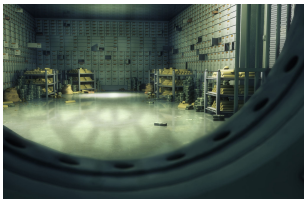

Exempt or Not? Kentucky's Gold Bullion Tax Break Mess

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Kentucky's gold bullion sales tax exemption was (arguably) enacted under H.B. 8 in the General Assembly's 2024 regular session. The bill includes an exemption for gold and silver bullion purchases from the 6 percent state sales and use tax, making Kentucky the 44th state to exempt gold and silver bars, according to the National Coin & Bullion Association. But this seemingly simple exemption has led to surprisingly complex legal and political drama.

H.B. 8 and the Line Item

While most currency has long been exempted from sales and use tax in Kentucky, some purchases—such as collectible coins and gold bars—have remained taxable. Although one may not normally think of gold bars being a readily tradable commodity, many big-box retailers are offering gold bullion bars both in stores and online to consumers. As a result, this issue is now more at the forefront than it was in the past. Gold bullion is currently selling for thousands of dollars per ounce. If bars are taxable, consumers would be required to pay—and retailers required to collect—potentially hundreds of dollars of sales tax per transaction.

H.B. 8, which was 198 pages upon its passage in the Senate, was known as a revenue bill associated with—but not part of—the annual budget bill. The Kentucky Constitution allows the governor to make line-item vetoes in the budget bill, and Gov. Andy Beshear (D) line-item vetoed the gold bullion sales tax exemption, adding that "if you own gold, you can afford to pay sales tax. Tangible goods are the primary basis of the sales tax. Other collectible goods are taxed as tangible personal property."

Then-Senate Majority Leader Damon Thayer (R) responded that Beshear's veto was illegal, but did not elaborate. Instead, the Republican-controlled General Assembly purposefully ignored the veto and made no attempt to override it, then sent the bill to the secretary of state to be enrolled as a matter of law without the governor's signature.

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The General Assembly has overridden many of Beshear's line-item vetoes, but apparently lawmakers did not want to set a precedent for overriding this type of activity given the unique situation involving the type of bill containing the exemption. In other words, overriding this veto could be interpreted as allowing the governor to veto a revenue bill not formally part of a budget bill—a precedent the General Assembly did not want to set.

Lawmakers' actions created a dilemma for retailers faced with a veto of an exemption that was codified into readily available statutes. Therefore, retailers could either (i) impose and collect the 6 percent sales and use tax, or (ii) not charge, collect, and remit it. Both options opened them to potential liability, in the form of either a government audit or a taxpayer lawsuit, which have become more common.

The fog lifted slightly when Attorney General Russell Coleman (R) sided with Republicans and said that the governor's line-item veto was invalid. However, the attorney general's position is not binding as law. Beshear has not pursued legal action regarding the line-item veto.

Murkier Still: Personal Accountability

In early January, Republicans introduced H.B. 2, which would allow those who have paid sales tax on gold and silver since August 2024 (when the exemption was to take effect) to personally sue as a result of the tax payment. Taxpayers would be entitled to a refund and an extra $1,000 per day for each day the violation occurred—all to be paid out of the administrative budget from the governor's office. However, the shocking part of the legislation was that *anyone* within the Finance and Administration Cabinet, including the revenue commissioner, could be held personally liable for instructing the collection and remittance of the tax. The bill's sponsor, Rep. T.J. Roberts (R), claimed that H.B. 2 is necessary to ensure the separation of powers and that the governor's actions in line-item vetoing H.B. 8 constituted an "abuse of power."

While there was support for H.B. 2 as introduced, some criticized its personal liability aspect, particularly given the unsettled nature of

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the law and the General Assembly's failure to act following the veto. Personal liability for government officials is generally reserved for extreme cases and disclosure of confidential taxpayer information. Many also saw the bill as having broader implications for public actions taken by other government agencies.

Ultimately, proposed amendments were made to H.B. 2 that, while maintaining taxpayers' ability to bring actions and seek refunds for payments made after August 2024, would not impose liability on finance cabinet officials until on or after the bill's effective date, alleviating some concerns regarding penalties for the period when the legality of the exemption and veto were uncertain. The proposed amendments retained personal liability but made the liability joint and several with the cabinet. On February 26 the amended bill cleared the House in a 76-to-17 vote. On February 27 it was sent to the Senate.

What Does This Mean?

With no current legal battle in sight, it is difficult to navigate what all of this means. With the General Assembly not overriding the veto, it is unclear what retailers are supposed to do—even with the attorney general's opinion. And what will the imposition of potential personal liability do to the Department of Revenue's ability to recruit new employees—already a difficult task—should the bill become law?

Many retailers are likely to continue to weigh the risk of subsequent audits against the risk of potential taxpayer lawsuits, which may be lengthier and more expensive than an audit defense and potential protest—even given the relatively low number of Kentucky taxpayers purchasing gold and silver bars. Nevertheless, tax professionals are monitoring the situation and its potentially wide-ranging implications.

Please reach out to the author of this article if you have questions or concerns. You can also visit our Tax Law Defined® Blog for more insight into the latest developments in federal, state and local tax planning and tax administration.

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