.0060)	54 BPS (.0054)	47 BPS (.0047)	41 BPS (.0041)	38 BPS (.0038)

Source: Dakota Depository Website (accessed September 2, 2021).

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## Delaware Depository - Fee Schedule

### Non-segregated storage

The annual fee for Non-Segregated Storage for products other than 1,000-ounce silver bars is 0.50% (one-half of one percent) of the total dollar value of the Precious Metals in storage or the Declared Value provided in writing by You. The annual fee for storage of 1,000-ounce silver bars is \$102.00 per bar. The annual fee for storage of 100-ounce gold bars is \$180.00 per bar. The minimum charge is \$25 per billing.

### Segregated Storage

The annual rate for Segregated Storage is 1.5% (one and one-half percent) of the total dollar value of Bullion in storage. Storage fees will be billed semi-annually in arrears. The minimum charge is \$50 per billing.

### Shipping Fees

A \$25.00 per package handling fee applies to shipments originating from or delivered to locations within the United States. The amount that You pay for postage, registration, and insurance charges will be billed to you on a C.O.D basis. Shipments will be prepared in accordance with standard DDSC practices. Fees for shipments originating from or delivered to locations outside the United States will be quoted upon request.

### Early Withdrawal Fee

An Early Withdrawal Fee in the amount of \$150 will be assessed if You deposit Bullion holdings and later withdraw the same Bullion holdings within six (6) months of the date of Your first deposit. The Early Withdrawal Fee will not be assessed as long as any quantity of Bullion is held in the Account at the time of such withdrawal.

### Personal Pickup and Account Assistance Fees

Personal Pickup Fees:

\$0.10 per ounce for all metal, other than the items listed below:

\$10.00 per item for:

- |                            |                               |                                |
|----------------------------|-------------------------------|--------------------------------|
| 1) 1,000-ounce silver bars | 4) 50-ounce platinum plates   | 7) Sealed 90% silver bags      |
| 2) 100-ounce gold bar      | 5) PGM Sponge containers      | 8) Sealed 40% silver clad bags |
| 3) 400-ounce gold bars     | 6) 100-ounce palladium plates | 9) Mint sealed coin boxes      |

## International Depository Services of Texas - Fee Schedule

Fees	
Storage Fees (Annual):	.65% of the account value up to \$250,000 .40% of the account value for accounts at \$250,000.01 to \$500,000 .35% of the account value for accounts valued at \$500,000.01 to \$2,500,000 .30% of the account value for accounts valued greater than \$2,500,000.01 to \$5,000,000 Over \$5,000,000 please call for custom quote
Handling Fee:	Preparation fee for shipments made via commercial courier (FedEx, UPS, etc.) & U.S. Mail \$30.00 per package
Release Fee:	Preparation and release fee for shipments made by armored carriers, and for direct releases to the account Owner, or authorized agent - Bullion - \$0.008 per ounce Certified Coins - \$0.03 each Minimum Charge per Release - \$30.00

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**Money Metals Depository (Idaho) -  
Fee Information**

<b>Value of Your Holding</b>	<b>Annual Fee (billed quarterly)</b>
\$0 - \$15,999	\$96
\$16,000 - \$99,999	0.59% (.0059)
\$100,000 - \$999,999	0.49% (.0049)
\$1,000,000 - \$2,999,999	0.39% (.0039)
Call for pricing on \$3+ million	

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**Texas Bullion Depository - Schedule of Fees**

<b>Segregated Storage Fees for Gold, Platinum, Palladium, and silver up to 50,000 Ounces</b>		
Account balance From	To	Annual Rate
\$ 0.01	\$ 2,499,999.99	0.50%
\$ 2,500,000.00	\$ 4,999,999.99	0.45%
\$ 5,000,000.00	\$ 7,499,999.99	0.40%
\$ 7,500,000.00	\$ 9,999,999.99	0.35%
\$ 10,000,000.00	\$ 24,999,999.99	0.30%
\$ 25,000,000.00	\$ 49,999,999.99	0.25%
\$ 50,000,000.00	\$ 99,999,999.99	Negotiable
\$ 100,000,000.00	\$ 100,000,000 +	Negotiable

<b>Non-Storage Fees</b>		
Fee Type	Fee Amount	Fee Details
Account Setup Fee	\$ 50	Per account
Withdrawal Fee	\$ 25	Per transaction
Customer Room Usage Fee	\$ 35	Per 1/2 hour
Postage / Transportation Fee (Domestic) for Gold, Platinum, Palladium, Rhodium	\$ 25	Up to 100 ounces per transaction, plus 15 cents (\$0.15) per ounce over 100 ounces
Personal Pick-Up Fee	\$ 25	Per transaction
Replacement Pallet Packaging Fee	\$ 50	Per pallet
Stop Payment Fee	\$ 30	Per transaction

Source: APMEX Website (accessed on 9/1/2021). See <https://www.apmex.com/storage/storage-fees>.

**United Precious Metals Association (Utah)  
(Alpine Gold Exchange Vaulting Services) -  
Fee Schedule**

All funded gold coin accounts are assessed monthly membership dues of approximately \$4.00\*, which covers vaulting and insurance of the first two gold coins, or fractions thereof. After that, vaulting costs about \$0.40 cents per gold coin per month. The vaulting of silver coins costs about 1.75 cents per coin per month. Silver and Goldback accounts have no membership fee.

Estimated Monthly Cost	
Account Total	Cost
\$4,000 Gold Coin Account	\$ 4.00
\$10,000 Gold Coin Account	\$ 5.20
\$50,000 Gold Coin Account	\$ 13.20
\$100,000 Gold Coin Account	\$ 21.20
\$2,500 Silver Account	\$ 1.40
\$10,000 Silver Account	\$ 5.25
\$50,000 Silver Account	\$ 25.20
\$0 - \$250,000 Goldback Account	Free

Fee Description	Fee	Type
Member Dues for unfunded accounts	Free	N/A
Physical Withdrawal of Gold, Goldback, or Silver coins	Free	N/A
Member Dues for Funded Goldback Accounts	Free	N/A
Member Dues for Funded Gold Coin Accounts	\$ 0.10	Gold
Vaulting/insurance for up to \$100 Gold Dollars	Free	N/A
Monthly vaulting/insurance for each increment of \$50 Gold Dollars above the initial \$100 Gold Dollars	\$ 0.01	Gold
Monthly vaulting/insurance for each increment of \$20 Silver Dollars	\$ 0.01	Silver
Up to \$10,000 Paper Dollar monthly volume in redemptions of prior contributions	Free	N/A
Switching holding from gold to silver or vice versa. (over 10k)	1.00%	Either
Silver dollar redemptions in excess of \$10,000 in a 30 day period	Varies	Silver
Silver redemptions if forced to sell out of network (i.e, a member wants to sell \$1,000,000 worth of silver immediately)	Wholesale Rate	
Gold redemptions in excess of \$10,000 in a 30 day period	Varies	
Gold redemptions if forced to sell out of the network (i.e, a member wants to sell \$1,000,000 worth of gold immediately)	Wholesale Rate	
Monthly True Link Debit card fee when activated if not exempt	10 (Up to 100 Gold and Silver Dollars received is free per 30 day period)	Paper
Member to Merchant transfers	1.00%	Either

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## Appendix C. Sales Tax Exemptions for Precious Metals by State

Sales Tax Exemptions for Precious Metals		Exempted Metals	Source
State	Metals		
Alabama	Coins and bullion exempted	Gold, silver, platinum, palladium, and combinations of these metals	Code of Alabama, Section 40-23-4(a)(51)  National Conference of State Legislatures, "Quick Reference Fiscal Table," NCSL.org, Posted July 2020, Updated November 18, 2020. <a href="https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx">https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx</a>
Alaska	No state sales tax	N/A	
Arizona	Coins and bullion exempted	Gold, silver, platinum, palladium, and rhodium	Arizona Revised Statute, Section 42-5061(A)(21)
Arkansas	Coins and bullion exempted	Gold, silver, platinum, and palladium	Arkansas Code, Section 26:52.454
California	Coins and bullion exempted for sales greater than \$1,500.	Gold, silver, and other precious metals for coins; gold and silver for bullion	18 California Code of Regulations, Section 1599; California Revenue and Tax Code, Section 6355
Colorado	Coins and bullion exempted	Gold, silver, platinum, palladium, and other precious metals	Colorado Revised Statutes, Section 39-26-706(4); Colorado Revised Statutes 39-26-102(2.6) and (6.5)
Connecticut	Coins and bullion exempted for sales greater than \$1,000.	Gold and silver	Connecticut General Statutes, Section 12-412(45)  National Conference of State Legislatures, "Quick Reference Fiscal Table," NCSL.org, Posted July 2020, Updated November 18, 2020. <a href="https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx">https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx</a>
Delaware	No state sales tax	N/A	
Florida	Coins and bullion exempted for sales greater than \$500.	Gold, silver, platinum, and combinations of these metals	Florida Administrative Code, Section 12A-1-0371, Florida Annotated Statutes, Section 212.08(7)(ww) and 212.05(1)(j)
Georgia	Coins and bullion exempted	Gold, silver, platinum, and combinations of these metals	Official Code of Georgia Annotated, Section 48.8.3(66) and (67)

State	Sales Tax Exemptions for Precious Metals	Exempted Metals	Source
Hawaii	No exemption for coin and bullion	N/A	Hawaii Tax Code
Idaho	Coins and bullion exempted	Gold, silver, platinum, rhodium, chromium, and other precious metals	Idaho Administrative Code, Section 35.01.02.039; Idaho Code, Section 63-3622V
Illinois	Coins and bullion exempted	Gold and silver for coins; any precious metal for bullion	Illinois Administrative Code, Section 130.120aa; 35 Illinois Compiled Statutes 120/2-5(18)
Indiana	IRA-qualified coins and bullion exempted	Gold, silver, platinum, and palladium	Indiana Code, Section 6-2.5-5-47
Iowa	Coins and bullion exempted	Gold, silver, platinum, palladium, and combinations of these metals	Iowa Code, Section 423.3.91
Kansas	Coins and bullion exempted	Gold and silver for coins; gold, silver, platinum, palladium, and combinations of these metals for bullion	Kansas Statutes Annotated, Section 79.3606(mmmm)
Kentucky	No exemption for coin and bullion	N/A	Kentucky Revised Statutes, Section 139.470, Revenue Cabinet Kentucky v. Saylor, 738 S.W.2d 426, 1987 Ky. App. LEXIS 585 (Ky. Ct. App. 1987)
Louisiana	Coins exempted for sales less than \$1,000 and for item(s) purchased at a trade show; bullion exempted	Gold, silver, and platinum	Louisiana Revised Statutes, Sections 47:302(AA)(32) and 47:302(BB)(98)
Maine	No exemption for coin and bullion	N/A	36 Maine Revised Statutes, Section 1760
Maryland	Coins and bullion exempted for sales greater than \$1,000.	Any precious metal that has gone through a refining process and is in a state or condition such that its value depends on its precious metal content and not on its form	Maryland Tax-General Code Annotated, Section 11-214.1
Massachusetts	Coins and bullion exempted for sales greater than \$1,000.	Gold and silver	Annotated Laws of Massachusetts, Section 64H-6(II)
Michigan	Coins and bullion exempted	Gold, silver, platinum, palladium, and other precious metals for coins; Gold, silver, and platinum for bullion	Michigan Compiled Laws Service, Section 205.54s
Minnesota	Bullion exempted	Gold, silver, platinum, and palladium	Minnesota Annotated Statutes, Section 297A.67.34
Mississippi	No exemption for coin and bullion	N/A	Mississippi Code Annotated, Section 27-65-111

Sales Tax Exemptions for Precious Metals		Exempted Metals	Source
Missouri	Coins and bullion exempted	Gold, silver, platinum, and palladium	Missouri Revised Statutes, Section 144.815 National Conference of State Legislatures, "Quick Reference Fiscal Table," NCSL.org, Posted July 2020, Updated November 18, 2020. <a href="https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx">https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx</a>
Montana	No state sales tax	N/A	
Nebraska	Coins and bullion exempted Coins exempted if used as a medium of exchange or not sold for a premium; bullion exempted if used as a medium of exchange or not sold for more than 50% greater than the face value	Gold and silver for coins; Gold, silver, platinum, palladium, and combinations of these metals for bullion	Revised Statutes of Nebraska Annotated, Section 77-2704.66
Nevada	No precious metals specified		Nevada Administrative Code, Section 372.170
New Hampshire	No state sales tax No exemption for coins; bullion exempted if purchased in a commodities market	N/A	National Conference of State Legislatures, "Quick Reference Fiscal Table," NCSL.org, Posted July 2020, Updated November 18, 2020. <a href="https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx">https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx</a>
New Jersey		Gold and silver	New Jersey Statutes, Section 54:32B-8.32
New Mexico	No exemption for coin and bullion	N/A	Coins: New Mexico Administrative Code, Section 3.2.1.27
New York	Coins and bullion exempted for sales greater than \$1,000.	Gold, silver, platinum, palladium, rhodium, ruthenium, and iridium	New York Consolidated Laws Service Tax, Section 1115(a)(27)
North Carolina	Coins and bullion exempted	No precious metals specified	North Carolina General Statutes, Section 105-164.13(69)
North Dakota	Coins and bullion exempted	No precious metals specified	North Dakota Century Code, Section 57-39.2-04(31)

State	Sales Tax Exemptions for Precious Metals	Exempted Metals	Source
Ohio	Coins and bullion exempted	Gold, silver, platinum, and palladium	Ohio Revised Code Annotated, 5739.02(B)(57); 26 US Code Service 408(m)(3)(B)
Oklahoma	Coins and bullion exempted	Gold, silver, platinum, palladium, and other precious metal	Oklahoma Administrative Code, Section 710:65-13-95; 68 Oklahoma Statutes, Section 1357(42)
Oregon	No state sales tax	N/A	National Conference of State Legislatures, "Quick Reference Fiscal Table," NCSL.org, Posted July 2020, Updated November 18, 2020. <a href="https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx">https://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx</a>
Pennsylvania	Coins and bullion exempted	Gold, silver, platinum, palladium, and other precious metals	72 Pennsylvania Statutes, Section 7204(65)
Rhode Island	Coins and bullion exempted	Not specified for coins; Gold, silver, platinum, rhodium, chromium, and other precious metals for bullion	Rhode Island General Laws, Sections 44-18-30(24) and (43)
South Carolina	Coins and bullion exempted	Not specified for coins; Gold, silver, platinum, and combinations of these metals for bullion	South Carolina Code, Section 12-36-2120(70)
South Dakota	Coins and bullion exempted	Gold, silver, and other precious metals for coins; Gold, silver, platinum, palladium, and combinations of these metals for bullion	South Dakota Codified Laws, Section 10-45-110
Tennessee	No exemption for coin and bullion	N/A	Tennessee Code Annotated, Section 67-6-301 et seq.
Texas	Coins and bullion exempted	Gold and silver for coins; Gold, silver, and platinum for bullion	34 Texas Administrative Code, Section 3.336; Texas Tax Code, Section 151.336
Utah	Coins and bullion exempted	Gold, silver, and platinum	Utah Code Annotated, Section 59-12-104(50) and (51)
Vermont	No exemption for coin and bullion	N/A	32 Vermont Statutes Annotated, Section 9741
Virginia	Coins and bullion exempted for sales greater than \$1,000.	Gold, silver, platinum, and combinations of these metals	Virginia Code Annotated, Section 58.1-609.1(19)

State	Sales Tax Exemptions for Precious Metals	Exempted Metals	Source
Washington	Coins and bullion exempted	Gold, silver, platinum, palladium, rhodium, and other precious metals	Annotated Revised Code of Washington, Section 82.04.062; Washington Administrative Code, Section 458-20-248
West Virginia	Coins and bullion exempted	Gold, silver, platinum, palladium, and other precious metals for coins; Gold, silver, platinum, and palladium for bullion	West Virginia Code, Section 11-15-9r
Wisconsin	No exemption for coin and bullion	N/A	Wisconsin Administrative Code Tax, Section 11.78(1)
Wyoming	Coins and bullion exempted	Gold and silver	Wyoming Statute, Sections 39-11-105(b)(vi)(a), 9-4-1302, and 9-4-1304