



PRECIOUS METAL BULLION AND COIN EXEMPTION

EVALUATION SUMMARY | JULY 2021 | 2021-TE22

TAX TYPE	Sales and use	REVENUE IMPACT	Could not determine
YEAR ENACTED	1990	NUMBER OF TAXPAYERS	Could not determine
REPEAL/EXPIRATION DATE	None		

KEY CONCLUSION: The exemption is commonly applied by bullion and coin dealers to provide similar tax treatment to purchases of bullion and coins as other investments, such as stocks and bonds, which are also not subject to sales and use tax. The exemption also helps the State's bullion and coin retail industry to remain competitive with retailers in other states, most of which have a similar exemption.

WHAT DOES THE TAX EXPENDITURE DO?

The Precious Metal Bullion and Coin Exemption (Bullion and Coin Exemption) exempts all sales, storage, use, or consumption of precious metal bullion and coins from state sales and use tax [Section 39-26-706(4), C.R.S.].

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not state a purpose of the Bullion and Coin Exemption; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of statute, legislative history, and legislative testimony, we considered the following potential purposes:

- Provide purchases of precious metal bullion and coins similar tax treatment as purchases of other assets, such as stocks and bonds, that are used as investments.
- Support Colorado's precious metal bullion and coin industry.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to consider amending statute to establish a statutory purpose and performance measures for the Bullion and Coin Exemption.



PRECIOUS METAL BULLION AND COIN EXEMPTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Precious Metal Bullion and Coin Exemption (Bullion and Coin Exemption) exempts all sales, storage, use, or consumption of precious metal bullion and coins from state sales and use tax [Section 39-26-706(4), C.R.S.]. Precious metal bullion is defined in statute as “any precious metal...that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form” [Section 39-26-102(6.5), C.R.S.]. Coins are defined in statute as “monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, or heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation” [Section 39-26-102(2.6), C.R.S.]. Other numismatic items, such as paper money, tokens, checks, and wampum, are not eligible for the exemption. Furthermore, the exemption only applies to sales and use tax, and individuals may be liable for income tax on any capital gains they realize through acquiring and selling bullion and coins.

The Bullion and Coin Exemption was originally enacted in 1990 with House Bill 90-1124 and, at that time, was limited to transactions that were "substantially equivalent to transactions in securities or commodities through a national securities or commodities exchange" or “through any person who is registered pursuant to the federal 'Commodity Exchange Act'." The original exemption expired in 1995; however, in 1999, House Bill 99-1009 reintroduced the exemption and expanded it to include all transactions of precious metal bullion and coins, removing the requirement that the transaction be equivalent to a transaction in securities or commodities. As a result, bullion and coin

retailers and purchasers who were not securities or exchange traders could claim the exemption as well.

Retailers apply the Bullion and Coin Exemption at the point of sale and report exempt sales on schedule A, Line 12 of the Department of Revenue's (Department) Retail Sales Tax Return (Form DR 0100). Retailers selling items that qualify for exemption are responsible for determining whether purchases are exempt based on statutory and regulatory requirements. Statute [Section 29-2-105(1)(d)(I), C.R.S.] requires local governments that have their sales and use taxes collected by the State to provide the exemption for their local sales taxes; however, home-rule cities and counties that collect their own sales and use tax can choose whether to allow the exemption. Only three (Aurora, Broomfield, and Centennial) of Colorado's 15 most populous home-rule cities and counties have exempted bullion and coins from their jurisdiction's sales and use taxes.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not directly state the intended beneficiaries of the Bullion and Coin Exemption. Based on the statutory language of the exemption, conversations with stakeholders, and testimony provided to the General Assembly when this exemption was first enacted and then reintroduced, we inferred that the intended beneficiaries are investors in precious metal bullion and coins, as well as the Colorado precious metal bullion and coin industry. Committee testimony indicated that the General Assembly intended this exemption to benefit the precious metal bullion and coin industry in Colorado by making the state a more attractive location for investors, dealers, and coin shows and exhibitions. According to an industry association, Colorado has approximately 50 coin dealers and, in 2017, hosted a national coin show in Denver.

Additionally, the U.S. Mint (Mint) is the largest producer of bullion and coins in the world. As a federal agency, the Mint does not collect sales and use tax on its sales regardless of state law governing sales of bullion and coins. However, the Mint does not sell bullion to the public directly.

Instead, it sells bullion to authorized dealers who apply the exemption when they sell to the general public. The Mint also sells commemorative coins directly to the public, which are considered legal tender in the United States, but might be worth more than their face value due to their rarity, appearance, or historical significance.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

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- 1) Provide purchases of precious metal bullion and coins similar tax treatment as purchases of other assets, such as stocks and bonds, that are used as investments. During legislative committee hearings when the exemption was established, some legislators and stakeholders raised concerns about Colorado's tax code treating investments in bullion and coins differently than other investment assets. Other investments, such as stocks and bonds, are considered capital assets, which are not subject to sales and use tax under Colorado law [Section 39-26-104, C.R.S.] and investors are generally only taxed on capital gains they realize when they sell the assets. Furthermore, a sales tax can discourage investments in tangible property, such as metal bullion and coins, since buyers often intend to resell the property in the future and may be required to collect sales tax on subsequent sales.
- 2) Support Colorado's precious metal bullion and coin industry. At the time the exemption was established, legislators and stakeholders also raised concerns about the negative impact on the industry from sales and use tax. Stakeholders reported that purchasers can easily buy items from sellers in states that have a sales tax exemption. Therefore, legislators were concerned that imposing a sales tax on purchases made in Colorado was resulting in consumers choosing to buy bullion and coins from out-of-state sellers.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We could not definitively determine whether the Bullion and Coin Exemption is meeting its purpose because no purpose is provided in statute or the enacting legislation. However, we found that it is meeting the potential purposes we considered in order to conduct this evaluation.

Statute does not provide quantifiable performance measures for the exemption. Therefore, we created and applied the following performance measures to determine the extent to which the exemption is meeting its potential purposes:

PERFORMANCE MEASURE #1: *To what extent is the exemption applied to eligible purchases of precious metal bullion and coins?*

RESULT: Although we could not quantify the extent to which the exemption is used due to a lack of data, we spoke with five dealers and one national business association that confirmed the exemption is applied to transactions of bullion and coins, and retailers and purchasers are widely aware of the exemption. Stakeholders reported that the exemption is applied both when purchases are made from coin dealers and when purchases are made from private parties, such as at coins shows. Therefore, it appears that in practice bullion and coin purchases are exempt from sales and use tax like purchases of other investment assets.

PERFORMANCE MEASURE #2: *To what extent has the exemption supported Colorado's precious metal bullion and coin industry?*

RESULT: We found the expenditure supports the bullion and coin industry in the state. Although we lacked data necessary to quantify the overall impact of the exemption on the industry, the exemption reduces the after-tax cost of bullion and coins by 2.9 percent, which equates to about \$29 dollars on a \$1,000 sale. While purchasers directly benefit

by not having to pay sales tax, the exemption likely benefits both dealers and purchasers to some extent. Specifically, because 33 of the 44 other states with a sales tax provide a similar exemption, including six of the seven states bordering Colorado, individuals might otherwise avoid making purchases from dealers in Colorado due to the increased after-tax cost. To avoid this, dealers would likely face pressure to absorb some or all of the cost of the sales tax by lowering their prices. This could be the case for precious metal bullion in particular because its value is largely driven by commodity prices for metals and it is fungible and readily available to investors. According to industry stakeholders, the exemption is an important support because coin and bullion dealers typically operate on small margins and would have difficulty absorbing the additional sales tax cost. Furthermore, according to data provided by an industry association, dealers in states without an exemption have significantly lower sales than in states with an exemption. The dealers believe that sales taxes resulted in customers making fewer purchases and for lower amounts.

Despite the exemption providing some support to the industry, bullion and coin dealers are still required to collect and remit local sales taxes if they sell bullion or coins in a self-collected home-rule jurisdiction that does not provide the exemption. Approximately half of the Colorado dealers listed on a national association's website are located in a self-collected, home-rule jurisdiction without an exemption. The municipal sales tax rates of these jurisdictions range from 3 to 4.81 percent. Therefore, dealers in these jurisdictions likely have to collect and remit sales tax on some of their sales.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

Because the Department does not collect data on the Bullion and Coin Exemption, we were not able to estimate the exemption's revenue impact to the State or the potential economic benefits it provides. However, according to data provided by an industry association, the average coin and bullion dealer in states with an exemption has about

\$1 million in annual sales in their state. Without the exemption, a dealer with \$1 million in annual sales in Colorado would otherwise be required to collect \$29,000 in sales taxes. Further, according to stakeholders, the exemption is also an important factor in determining where to hold coin shows and conventions, which provide indirect economic benefits such as increased retail, food, and lodging sales (and sales tax collections) from the visitors they attract to the state.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Removing the exemption would increase the after-tax cost for purchases of bullion and coins in Colorado, equivalent to the state sales and use tax rate of 2.9 percent. For example, at the time of this evaluation one troy ounce of silver bullion cost approximately \$20. If the exemption was repealed, purchasers would be required to pay \$0.58 in sales tax on the purchase of one troy ounce of silver bullion. All five of the dealers and the national business association we spoke to reported that the exemption is critical to the industry and that its repeal would have a substantial impact on their business. Specifically, they stated that their customers are price-sensitive and without the exemption would likely make purchases from dealers in other states. In addition, the Mint is the largest coin producer in the country and, as a federal agency, does not collect sales tax regardless of state laws. Dealers felt the exemption allowed them to remain competitive in a national market where many other dealers do not collect sales tax. For this reason, they reported that without the exemption, Colorado businesses would be significantly smaller and, in some cases, would not be profitable enough to continue or would need to move to another state that maintains a sales tax exemption. Additionally, a national industry association that has held trade shows in Colorado in the past and plans to do so in the future reported that removing the exemption would result in them moving their events to another state that provides an exemption.

Although eliminating the exemption could reduce industry sales in the state, about half of the dealers in the state and at least one recent large convention were located in home-rule jurisdictions that do not provide

a Bullion and Coin Exemption. The sales taxes in these locations ranged from 3 to 4.81 percent. Thus, it appears that some dealers' are less sensitive to sales taxes and choose to operate in jurisdictions that collect sales taxes, though we were unable to quantify the sales volume of the dealers in these areas or determine the specific types of products they sell.

If the exemption were eliminated, Colorado residents would also be required to remit use tax to the State if they make a purchase of bullion or coins from an out-of-state vendor that does not collect and remit Colorado sales tax. However, compliance with use tax remittance is typically lower than sales tax remittance, so the State is unlikely to collect as much in use tax as it would in sales tax on purchases made within Colorado.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

There are 45 states, including Colorado, that levy sales and use taxes. Of these states, 33 have a similar exemption. However, 13 states limit the exemption to transactions that are more than a minimum amount, such as \$1,000, or are substantially equivalent to a commodities investment transaction.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We did not identify any tax expenditures or programs with a similar purpose available in the state.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

The Department of Revenue was not able to provide us with data for the Bullion and Coin Exemption because this information is not itemized on the Department's Retail Sales Tax Return (Form DR 0100) or the Retailer's Use Return (Form DR 0173). Instead, the exemption is claimed on the same line as several other exemptions which cannot be separated for analysis. Finally, transactions between private sellers who are not required to obtain a sales tax license are not typically reported

to the Department, so it does not have any information on the extent or value of these sales.

If the General Assembly determined that more information on this tax expenditure is necessary, it could direct the Department to collect information specifically for the Bullion and Coins Exemption on the Retail Sales Tax Return, require private parties to report sales, and make changes in GenTax, its tax processing and information system, to allow it to pull this data. However, according to the Department, this would require additional resources to make changes to the form and complete the necessary programming in GenTax (see the Tax Expenditures Overview section of the *Office of the State Auditor's Tax Expenditures Compilation Report* for additional details on the limitations of Department data and the potential costs of addressing the limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH A STATUTORY PURPOSE AND PERFORMANCE MEASURES FOR THE BULLION AND COIN EXEMPTION. Statute and the enacting legislation for the exemption do not state the exemption's purpose or provide performance measures for evaluating its effectiveness. Therefore, for the purposes of our evaluation, we considered two potential purposes for the exemption: 1) provide purchases of precious metal bullion and coins similar tax treatment as purchases of other assets, such as stocks and bonds, that are used as investments; and 2) support Colorado's precious metal bullion and coin industry. We identified this purpose based on our review of statute, the legislative history, and legislative testimony. However, the General Assembly may want to clarify its intent for the exemption by providing a purpose statement and corresponding performance measure(s) in statute. This would eliminate potential uncertainty regarding the exemption's purpose and allow our office to assess the extent to which the exemption is accomplishing its intended goal(s).