

**M e m o r a n d u m****168.0280**

To: Mr. Robert Shaw  
Business Taxes Representative  
Return Review Section MIC:35

Date: January 25, 1994

From: Gerald Morrow  
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Subject: Occasional Sale Deduction

S- -- XX XXXXXX  
[G]

This is in response to your memorandum dated November 29, 1993, concerning whether a taxpayer's [G] sale qualifies for the occasional sales exemption.

My understanding is that you are questioning the deduction taken for "occasional sales" on the sales and use tax return of [G] (hereinafter taxpayer) based on your belief that the taxpayer is required to hold a seller's permit and the transaction is for a substantial amount. The taxpayer has provided a statement regarding the occasional sales exemption it claimed on line 10(e) of its return.

"Occasional sale" is defined in section 6006.5(a) of the Revenue and Taxation Code. A part of this definition includes the requirement that the tangible personal property sold not be held or used by a seller in the course of activities for which he or she is required to hold a seller's permit or permits. Although the taxpayer believes that the items to be transferred are not used in the course of such activities, we disagree.

Taxpayer asserts that it sells property qualifying for the section 6355 exemption, for sales of monetized and nonmonetized bullion. This exemption applies only to sales when the total market value sold in a single transaction exceeds \$1000 (in the future this amount will be increased by the Board for inflation).

On the other hand, when the total market value of monetized and nonmonetized bullion sold in a single transaction is less than \$1000, that sale is not exempt. Thus for the purposes of the definition of "seller" under Revenue and Taxation Code section 6014, monetized and nonmonetized bullion is not excluded from "tangible personal property of a kind the gross receipts from the retail sale of which is, or would be, required to be included in the measure of the sales tax if sold at retail." That is, monetized and nonmonetized bullion is not the type of property whose sale at retail is always exempt, but rather it is only the character of the sale which brings it within the exemption.

Since monetized and nonmonetized bullion is not the kind of property whose retail sale is never taxable, a person selling monetized and nonmonetized bullion is a seller under section 6014 and is required to hold a permit by section 6066. This is true whether or not the taxpayer ever actually makes sales subject to tax. Since taxpayer was required to hold a seller's permit, its sale of property used in the course of such activities does not qualify for the occasional sales exemption. The property in question here was used by taxpayer in the course of activities requiring a seller's permit. We therefore agree that the occasional sales exemption does not apply.

If you have further questions, feel free to write again.

GM/md  
Enclosures