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ISAAC W. CHOY
DIRECTOR OF TAXATION

To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 12, 2021
Time: 9:30 A.M.
Place: Via Videoconference, Hawaii State Capitol

Re: H.B. 1184, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding H.B. 1184 for your consideration.

H.B. 1184 would add a new section to chapter 237, Hawaii Revised Statutes (HRS), to exempt from General Excise Tax (GET) amounts received from the sale of precious metal bullion within the State. "Precious metal bullion" means coins, bars, or rounds, minted primarily of refined gold, silver, or other precious metals, that are either marked and valued by their weight, purity, and content, or minted by a government authority. The measure is effective upon approval, with the new GET exemption taking effect on July 1, 2021.

The Department notes that the measure's definition of precious metal bullion is quite broad. Only two specific precious metals -- gold and silver -- are identified by name; there is no guidance as to what other types of metal should be considered "precious." For example, platinum (various types), palladium, rhodium, copper, and mercury are all identified by various sources as "precious metals," and that list could expand in the future given environmental constraints and technological developments. To avoid taxpayer confusion, the Department recommends amending the definition to specifically identify each type of precious metal that the Legislature wishes to exempt from GET.

Finally, the Department respectfully requests that the effective date of the new GET exemption be postponed until January 1, 2022. The effective date will also provide the Department time to make the necessary forms, instructions, and computer system changes.

Thank you for the opportunity to provide comments.

Testimony of the Industry Council for Tangible Assets, Inc.
IN SUPPORT OF
HB 1184: EXEMPTS THE SALE OF PRECIOUS METAL BULLION
FROM THE GENERAL EXCISE TAX
Submitted before the House Committee on Economic Development
February 12, 2021

Chairman Quinlan and members of the committee, thank you for allowing us to submit written testimony on HB 1184. My name is David Crenshaw, and I am the executive director of the Industry Council for Tangible Assets, the national association representing the owners of businesses that deal in coins, currency, and precious-metal bullion, as well as those who collect and invest in these items. Our mission for over 35 years has been legislative and regulatory affairs on the state and federal level.

The sales-tax exemption on precious-metal bullion will increase revenue for Hawaii in multiple ways. It will increase the number of coin businesses and industry jobs, generating revenue from additional income tax. As the volume of in-state retail sales increases, so too will sales taxes revenues on related items, like collector supplies, that are non-exempt. In addition, it is a proven fact that in the 39 states with sales tax exemptions, the hospitality industry has benefitted significantly from the opportunity to host small, medium, and large coin shows such as the Whitman Coin & Collectibles Expo and the American Numismatic Association World's Fair of Money.

The sales tax exemption will also level the playing field for the small-business owner. Hawaii's businesses would no longer lose customers to operations in the 38 states on the mainland plus Alaska that do have a sales-tax exemption. Additionally, Hawaiian residents would have the security of doing business and developing relationships with local businesses, sparing them the expense, inconvenience, and potential risks of purchasing these items out of state.

As you will see from my colleague's written testimony, Patrick Heller, a positive fiscal impact results from eliminating the sales tax on precious-metal bullion as well as on coins and currency. Please support this important exemption, and include coins, which will be beneficial to the state's revenue, to in-state businesses, and to in-state investors and collectors.

We have provided both sponsors of HB 1184 with a packet of additional information supporting this bill that may be shared with this committee. I can be reached at (678) 430-3252 should you request more information or wish to discuss this matter further. Thank you for the opportunity to submit this testimony.

Sincerely,



David Crenshaw
Executive Director

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempts sale of precious metal bullion

BILL NUMBER: HB 1184

INTRODUCED BY: OKIMOTO, D. Kobayashi

EXECUTIVE SUMMARY: Exempts the sale of precious metal bullion from the general excise tax.

SYNOPSIS: Adds a new section to chapter 237, HRS, providing an exemption from the sale of precious metal bullion within the State. Defines “precious metal bullion” as coins, bars, or rounds, minted primarily of refined gold, silver, or other precious metals, that are: (1) Marked and valued by their weight, purity, and content; or (2) Minted by a government authority.

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: The general excise tax is a business privilege tax, which means that it is not supposed to be imposed if there is no underlying business.

Section 237-3(b), HRS, provides an exemption for income from a number of investing activities which the legislatures at the time thought were not the kind of business they wanted to tax, including:

gross receipts from the sale of securities as defined in 15 United States Code section 78c or similar laws of jurisdictions outside the United States, contracts for the sale of a commodity for future delivery and other agreements, options, and rights as defined in 7 United States Code section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act, or evidence of indebtedness or, except as otherwise provided, from the sale of land in fee simple, improved or unimproved....

We suggest that if the legislature agrees that precious metal bullion sales are not worthy of general excise taxation, the sale of foreign currency (which we understand the Department has administratively decided not to tax) as well as precious metal bullion be added to the list in section 237-3(b), instead of establishing an entirely new code section, because of similarity with the investment activities already identified in that subsection.

Digested 2/10/2021

FOUNDATION FOR THE ADVANCEMENT OF MONETARY EDUCATION, Ltd.

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Lawrence M. Parks
Executive Director

Considerations About Gold

When I was a young boy in the 1950s, the Boy Scout motto, “BE PREPARED,” was considered not only admirable, but required. The idea was to always be in “a state of readiness in mind and body.”

In Hawaii, it is even more important than elsewhere to be prepared, because so many essentials are imported. A breakdown in the supply chain of essential goods could be disastrous.

Few possess any of the most critical good: real money. They may have some so-called dollars, but those are not in any way related to real “dollars,” as the *Constitution’s* Seventh Amendment use of the word.

For more than 150 years or more, our Supreme Court has been making political decisions, as opposed to legal decisions, about our money. Ignoring the *Constitution’s* teaching that we have only gold and silver coins as our money, we now have paper or electronic blips as money.

Profits garnered by financial firms from this usurpation of our *Constitution* are unfathomable. You have read about some of the excesses, such as an apartment in New York City that sold for \$240 million, paintings that have sold for many hundreds of millions, and so on.

What you may have not read about are the hundreds of trillions (no typo) in derivative bets by large U.S. money-center banks, all backstopped by an unlimited call on all the accumulated wealth of our citizens should an “accident” occur. Another data point, according to the Bank for International Settlements, “Trading in FX [foreign exchange] markets reached \$6.6 trillion per day in April 2019, up from \$5.1 trillion three years earlier. How can this be? What could go wrong?”

In the entire history of nations, there have been zero successes with paper money. There is no reason to believe that our experience will be any different. Indeed, because the United States dollar has been appointed the world’s “reserve currency,” with perhaps minor exceptions of North Korea and Cuba, nearly the entire world is directly or indirectly dependent on it.

It is critical that Hawaii be prepared when the dollar is no longer accepted as payment for essential goods.

The most efficient way to do that is for Hawaii to take possession of gold to meet emergency payments to its most vulnerable citizens, especially pensioners.

Hawaii should also look for ways to get rid of possible impediments for its citizens to take possession of gold on their own. There is virtually no cost to the state and no downside to do this, although it may aggravate some Wall Street relationships.

I understand that you may not have heard much about monetary malfeasance in the U.S. nor in other countries. If the authorities were truthful, it would precipitate a panic.

We offer, at no cost to you, evidence, mostly from official sources, both at home and abroad, that will bring you up the learning curve on this critical issue.

Meanwhile, Hawaii should be prepared.

HB-1184

Submitted on: 2/11/2021 3:04:01 AM

Testimony for ECD on 2/12/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jp Cortez	Sound Money Defense League	Support	No

Comments:

Chairman Quinlan, Vice-Chair Holt, and the rest of the House Committee on Economic Development, thank you for the opportunity to testify before the committee.

On behalf of the Sound Money Defense League, I ask you to vote YES on House Bill 1184, a measure before the House Committee on Economic Development, which removes taxation from the purchase of gold and silver coins and bullion.

Under current law, Hawaii citizens are discouraged from insuring their savings against the devaluation of the dollar because they are penalized with taxation for doing so. House Bill 1184 removes the disincentives to holding gold and silver for this purpose. Here are a few reasons why we strongly urge you vote YES on House Bill 1184:

- **Studies have shown that taxing precious metals is an inefficient form of revenue collection.** The results of one study involving Michigan show that any precious metals tax proceeds Hawaii gains are likely surpassed by the state revenue *lost* from conventions, businesses, and economic activity that are driven out of the state.
- **39 states have removed some or all taxes from the purchase of gold and silver.** Hawaii currently stands against the vast majority of its peers.
- **Taxing precious metals is unfair to certain savers and investors.** Gold and silver are held as forms of savings and investment. Hawaii does not tax the purchase of stocks, bonds, ETFs, currencies, and other financial instruments.
- **Levying taxes on precious metals is inappropriate.** In many states, purchases of computers, shirts, and shoes carry taxes because the consumer is "consuming" the good. Precious metals are inherently held for resale, not "consumption," making the application of taxes on the purchase of precious metals inappropriate.
- **Taxing precious metals is harmful to citizens attempting to protect their assets.** Purchasers of precious metals aren't fatcat investors. Most who buy precious metals do so in small increments as a way of saving money. Precious

metals investors are purchasing precious metals as a way to preserve their wealth against the damages of inflation. Inflation harms the poorest among us, including pensioners, Hawaiians on fixed incomes, wage earners, savers, and more.

In 2016, the state of Louisiana experimented briefly with slapping taxes on precious metals purchases. *They quickly reversed course only one year later -- and reinstated the exemption on precious metals -- because businesses and coin conventions were closing their doors, and state tax revenues were leaving the state.*

We strongly urge you to vote YES on House Bill 1184 to give the legislature an opportunity to consider exempting precious metals purchases from taxes in Hawaii.

Feel free to call me at 404-948-8935 or email me at jp.cortez@soundmoneydefense.org to discuss this important subject. Thanks again for your time and consideration.

Best,

Jp Cortez

HB-1184

Submitted on: 2/9/2021 7:25:18 PM

Testimony for ECD on 2/12/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Wells	Individual	Support	No

Comments:

These metals are investments and shouldn't be taxed.

HB-1184

Submitted on: 2/11/2021 12:02:11 AM

Testimony for ECD on 2/12/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Craig Watanabe	Individual	Support	No

Comments:

Re: support of HB1184

Dear Chair Quinlan

I support HB1184 which eliminates sales and use tax on precious metal bullion. I'd also really appreciate coins added to this bill. 39 other states already have exemptions on coins, currency, and bullion with 3 other states having active pending legislation. I am concerned of the millions of Hawaii dollars leaving the State every year for the 47 years I've been in business here, because it's cheaper to buy out of state per there's no sales tax on these items in the other 39 states. Just me alone, I know I could do 2-3x fold more business here in Hawaii.

Old coins, old currency, and all bullion are not consumer goods that are used in everyday life. They're not consumed, don't wear out, and are not replaced. They're purchased only for ultimate resale and not for consumer use. Coins, currency, and bullion are subject to capital gains tax when sold. If sales tax is continued to be imposed the purchaser is paying on the front end and back end of the transaction. Precious metal products are qualified IRA investments per the 1997 Taxpayer relief act and the 1986 legislation that created the U.S. Mint's American Gold and Silver coins. Internal Revenue Code Sec 408(m).

No other IRA eligible investment products are subject to sales or use tax. Sales and use tax on these investments is an immediate investment 'penalty,' meaning, metals must increase in value even more to reach a profitable position for the purchaser. Serious investors have not and will not purchase inside of Hawaii only to suffer this investment penalty.

Wealthy investors can purchase these products in the form of commodity contracts, not subject to sales and use taxes. It's the small investors who bear the burden of sales taxes for their modest investment transactions. This forces them to buy out of state. During the course of a year I refer at least 2-3 million dollars worth of strictly bullion business to the mainland. All that money, gone from Hawaii.... and that's just my dealership.

The nation's largest coin dealer, the U.S. Mint does not charge sales tax. That discourages people here in Hawaii from purchasing in Hawaii, imposing sales tax on that choice of their investments.

Coins and currency are legal tender, not consumer goods that shouldn't be subject to

sales tax.

Large coin conventions have not considered Hawaii for their conventions partly because of sales tax. Thousands of people attend national 3-4 day conventions which generate significant tourism dollars.

Local dealers pay income taxes, payroll taxes, property taxes. We purchase equipment, supplies, and services, all of which contribute to the state and local economies. We are members of local business and charitable organizations, and churches.

We are all family businesses, and would be impacted dramatically by the elimination of the sales tax on coins, currency, and bullion which would allow us to compete fairly with the 39 states already exempt.

Thank you for taking time to consider this request to support HB1184.

sincerely submitted,

Craig Watanabe

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

In Support Of

HB 1184: An Act To Create An Exemption From Sales And Use Tax For The Retail Purchase Of Precious Metals Coins And Bullion

Before The Hawaii House Committee on Economic Development

February 12, 2021

Chairman Quinlan and members of the Committee, I write in support of HB 1184 to establish a sales-and-use-tax exemption for the retail sales of precious-metals coins and bullion in Hawaii.

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, coins, and currency in Alabama, Indiana, Iowa, Kansas, Minnesota, Nebraska, North Carolina, Oklahoma, Ohio, 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 after it was suspended in 2016).

I write 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 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.

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

Precious-metals bullion, 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, coins, and currency 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 Hawaii Department of Taxation confirm that precious-metals bullion, 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 a 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 in 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.
- 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 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 Hawaii 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 Hawaii 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 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 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. (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 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. A national survey conducted in 2016 by the Industry Council for Tangible Assets, the coin and precious metals 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 Industry Council for Tangible Assets 2016 national survey of actual 2015 sales, sales tax collections, and coin show attendance, which document has been supplied to the sponsors of HB 1184.

OTHER QUESTIONS AND CONCERNS

Why would Hawaii 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, or purchase shares in precious metals exchange traded funds, 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, 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?

Hawaii residents can easily purchase precious-metals bullion and coins from sellers in 38 states on the mainland plus Alaska, 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 1184 in Hawaii. Among the beneficiaries would be:

- Hawaii state government, with increased tax collections
- Existing Hawaii businesses, with higher profits
- Future owners and employees of new business that will be made possible
- Hawaii workers, with more jobs and higher pay
- Hawaii 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.
- Hawaii consumers, who are better protected by dealing with local businesses than with strangers
- Hawaii 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.

One Final Note

HB 1184 would establish a sales and use tax exemption on the retail sales of precious metals coins and bullion. Most other states that have enacted such exemptions have also exempted other legal tender coinage, though almost all do not exempt from sales or use taxes coins sold for use in jewelry (a consumption item). After Virginia first enacted a precious metals coin and bullion exemption, it later amended the law to add all legal

tender coins. The accumulated data suggest that state tax collections increase by a greater amount as the reach of this exemption covers all coins and even currency. If the Committee were to consider an amendment, I would encourage adding all legal tender coins and currency to the items qualifying for a sales and use tax exemption. The Industry Council for Tangible Assets has a template for a model bill that would achieve this purpose.

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 pat@libertycoinservice.com. Thank you for your consideration.

Sincerely,

Patrick A. Heller
Communications Officer and Owner Emeritus (1981-2014)
Liberty Coin Service
Member of the Board of Directors, Industry Council for Tangible Assets (2002-2021)
Treasurer, Industry Council for Tangible Assets (2002-2019)