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SENATE BILL 5395

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kauffman, Schoesler, Hobbs, Zarelli, and Roach

Read first time 01/21/09. Referred to Committee on Ways & Means.

1            AN ACT Relating to the excise taxation of the sale of metals for  
2 investment purposes; amending RCW 82.04.062; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    When the legislature enacted chapter 471,  
5 Laws of 1985, it intended to tax the business of making sales of  
6 precious metal bullion the same as sales of other investment products.  
7 The business and occupation tax was to be imposed on commissions, not  
8 on the value of the investment product traded. Other activities  
9 involving precious metal bullion, including reforming precious metal  
10 bullion into smaller units, were not taxable.

11            However, the method of calculating business and occupation tax for  
12 taxpayers engaged in both manufacturing and selling activities changed  
13 after chapter 471, Laws of 1985 was enacted. In the judgment of the  
14 department of revenue, this change caused the reforming of precious  
15 metal bullion into smaller units in this state to be taxable under the  
16 manufacturing business and occupation tax classification. It is the  
17 intent of this act to reimplement the original intention of the  
18 legislature and limit the business and occupation tax imposed on the  
19 business of making sales of precious metal bullion to a tax on amounts

1 received as commissions and not to tax the activity of reforming  
2 precious metal bullion into different shapes or sizes. It is also the  
3 intent of the legislature that the business and occupation tax apply to  
4 the markup on the sale of precious metal bullion, where the taxpayer is  
5 selling its own precious metal bullion. The legislature further  
6 intends to accord the same tax treatment to investment purchases of  
7 rare earth metals.

8 **Sec. 2.** RCW 82.04.062 and 1985 c 471 s 5 are each amended to read  
9 as follows:

10 (1) For purposes of this chapter, "wholesale sale," "sale at  
11 wholesale," "retail sale," and "sale at retail" do not include the  
12 sale, for investment purposes, of precious metal bullion ~~((or))~~ ,  
13 monetized bullion, or rare earth metals.

14 ~~((In computing tax under this chapter on the business of making  
15 sales of precious metal bullion or monetized bullion, the tax shall be  
16 imposed on the amounts received as commissions upon transactions for  
17 the accounts of customers over and above the amount paid to other  
18 dealers associated in such transactions, but no deduction or offset is  
19 allowed on account of salaries or commissions paid to salesmen or other  
20 employees.~~

21 ~~(3))~~ The tax imposed by this chapter does not apply to the melting  
22 and reforming of precious metal bullion into different units.

23 (3) The sale, for investment purposes, of precious metal bullion,  
24 monetized bullion, or rare earth metals is taxable under RCW  
25 82.04.290(2) on amounts received:

26 (a) Over and above the market price for the bullion or rare earth  
27 metals sold on the date that the order for the bullion or rare earth  
28 metals is received, regardless of whether this markup is referred to as  
29 a commission, premium, spread, or some other term. A deduction is  
30 allowed from the measure of tax for amounts derived from charges to the  
31 buyer for shipping, handling, and insurance, but only to the extent  
32 that the deduction does not exceed the seller's actual expenditures to  
33 third parties for delivery of, and insurance for, the bullion or rare  
34 earth metals sold; and

35 (b) As commissions upon transactions for the accounts of customers  
36 over and above the amount paid to other dealers or mints associated in

1 such transactions. No deduction or offset is allowed on account of  
2 salaries or commissions paid to salespersons or other employees.

3 (4)(a) The sale of precious metal bullion and monetized bullion is  
4 presumed to be for investment purposes. The presumption may be  
5 rebutted only if the seller knew at the time of sale that the buyer  
6 purchased the precious metal bullion or monetized bullion for other  
7 than investment purposes.

8 (b) The sale of rare earth metals is presumed to be a sale for  
9 investment purposes except when the rare earth metals are physically  
10 delivered to the buyer or a person designated by the buyer. However,  
11 for purposes of determining the seller's tax liability only, the sale  
12 of rare earth metals physically delivered to the buyer or a person  
13 designated by the buyer will nonetheless be deemed a sale for  
14 investment purposes if the seller receives a declaration from the  
15 buyer. The declaration must be in the form designated by the  
16 department, signed by the buyer, and state that the buyer's purchase of  
17 rare earth metals is for investment purposes. The seller must retain  
18 the declaration as provided in RCW 82.32.070. A buyer who provides the  
19 seller with a false declaration is subject to any applicable taxes  
20 under chapters 82.08 and 82.12 RCW and penalties and interest on such  
21 taxes.

22 (5) For purposes of this section, the following definitions apply:

23 (a) "Market price" means the seller's highest publicly stated price  
24 during a particular date for which the seller is willing to buy  
25 precious metal bullion, monetized bullion, or rare earth metals. If no  
26 such publicly stated price is available, current market price means the  
27 closing price for the bullion or rare earth metals on the New York  
28 mercantile exchange if the bullion or rare earth metals are traded on  
29 that exchange. If the bullion or rare earth metals are not traded on  
30 the New York mercantile exchange, market price may be determined by any  
31 reasonable method approved by the department. For purposes of this  
32 subsection (5)(a), "seller" means a person taxable under subsection  
33 (3)(a) of this section.

34 (b) "Monetized bullion" means coins or other forms of money  
35 manufactured from gold, silver, or other metals and that have been or  
36 are used as a medium of exchange under the laws of this state, the  
37 United States, or any foreign nation. "Monetized bullion" does not

1 include coins or money sold to be manufactured into jewelry or works of  
2 art.

3 (c) "Precious metal bullion" means any precious metal ((which))  
4 that: (i) Has been put through a process of smelting or refining,  
5 including, but not limited to, gold, silver, and platinum group metals,  
6 ((rhodium, and palladium,)) and ((which)) (ii) is in such state or  
7 condition that its value depends upon its contents and not upon its  
8 form. ((For purposes of this section, "monetized bullion" means coins  
9 or other forms of money manufactured from gold, silver, or other metals  
10 and heretofore, now, or hereafter used as a medium of exchange under  
11 the laws of this state, the United States, or any foreign nation, but  
12 does not include coins or money sold to be manufactured into jewelry or  
13 works of art.))

14 (d) "Rare earth metals" means:

15 (i)(A) Elements with the atomic numbers twenty-one (scandium),  
16 thirty-nine (yttrium), fifty-seven (lanthanum) through seventy-one  
17 (lutetium); and

18 (B) Compounds containing an element listed in (d)(i)(A) of this  
19 subsection (5)(d) that, due to its instability, is commonly held as a  
20 compound containing any other element;

21 (ii) Where such element or compound:

22 (A) Has been put through a process of smelting or refining; and

23 (B) Is in such state or condition that its value depends upon its  
24 content and not upon its form.

25 NEW SECTION. Sec. 3. This act applies both retroactively and  
26 prospectively.

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