

Exemption for Certain Precious
Metal Bullion

Effective September 1, 1989, precious metal bullion sold for investment is exempt from state and local sales and compensating use taxes imposed under section 1115(a)(27) of the Tax Law, when certain specified conditions are met.

"Precious metal bullion" means bars, ingots or coins of gold, silver, platinum, palladium, rhodium, ruthenium or iridium. However, such bullion does not include coins of the Republic of South Africa or bars, ingots or coins that have been manufactured, processed, assembled, fabricated or used for an industrial, professional, esthetic or artistic purpose.

For the exemption to apply:

- the receipt or consideration given or contracted to be given for the bullion must depend only on the value of the metal content of the bullion; and
- if applicable, the retailer must be registered as a broker or dealer with the New York Department of State pursuant to the provisions of section 359-e of the General Business Law.

Precious metal bullion is sold for investment when the aggregate sale under a single invoice totals more than \$1,000.00 and the purchaser or user, or the agent of either, holds the bullion in the same form as when purchased, without manufacturing, processing, assembling or fabricating the bullion.

Sales of bullion for greater than \$1,000.00 that do not depend on the value of the metal content and sales of bullion for less than \$1,000.00 are subject to tax regardless of the purchaser's intent to hold the bullion as an investment. Any bullion purchased exempt under the new provision of law but later converted to self-use would be subject to sales or use tax, as the case may be.

The receipt or consideration given or contracted to be given is deemed to depend only on the value of the metal content if, at the time of sale, the receipt or consideration (the selling price) for the purchase of coins at retail does not exceed:

140%	with respect to	silver coins;
120%	with respect to	gold coins weighing 1/4 ounce or less;
115%	with respect to	all other coins;

of the greater of:

- (A) the daily closing cash bullion price, or
- (B) the coins' face value at prevailing rates of exchange.

With respect to bars and ingots, the receipt or consideration may not exceed 115% of the daily closing cash bullion price of such metal. If there is no closing price, the average of the bid and asked prices shall be substituted.

Example 1

A registered broker sold 50 silver commemorative coins to a purchaser at a price of \$25.00 each. The silver content of each coin was 3.594 troy ounces and silver closed at \$5.553 per troy ounce on the day of the sale. Taxability of the receipt from the sale is determined as follows:

Selling price of the coins (50 X \$25.00)	\$1,250.00
Value of the silver content of coins (3.594 X \$5.553 X 50)	998.00
Ratio of selling price to value of silver content	125%

The seller of the coins was a registered broker. The receipt from the sale was 125% of the value of the silver content of the coins. This sale is exempt from tax inasmuch as the selling price of the coins did not exceed 140% of the daily closing cash bullion price of silver on the day of the sale. Since the coins had no currency value, no consideration needed to be given as to whether the selling price was greater than 140% of the face value.

Example 2

A broker sold a Liberty Type "Double-Eagle" gold coin (with a face value of \$20.00) to a purchaser at a price of \$1,500.00. The coin contained .9675 troy ounces of gold. Gold closed at \$384.16 per troy ounce. The taxability of the sale is calculated as follows:

Selling price of coin	\$1,500.00
Value of gold content of coin (.9675 troy oz. X \$384.16 per oz.)	371.67
Face value of coin	20.00
Ratio of selling price of coin to value of gold content	404%
Ratio of selling price of coin to face value	7500%

This transaction is taxable because the selling price of the coin exceeded the value of the metal content of the coin and/or the face value of the coin by more than 115%.

Example 3

A broker sold the following precious metal bullion:

1 troy oz. platinum bar	-	\$ 530.00
5 troy oz. palladium bars	-	<u>745.00</u>
Total sale		\$1,275.00

Bullion platinum closed at \$480.50 per troy ounce and bullion palladium closed at \$134.00 per troy ounce. The taxability of the sale is computed as follows:

	<u>Selling price of bullion</u>		<u>Cash bullion value on day of sale</u>		<u>Ratio of selling price of bullion to market value</u>
Platinum	\$ 530.00	(1 oz. @ \$480.50)	\$ 480.50		110%
Palladium	<u>745.00</u>	(5 oz. @ \$134.00)	<u>670.00</u>		111%
Total	\$1,275.00		\$1,150.50		

This transaction is exempt from sales and use taxes because the selling price of the bullion purchased did not exceed 115% of the daily closing cash bullion price of either of the metals.

Example 4

A dealer sold a 1979 Franklin Mint 1 oz. (1.001 troy oz.) gold piece (with no face value), and a 100 gram (3.215 troy oz.) Swiss Credit Bank gold bar for a total of \$2,450.00 (\$1,250.00 and \$1,200.00 respectively). Gold closed at \$364.60 per troy oz. The taxability of the sale is as follows:

<u>Selling price of gold piece</u>	\$1,250.00
Value of gold content of gold piece (1.001 troy oz. X \$364.60)	586.09
Ratio of selling price to gold content of gold piece	213%
<u>Selling price of gold bar</u>	\$1,200.00
Value of gold content of bar (3.215 X \$364.60)	1,172.19
Ratio of selling price to gold content of gold bar	102%

The sale of the Franklin Mint gold piece is subject to sales tax because the selling price exceeded the value of the metal content of the coin by more than 115%; the sale of the gold bar is exempt from sales and use tax because the selling price exceeded the value of the metal content of the coin by 102%, which is less than the 115% allowable tolerance.

According to the sales tax regulations, when taxable and exempt items are billed as a single unit, sales tax must be collected on the total price. Therefore, unless the invoice for this sale shows the gold bar, the gold piece and the sales tax on the gold piece separately, sales tax must be collected on the total sale.

Vendors of precious metal bullion in the State of New York have always been required to maintain records sufficient to comply with the provisions of section 533.2 of the Sales Tax Regulations. However, in view of the requirements of the exemption for precious metal bullion, sellers of such metals should be particularly careful to maintain records for each sale of:

- the fine metal content of any precious metal bullion sold;
- the daily closing cash bullion prices of precious metal bullion sold;
- the name and address of the purchaser; and
- the point of delivery of the bullion to the purchaser.

This information is necessary for determining the taxable status of precious metal bullion sold on and after September 1, 1989, is required to verify the nontaxable sales claimed by the vendor and must be kept on file for three years after the date of the sale.

Sales tax is imposed on the sale, except for resale, of the service of storing tangible personal property in the State of New York. Therefore, New York depositories or other persons storing precious metal

bullion for customers at locations in New York State must collect sales tax on the charges for such storage, unless the customer furnishes a properly completed Form ST-121, Exempt Use Certificate. To be properly completed, an Exempt Use Certificate must contain the name and address of the purchaser, the sales tax identification number of the purchaser and a description of the service purchased. Any such certificate received by a person providing storage space must be kept on file for three years, and must be available for inspection by our auditors upon request.