

Taxability Of Futures Contracts For Precious Metals  
Traded On Commodity Exchanges

Due to the unique nature and method of trading precious metals on commodity exchanges, the following policy of the State Tax Commission is set forth regarding the imposition of sales and compensating use tax on transactions connected with the trading of futures contracts for precious metals on any contract market or other board of trade located within New York State, as defined in and regulated by the Commodity Exchange Act, as amended.

Transactions exclusively involving the trading of futures contracts for precious metals are not transactions involving the sale of tangible personal property. Such futures contracts are intangibles and the sales thereof are not subject to the sales tax. However, if the futures contracts are not traded prior to maturity, a transfer of title or possession or both occurs. Such transfer is considered a sale of tangible personal property subject to the sales and use tax, unless purchased for resale or by an organization exempt under section 1116 of the Tax Law.

In those transactions where the contract is closed out, the purchaser will receive a depository receipt issued by the depository located within New York State. This receipt will contain information on the bar(s) and/or assay certificate(s) corresponding to the contract unit of metal held in the depository and covered by the receipt. If, although the depository receipt is delivered, the precious metal it covers remains at the New York depository, the transaction will be presumed to be a purchase of tangible personal property intended for resale and a sales or use tax will not be imposed. However, when the holder of the depository receipt takes actual physical possession of the precious metal from the New York depository without any intention of resale, and no eligibility exists for exemption under section 1116 of the Tax Law, the holder of the depository receipt shall be liable for sales and use tax.

In order to take physical possession of the precious metal within New York State, the holder of the depository receipt shall, prior to taking possession, obtain a Release Authorization ( TP-155 ) from the State Tax Commission. Such Release Authorization will certify payment of all applicable sales or use tax or that the transaction does not require the payment of a sales or use tax. Failure of a person to obtain a Release authorization will subject the transaction to the provisions of section 1132 of the Tax Law and may result in the issuance of an assessment pursuant to section 1138 of the Tax Law.

To obtain such Release Authorization, the holder of a depository receipt must obtain and complete an Application For Release Authorization ( TP-132 ). The completed application form must be returned to the Taxpayer Assistance Bureau, 2 World Trade Center, Room 6379, New York, N.Y.

Applications may be obtained from Taxpayer Assistance Bureau at the above address, the depository bank indicated on the depository receipt, or from any recognized member of a commodity exchange dealing in precious metals.

A validated Release Authorization must be presented to the Depository prior to taking possession of the precious metal.

The taxability of transactions involving purchases of precious metals other than through futures contracts, as herein described, remains consistent with the Department's published policy on bullion and coins.