

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Mansoor Analyst: David Scott Bill Number: AB 1774

Related Bills: None Telephone: 845-5806 Introduced Date: February 17, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exclusion/Gain From Sale Or Exchange Of Gold & Silver Coins Issued By Federal Government

SUMMARY

This bill would do the following:

- Exempt the sale, use, storage, or other consumption of federally issued gold and silver coins from California sales and use tax;
- Exempt the gain from the sale of federally-issued gold and silver coins from California income and franchise taxes; and
- Provide that gold and silver coin issued by the federal government is legal tender in California under the Civil Code.

This analysis will not address the changes to the Civil Code or the Sales and Use Tax Code sections of the Revenue & Taxation Code, other than to list the changes above.

RECOMMENDATION

No position.

PURPOSE OF THE BILL

It appears that the purpose of this bill is to treat federally-issued gold and silver coins as currency, rather than as assets.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2013, and specifically operative for taxable years beginning on or after January 1, 2012.

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ANALYSIS

FEDERAL/STATE LAW

Federal Law

The U.S. Constitution (Art. 1, Sec. 8.5) provides that Congress shall have the power “to coin money, regulate the value thereof...” In addition the U.S. Constitution (Art. 1, Sec.10) provides that states shall not “coin money.”

“The Coinage Act of 1965, specifically Section 5103, Title 31, United States Code, entitled "Legal tender," states: "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."

This statute means that all United States money as identified above are a valid and legal offer of payment for debts when tendered to a creditor. There is, however, no Federal statute mandating that a private business, a person, or an organization must accept currency or coins for payment for goods and/or services. Private businesses are free to develop their own policies on whether or not to accept cash unless there is a State law which says otherwise. For example, a bus line may prohibit payment of fares in pennies or dollar bills. In addition, movie theaters, convenience stores and gas stations may refuse to accept large denomination currency (usually notes above \$20) as a matter of policy."¹

Generally, when capital assets are sold or exchanged, the owner has a capital gain or loss, and the length of time the asset was owned would dictate if the gain was a long term or short term capital gain. Federal law taxes capital gains at different rates, depending on how long the asset was held. Gold and silver coins, as well as bullion, held for personal investment are considered to be capital assets. (Gold and silver coins are treated as investments by most owners of these coins. The reason is that the market value of the precious metal in the coin exceeds the face value of the coin.)

State Law

California taxes the gain on the sale of capital assets at ordinary income rates.

THIS BILL

This bill would do the following:

- Exclude from gross income, for California income and franchise tax purposes, the gain from the sale or exchange of federally-issued gold and silver coins.

¹ U.S. Department of the Treasury, *Legal Tender Status*, Resource Center:FAQs< <http://www.treasury.gov/resource-center/faqs/Currency/Pages/legal-tender.aspx>> February 27, 2012.

For income and franchise tax purposes, this is simply an exclusion from gross income (state capital gains) for any gain from the sale or exchange of federally-issued gold and silver coins for income tax purposes. This bill does not exclude losses from the sale or exchange of federally-issued gold and silver coins from gross income.

The face value of the coins is the value for legal tender purposes. Gold and silver coins already can be used as legal tender; however the value of the metal in the coin probably exceeds the face value of the coin, and only the face value counts as legal tender.

This bill would create a fed/state difference in the treatment of the sale of the coins. Federal capital gains income taxes will still apply to the sale. Individual taxpayers would have a California adjustment for capital gains to report.

OTHER STATES' INFORMATION

Prior to 2012, seven other states had proposed legislation to make federally-issued gold and silver coins legal tender. In 2012, bills were introduced in the states of *Washington* and *Idaho*.

- *Utah* is the only state that has actually passed legislation that recognizes gold and silver coins issued by the federal government as legal tender in the state. The *Utah* legislation also calls for the Revenue and Taxation Interim Committee to study an "alternative" currency for *Utah* and make a recommendation as to whether an alternative legal tender should be established.
- *Georgia, Idaho, Indiana, Minnesota, Montana, North Carolina, and South Carolina* had legislation introduced. The legislation did not pass in their respective states.
- The *Washington* and *Idaho* bills are still pending.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

| Estimated Revenue Impact of AB1774: Exclusion/Gain From Sale Or Exchange Of Gold & Silver Coins Issued By Federal Government For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After July 1, 2012 (\$ in Millions) | | | | |
|---|---------|---------|---------|---------|
| 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
| \$0.0 | -\$5.1 | -\$4.0 | -\$4.3 | -\$4.4 |

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: The use of gold and silver coins, as legal tender, offers an alternative currency to the current paper currency.

Con: Some taxpayers may say that with the state's current fiscal crisis, additional tax expenditures should be avoided. Additionally, the legal tender piece of this bill has limited use, since the coins would only be worth face value rather than market value for the settlement of debts, taxes, etc.

POLICY CONCERNS

This bill does not exclude losses from the sale or exchange of federally-issued gold or silver coins. This could lead to a loophole that would allow traders or coin collectors to generate California losses by buying and selling these coins. The author may wish to modify the language to include losses on the sale or exchange of these coins in the exclusion from gross income.

As legal tender, only the face value of the federally-issued coins could be used to satisfy debts of the owner of the coins, whereas the market value of the precious metal the coin was minted from may far exceed the face value. As a result, taxpayers may be reluctant to use a gold or silver coin with a much higher investment value than face value as legal tender to pay their debts or other obligations. The purpose of the bill may not be met, because of this reluctance.

LEGISLATIVE STAFF CONTACT

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