

# SENATE BILL REPORT

## SB 5395

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As of February 9, 2009

**Title:** An act relating to the excise taxation of the sale of metals for investment purposes.

**Brief Description:** Concerning the excise taxation of bullion and rare earth metals.

**Sponsors:** Senators Kauffman, Schoesler, Hobbs, Zarelli and Roach.

**Brief History:**

**Committee Activity:** Ways & Means: 2/04/09.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dean Carlson (786-7305)

**Background:** Until 1985 sales of precious metal bullion and monetized bullion were subject to retail sales tax and state B&O tax. Retailers collected state sales tax, plus applicable local sales taxes, from purchasers. Sellers were also subject to B&O tax on the gross receipts of such transactions; retailers paid under the retailing classification (0.471 percent rate) and wholesalers were taxed under wholesaling classification (0.484 percent).

In 1985 exemptions from retail sales tax and state B&O tax were adopted for retail and wholesale sales of precious metals and monetized bullion. Sellers who receive commission income upon transactions for customers remain taxable on their commission income, over and above the amounts paid to other dealers; the commissions are subject to the 1.5 percent service B&O tax rate. No deduction from the tax on commissions is allowed for the cost of salaries or commissions paid to persons employed by the seller. Also, under existing law, no deduction is allowed for costs of delivering products to purchasers.

Precious metal bullion is defined to mean precious metals that have been refined or smelted; the value of the bullion is attributable to the content of the product rather than its form. Examples of precious metal bullion specified in the statute include gold, silver, platinum, rhodium, and palladium. Monetized bullion means coins and other metals used as a medium of exchange. The exemptions do not apply to precious metal or monetized bullion that is used to produce jewelry or artwork, for which the value does depend upon the form of the product.

The 1985 legislation addressed only retailing and wholesaling activities. Persons who

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manufactured such products remained subject to the B&O manufacturing rate (0.484 percent). According to the Department of Revenue, reforming the bullion into different shapes or sizes constitutes a manufacturing activity.

**Summary of Bill:** The B&O tax does not apply to the melting and reforming of precious metal bullion. The sale of precious metal bullion and monetized bullion is presumed to be for investment purposes, so the sale is only taxed on amounts over and above market price. A deduction is also allowed for actual costs incurred by the seller in delivering the bullion to the buyer, including the cost of insurance.

In addition, the sale of rare earth metals is presumed to be a sale for investment purposes, and, like precious metal bullion and monetized bullion, the tax only applies on amounts over and above the market price. Rare earth metals are defined in the statute.

The bill takes effect both retroactively and prospectively.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: When Washington put us at a disadvantage by taxing precious metals, Ray Moore said that if I provide an exemption, it would improve jobs. We went from three employees to 175 employees since the exemption was implemented. We are growing dramatically and are looking to double that, as well as build a 150,000 square foot facility. The exemption we are asking for only applies to bullion products. We are making big blocks of silver into smaller blocks of silver. This is so the small investor can invest in precious metals. After our exemption in 1985, there was a court case that changed our tax status that we didn't know about until two years ago and the Department of Revenue said that we were subject to the manufacturing B&O tax. This puts us at a competitive disadvantage with companies such as one in Idaho.

**Persons Testifying:** PRO: Joe Beitey, Rob Vugteveen, Ross Hansen, Northwest Territorial Mint.