

**Testimony of Patrick A. Heller of Liberty Coin Service, Lansing, Michigan
IN SUPPORT OF SB 437
SALES AND USE TAX EXEMPTION OF BULLION, NUMISMATIC COINS AND CURRENCY
Before the Kansas Senate Assessment and Taxation Committee
March 13, 2018**

Madam Chair and members of the Committee, thank you for the opportunity to testify in support of SB 437 to establish a sales-and-use-tax exemption for the retail sales of precious-metals bullion and rare coins in Kansas.

My name is Patrick A. Heller. After working as a CPA in Michigan, in 1981 I became the owner of Michigan's largest coin dealer, Liberty Coin Service, in Lansing. When Michigan enacted a comparable exemption in 1999, the House and Senate fiscal agencies and the Michigan Treasury used my calculation of forsaken tax collections in their analyses. I also conservatively forecasted the likely increase in Michigan tax collections if the exemption was enacted, and later documented that the actual increase in tax collections was nearly double what I had estimated. My analyses of both tax expenditures and documented increases in state Treasury tax collections were subsequently used to support successful efforts to adopt sales and use tax exemptions for precious-metals bullion, rare coins, and currency in Iowa, Pennsylvania, South Carolina, Nebraska, and Virginia. These same analyses were used to expand the tax exemptions in Texas and Louisiana. Most recently, the Indiana and Minnesota legislatures have passed similar exemptions; these have not yet been signed into law.

I am here to address three issues about which legislators around the country have expressed concern. First, I discuss the question of whether enacting a sales tax exemption for money and not for other tangible property is fair. Second, I discuss why precious metals and rare coins merit a sales-and-use-tax exemption, while other assets sometimes purchased as investments (such as rare stamps, works of art, antiques, and the like) do not. Third, I review the limitations of a static tax-impact analysis versus a dynamic analysis.

1. Is it fair to exempt money but no other tangible property?

Precious-metals bullion, rare coins, and currency have a major distinction from other tangible assets that are subject to sales and use tax. Sales and use taxes are consumption taxes on assets that are consumed or used. In contrast, precious-metals bullion, rare coins, and currency



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are not consumed. Often, they are acquired as investments to be sold. Others are acquired for the enjoyment of a hobby but are still preserved carefully with an eye toward future sale. They are not worn, used, or otherwise consumed.

The Internal Revenue Service and the Kansas Treasury confirm that precious-metals bullion, rare coins, and currency are capital assets that are not consumed. Both tax agencies anticipate that these assets will be sold and that the owners will report and pay income taxes on their profits from the sales. In fact, the IRS has a Form 1099-B, which is used by coin dealers to report to the IRS some bullion and coin purchases from the public.

2. Why it is appropriate to “draw the line” with the rare coin and precious metals exemption?

- It parallels the intent of Federal legislation that permits Individual Retirement Accounts to own these products but no other tangible personal property.
- It parallels legislation over thirty states, none of which extend exemptions to stamps, art, antiques, diamonds, and so forth.
- It parallels the scope of investment advice given by many prudent investment advisors, who recommend only these forms of tangible personal property.
- The state of Utah exempts gold and silver gains and losses from Utah income taxes; the state of Arizona now exempts gains and losses from US gold, silver, and platinum coins from that state's income taxes.
- Rare coins are or have been “legal tender” in their land of issue, a status not shared by other tangible personal property.
- The U.S. Constitution specifically grants the Federal government the authority to coin money, but no explicit powers to manufacture any other tangible personal property.
- The United States Mint manufactures commemorative rare coins and proof versions of circulating coinage. It sells them at prices well above precious metal or face value. The U.S. government has no other programs to manufacture and sell art, antiques, gems, and so forth.
- Investment brokerage firms, including Merrill Lynch, have often established investment funds for the sole purpose of acquiring rare coins. To my knowledge, no comparable investment funds have ever been created for investments in other tangible personal property.

- Investment brokerage firms have established exchange-traded funds for trading gold, silver, platinum, and palladium. I am not aware of exchange-traded funds established to invest in stamps, art, antiques, gems, or other collectible tangible personal property.
- Directly underneath the masthead of The Wall Street Journal are listed key financial indicators, including the price of gold. No information appears there for stamps, art, antiques, gems, or other collectible tangible personal property.

3. Static versus dynamic tax analysis.

State treasuries and legislative fiscal agencies use a static analysis of the impact of tax-law changes. A static analysis asks, “If a sales tax exemption is enacted, how much in existing tax collections would be lost?”

However, if only the forsaken taxes are calculated, with no consideration of the change in behavior of Kansas residents after a tax change occurs, the overall impact on total tax collections will be inaccurate. Instead, a dynamic analysis is needed to reflect the impact of changes to other Kansas Treasury tax collections.

From my work with the agencies in Michigan, I learned that there is no approved methodology for state treasuries and fiscal agencies to do a dynamic analysis. I believe my findings of the coin-dealer industry’s changes in Michigan, once the exemption was adopted, will help this committee in approximating a dynamic analysis.

- From the enactment of the exemption in 1999 to the end of 2011, I tracked a 67% increase of coin dealerships in Michigan. About half of this increase was from new businesses opening, and about half was from existing businesses expanding their operations to also become coin dealers.
- Coin-dealer employment levels more than doubled over this time frame, and total payrolls increased by an even greater amount. For my own company, from 1997 to 2011, total employment and contractors increased 243%, while total payroll increased more than 800%. Michigan Treasury research has determined that 38.5% of payrolls are spent on merchandise for which Michigan sales tax is collected. The increase in coin-dealer payrolls in Michigan generated additional sales tax collections that more than offset tax collections lost because of the exemption. I would also like to point out that this coin-

dealer employment increase occurred while Michigan as a whole was suffering a decline in employment.

- Industry sales soared. According to Dun & Bradstreet information in 1995, my company accounted for about 15% of sales by coin dealers in Michigan. From 1997 to 2011, my company's out-of-state retail and wholesale sales and Michigan wholesale sales increased about 673%. Our Michigan retail sales during this time increased more than 2,500%. Yes, volume increased across the board, but there was a definite major volume increase specifically resulting from the new tax exemption. Before the exemption was enacted in Michigan, my company rarely saw sales of precious-metals bullion or rare coins amounting to more than \$1,000. An analysis of my company's Michigan retail sales for the year 2011 showed that 94% of total sales volume was for transactions of \$5,000 or higher. (Special note: State treasuries and legislative fiscal agencies do not realize how price-sensitive customers are to have to pay sales and use taxes on precious-metals bullion and rare-coin investments. Therefore, they almost always assume that states that impose such taxes on these sales still have as much per capita in-state retail sales as do states that grant exemptions. There have been several one-time surveys done on coin dealer sales tax collections over the past 30 years of sales tax collections for the retail sales of precious-metals bullion and rare coins, almost no state treasuries collected more than \$500,000 per year).
- As coin dealers drew more customers for exempt merchandise, they also drew more customers for merchandise they handled that were still subject to sales tax. Major categories of such products handled by coin dealers were jewelry, antiques, sports cards, other collectibles, and hobby supplies.
- As the number of coin dealers increased and their volumes rose, business tax collections from these companies rose.
- For my own company, from 1997 to 2011, our total Michigan tax collections increased 216% despite the drop in sales taxes collected on our Michigan retail sales. Over the same period, our Lansing tax payments increased by more than 1,100% and our local advertising expenditures increased more than 480%!
- Further, the hospitality industry in Michigan increased tax collections as more coin shows were sponsored in the state, which encouraged more out-of-state dealers to spend money in Michigan.

- My research that indicated that the Michigan Treasury collected greater sales taxes after the exemption and also greater amounts of other taxes was confirmed nationwide by the Industry Council for Tangible Assets 2016 national survey of actual 2015 sales, sales tax collections, and coin show attendance, as summarized in the attached document.

OTHER QUESTIONS AND CONCERNS

Why would Kansas coin dealers experience such growth after an exemption was established?

- Affluent investors currently can afford to purchase in bulk quantities out of state and have their purchases stored at specialized depositories in Delaware. Our experience is that many such purchasers would prefer to deal face-to-face when make sizeable transactions.
- Alternatively, affluent investors can afford to purchase gold, silver, platinum, or palladium contracts on commodity exchanges, which are purchases not subject to sales and use taxes in any state. If able to purchase comparable physical products from local dealers, many if not most customers alter their buying habits to do so.
- Because of thin profit margins on bullion products, the sales tax is a major impediment to potential buyers. In 1994, Michigan raised the sales tax rate from 4% to 6%. My company's in-state retail sales for the 12 months following the increase fell by almost exactly one-third from the 12 months before the rate increase. Therefore, our sales tax collections did not increase.
- When precious-metals bullion, rare coins, and currency were subject to Michigan sales tax, we rarely made in-state retail sales greater than \$1,000. Yet, my analysis of my company's 2011 retail sales showed that 94% of our Michigan retail sales volume was for transactions of \$5,000 or more.

Who would benefit from the exemption?

Kansas residents can easily purchase precious-metals bullion and rare coins from sellers in Colorado, Missouri, Nebraska, Oklahoma, and 32 other states, and then arrange for out-of-state storage. Generally, the more affluent use such arrangements.

There are several constituencies that would benefit from enacting House Bill 1046 in Kansas.

Among the beneficiaries would be:

- Kansas Treasury, with increased tax collections
- Existing Kansas businesses, with higher profits
- Future owners and employees of new business that will be made possible
- Kansas workers, with more jobs and higher pay
- Kansas smaller-scale investors, who can deal locally without the burden of sales and use taxes, which affluent investors can easily achieve by purchasing commodities or arranging for storage in Delaware.
- Kansas consumers, who are better protected by dealing with local businesses than with strangers
- Kansas senior citizens, who will have more resources to avoid scam artists

All these benefits and more were realized in Michigan with no net cost to the state Treasury or Michigan taxpayers.

In Michigan, a high percentage of sales tax collections is explicitly allocated to education funding. For this reason, the Michigan Education Association automatically opposes sales tax exemptions. However, the MEA did not oppose this exemption and was rewarded when total sales tax collections increased.

Thank you for the opportunity to speak.