

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-H-81 (123) S  
Sales Tax  
June 24, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810401A

On April 1, 1981 a Petition for Advisory Opinion was received from Web's Coins, Ltd., 728 New Loudon Road, P.O. Box 804, Latham, New York 12110.

The issue raised is whether the sales tax imposed under Article 28 of the Tax Law is applicable to sales of "coin of the realm". Petitioner, a dealer in rare coins, contends that such an imposition would violate the Constitution of the United States.

Section 1105(a) of the Tax Law, contained in Article 28 thereof, imposes the State sales tax on the receipts from every retail sale of tangible personal property. Section 1101(b)(6) of the Tax Law defines the term "tangible personal property" as "corporeal personal property of any nature."

The question of the inclusion of coins within the category of tangible personal property the sale of which is subject to sales tax is fully treated in the Sales and Use Tax Regulations, as follows:

"(3) Where coins or other currency of one nation are exchanged for coins or other currency of another nation in the open market; the exchange rate reflects actual currency value, and the coins or other currency are in general circulation, the transaction is a financial transaction and not a sale of tangible personal property and is therefore not subject to sales tax.

(4) Where a coin, such as a rare coin or commemorative coin, which is legal tender, but is either not in general circulation, or is purchased at a rate not reflecting actual currency value or at a value determined by the precious metal content of the coin, such purchase shall be deemed to be for numismatic, coin collecting or investment purposes and is a sale of tangible personal property subject to sales tax.

Example 1: A foreign coin, with a face value of \$25 in the issuing nation's currency, is legal tender in that nation, and has a value of \$30 U. S. It contains 800 grains of sterling silver valued at \$9. The offering advertisement stated that the coin was a limited, commemorative edition, and that the price on buying and selling may vary from the official exchange rate. The coin is sold for less than the official exchange rate. The sale of the coin in New York is a taxable sale of tangible personal property.

Example 2: A foreign nation issues a coin, which is for general circulation. It is advertised for sale in New York at the official exchange rate, plus postage and handling charges. The advertisement stresses the limited availability and uniqueness of the coin, the fact that the coins sold are in brilliant, uncirculated condition and that the buying and selling rates will reflect service charges and may vary from the official exchange rate. These transactions are for numismatic or investment purposes, and are subject to sales tax." 20 NYCRR 527.1.

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

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The foregoing regulatory provisions constitute the Tax Commission's official interpretation of the meaning of section 1105(a) of the Tax Law as it applies to the sale of coins. Implicit in the rendering of such interpretation is a determination that no constitutional limitations are transgressed thereby. Further, it is not the function of Advisory Opinions to effect changes in regulations, whether grounded in constitutional or other considerations. Rather, Advisory Opinions merely set forth "the applicability to a specified set of facts of pertinent statutory and regulatory provisions." 20 NYCRR 901.1(a). In the present instance it is sufficient, therefore, to refer to the above-quoted provisions of the Sales and Use Tax Regulations, which set forth the applicability of the State sales tax to the sale of coins. If Petitioner wishes to contest the validity of the Tax Law as interpreted in such regulatory provisions he must do so in a proper forum.

DATED: June 9,1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau