Testimony of Patrick A. Heller of Liberty Coin Service, Lansing, Michigan

IN SUPPORT OF

HB 268: EXEMPT SALE OF INVESTMENT METAL BULLION AND COINS FROM SALES TAX AND SIMILAR LANGUAGE IN THE APPROPRIATIONS FOR FY 2022-2023

Submitted before the Ohio Senate Finance Committee

May 18, 2021

Chair Dolan and members of the Committee, I write in support of HB 268 to re-establish a sales-and-use-tax exemption for investment metal bullion and coins and for similar language in the Appropriations for FY 2022-2023 for Ohio.

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 projected. My analyses of both tax expenditures and documented increases in state Treasury tax collections were subsequently used to support a successful effort to previously adopt this exemption in Ohio. This research has also supported successful efforts to adopt sales and use tax exemptions for precious-metals bullion, coins, and currency in Alabama, Arkansas (signed into law by Governor Hutchinson on May 3, 2021 and taking effect October 1, 2021), Indiana, Iowa, Kansas, Minnesota, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Virginia, West Virginia, and Wyoming. These same analyses were used to expand the tax exemptions in Texas and Louisiana (and also to restore the exemption in Louisiana in 2017 after it was suspended in 2016).

The experience in other states that have adopted similar legislation is that its effect was primarily a business development program rather than a tax exemption. In contrast, when states have revoked such exemptions, they are usually quickly re-instated once the state government documented that total tax collections actually decreased. Examples: 1) when Florida temporarily revoked its bullion and coin sales tax exemption in the 1990s, the Orange County Convention & Visitors Bureau calculated that the hospitality industry lost $60 million in annual taxable sales as a result of more than 100 coin shows and conventions in that state shutting down or moving to another state, 2) after Ohio revoked a previous exemption in 2005, it was reported that within six months at least 100 Ohio coin businesses had either closed, reduced staff, or moved to another state that had a bullion and coins sales and use tax exemption; further all major coin shows in Ohio were cancelled

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until an exemption was later restored, and 3) In 2016 the state of Louisiana experienced a major decline in oil and gas severance tax collections prompting a 27 month suspension of more than 200 sales tax exemptions and tax credits; when it was determined that so many coin businesses and trade shows had closed, reduced staff, or moved out of the state so that tax collections declined even further, the bullion and coins sales tax exemption was one of only 4 tax breaks reestablished the following year.

I also write to address issues about which legislators around the country have expressed concern. First, I discuss the question of whether enacting a sales tax exemption for investment metal bullion and coins and not for other tangible property is fair. Second, I discuss why investment metal bullion and 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. As an example of this limitation, the Ohio Legislative Service Commission's Fiscal Note & Local Impact Statement for HB 268 far overestimated potential lost revenues and did not include any projection of replacement tax collections that in many other states have exceeded the tax expenditure of similar exemptions.

1. Is it fair to exempt investment metal bullion and coins but no other tangible property?

Investment metal bullion and coins 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, coins, currency, and precious-metals bullion 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 Ohio Department of Taxation confirm that Investment metal bullion and coins 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 Investment metal bullion and coin purchases from the public.

2. Why it is appropriate to "draw the line" with an investment metal bullion and coins exemption?

- It parallels the intent of Federal legislation that permits Individual Retirement Accounts to own many of these products but no other tangible personal property.
- It parallels legislation enacted in 34 other 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.
- Coins are or have been "legal tender" in their land of issue, a status not shared by other tangible personal property.
- The US 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 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 have often established investment funds for the sole purpose of acquiring 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 Ohio 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 Ohio state government 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 143%, while total payroll increased more than 800%. Michigan Treasury research 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 in-state retail sales of precious-metals bullion or 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.** (<u>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 investment metal bullion and 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 coins, almost no state treasuries collected more than $500,000 per year</u>).
- 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. A national survey conducted in 2016 by the National Coin & Bullion Association, the coin and precious-metals bullion dealer national trade association, found that dealer sales of merchandise still subject to sales tax increased so much that, on average, they replace two-thirds of tax collections lost from the exemption.

- 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 greater amounts of other taxes was confirmed nationwide by the National Coin & Bullion Association 2016 national survey of actual 2015 sales, sales tax collections, and coin show attendance, which document has been supplied to the sponsor of HB 268.

OTHER QUESTIONS AND CONCERNS

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

- Affluent investors have almost no financial benefit from enactment of this exemption since they already can afford to 1) purchase in bulk quantities out of state and have their purchases stored at specialized depositories in Delaware, 2) purchase shares of gold, silver, platinum, or palladium exchange traded funds, 3) purchase gold, silver, platinum, or palladium commodity or options contracts such as on the New York COMEX, or 4) purchase certificates of precious-metals bullion bars stored in the vaults of the Perth Mint in Perth, Australia, Royal Mint in the suburbs of London, England, or the Royal Canadian Mint in Ottawa, Canada—all of which are exempt from payment of Ohio sales and use taxes. However, our experience is that many such purchasers would prefer to deal face-to-face when making sizeable transactions. In the circumstances of Liberty Coin Service, retail sales of $5,000 or more only accounted for about 1% of our in-state retail coins and precious metals bullion sales in 1997 but rose to account for 94% of our in-state retail coins and precious-metals bullion sales in 2011 (where our total in-state retail coins and precious metals bullion sales in 2011 rose 2,500% from 1997).
- 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.

<u>Who would benefit from the exemption</u>?

Ohio residents can easily purchase precious-metals bullion and coins from sellers in 38 states (soon to be 39 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 268 in Ohio. Among the beneficiaries would be:

- Ohio state government, with increased tax collections
- Existing Ohio businesses, with higher profits
- Future owners and employees of new business that will be made possible
- Ohio workers, with more jobs and higher pay
- Ohio smaller-scale investors, who can deal locally without the burden of sales and use taxes, which affluent investors can easily achieve by purchasing commodities, shares of exchange traded funds, certificates of bullion stored outside of the US, or arranging for storage in Delaware.
- Ohio consumers, who are better protected by dealing with local businesses than with strangers
- Ohio senior citizens, who will have more resources to avoid scam artists
- Affluent Ohio citizens, while not really benefitting financially, will be more willing to conduct business with local Ohio businesses.

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 submit this written testimony. Should you have any questions, you are welcome to call me at 800-933-4720 or email me at <u>path@libertycoinservice.com</u>. Thank you for your consideration.

Sincerely,

Patrick A. Heller
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