

**STATE BOARD OF EQUALIZATION**

916-445-2705

June 20, 1980

Mr. [M]
Vice President and General Counsel

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Dear Mr. [M]:

It is my opinion that a foreign corporation selling monetized bullion from out of state through the mail to a California resident could qualify the transaction for the \$1,000 monetized bullion exemption of Revenue and Taxation Code Section 6355. The corporation would have to be registered under the Commodity Exchange Act or be conducting its business in such a manner that it would have been exempted from licensing under Corporations Code Sections 29511-29514 and the regulations of the Corporations Commissioner as they existed on December 31, 1979.

Presumably the transactions so conducted by mail would be exempt from sales tax imposed on the seller because the transactions would be exempt sales in interstate or foreign commerce (cf. Regulation 1620), and the use tax imposed on the buyer would be in question. The buyer, faced with the imposition of the use tax, would need to be able to prove that the transaction was exempt from use tax by Revenue and Taxation Code Section 6355, and necessarily, that would involve proving the seller's qualifying status.

Assuming that the out-of-state seller is not engaged in business in California within the meaning of Revenue and Taxation Code Section 6203, the seller will not be liable for the collection of any use tax which might be due as a result of the buyer's purchases.

Very truly yours,

Philip R. Dougherty
Tax Counsel

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