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## REVENUE ADMINISTRATIVE BULLETIN 2017-26

**Approved:** December 15, 2017

### TAX BASE FOR THE TRANSFER OF A VEHICLE, ORV, MANUFACTURED HOME, AIRCRAFT, SNOWMOBILE, OR WATERCRAFT

(Replaces Revenue Administrative Bulletin 1990-4)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

**RAB 2017-26.** This Revenue Administrative Bulletin (RAB) explains the tax base for the transfer of vehicles, off-road vehicles (ORVs), manufactured housing, aircraft,<sup>1</sup> snowmobiles, and watercraft.<sup>2</sup> This RAB replaces RAB 1990-4.

#### BACKGROUND

Prior to September 1, 2004, use tax was imposed on the privilege of using, storing, or consuming a vehicle, ORV, manufactured home, aircraft, snowmobile, or watercraft at a rate of 6% of the retail dollar value of the transferred property at the time of acquisition as determined by rules promulgated by the Department.<sup>3</sup> In accordance with this statutory directive, the Department promulgated Rule 85, Mich Admin Code R 205.135, which states that “[t]he base price to be used in computing the tax liability shall not be less than its retail dollar value as listed in any recognized guide for use or appraisal purposes.” This rule is still in effect.

2004 PA 172, effective September 1, 2004, removed the imposition of use tax based on the retail dollar value of transfers of such property, but left in place the imposition of use tax based on the purchase price of the property. However, 2004 PA 175, also effective September 1, 2004, simultaneously enacted the Streamlined Sales and Use Tax Revenue Equalization Act (Equalization Act). Section 9 of the Equalization Act imposes tax on the privilege of storing, registering, or transferring ownership of any vehicle (other than a vehicle stored, registered, or transferred by a licensed new or used vehicle dealer), ORV, manufactured home, aircraft other

<sup>1</sup> This RAB does not address qualified aircraft under MCL 205.181.

<sup>2</sup> This RAB does not address the exemption for transfers between certain family members under MCL 205.93(3)(a) or MCL 205.94bb.

<sup>3</sup> MCL 205.93(2) as it read prior to the effective date of 2004 PA 172 and 175 (September 1, 2004). Dealers in these types of properties were excluded from this imposition.

than a qualified aircraft under MCL 205.181,<sup>4</sup> snowmobile, or watercraft in this state at a rate of 6% of the retail dollar value of the property at the time of acquisition, as determined by the Department.<sup>5</sup> The Equalization Act also provides a credit for any use tax paid on the property. In other words, use tax is imposed on the actual purchase price paid for the property; however, to the extent that the purchase price is less than the retail dollar value of the property, equalization tax is imposed at a rate of 6% on the difference.

## ISSUES

- I. What is the tax base for the sale or transfer of vehicles, ORVs, manufactured housing, aircraft, snowmobiles, and watercraft?
- II. How will the Department establish or confirm the retail dollar value of a transferred vehicle, ORV, manufactured home, aircraft, snowmobile, or watercraft?
- III. If the Department determines that the retail dollar value of the sale or transfer of a vehicle, ORV, manufactured home, aircraft, snowmobile, or watercraft is greater than the value reported to the Secretary of State, how may a taxpayer rebut that determination?

## CONCLUSIONS

### I. Tax Base

The Use Tax Act imposes tax on the privilege of using, storing, or consuming taxable tangible personal property, including the property discussed in this RAB, based on the purchase price of the property.<sup>6</sup> The purchase price of the property is the “total amount of consideration paid by the consumer to the seller, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise....”<sup>7</sup>

The Equalization Act imposes tax on the transfer of ownership of vehicles<sup>8</sup> (not sold by a Michigan licensed new or used vehicle dealer), ORVs, manufactured housing, aircraft, snowmobiles, and watercraft at a rate of 6% of the *retail dollar value* of the property<sup>9</sup> at the time of acquisition by the transferee,<sup>10</sup> (as determined by the Department). However, a taxpayer may

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<sup>4</sup> For purposes of this RAB “aircraft” does not refer to “qualified aircraft” as that term is defined by MCL 205.181. This RAB does not address “qualified aircraft” under MCL 205.181 which covers aircraft purchased in another state and brought into Michigan at a later time.

<sup>5</sup> MCL 205.179(1).

<sup>6</sup> MCL 205.93(1).

<sup>7</sup> MCL 205.92(f).

<sup>8</sup> “Vehicle” includes any vehicle required to be registered and/or titled with the state of Michigan.

<sup>9</sup> For purposes of this RAB, “property” collectively refers to vehicles, aircraft, watercraft, mobile homes, ORVs, and snowmobiles.

<sup>10</sup> MCL 205.179(1) (emphasis added). Transactions that are exempt under either the General Sales Tax Act or the Use Tax Act are exempt from this tax imposition as well. MCL 205.179(2).

claim a credit against the equalization tax for any use tax the taxpayer paid to Michigan on the same property; the credit may not exceed the tax imposed by the Equalization Act.<sup>11</sup>

Therefore, the Equalization Act tax base for the sale or transfer of ownership of any vehicle (excluding sales/transfers by Michigan dealerships), ORV, manufactured home, aircraft other than a qualified aircraft under MCL 205.181, snowmobile, or watercraft is the retail dollar value of the property. The Department – consistent with Mich Admin Code R 205.135 – determines the “retail dollar value” using the National Auto Dealers Association (NADA) valuation guide.<sup>12</sup>

**Example 1.**<sup>13</sup> John provides Brian a vehicle as a gift. The retail dollar value of the vehicle is \$10,000. The Equalization Act tax base for the vehicle is \$10,000. Brian is liable for \$600 in equalization tax.

**Example 2.** John sells Brian a vehicle for \$100. No tax is paid. The retail dollar value of the vehicle is \$10,000. The Equalization Act tax base for the vehicle is \$10,000. Brian is liable for \$600 in equalization tax.

**Example 3.** Marc sells Kurt a vehicle for \$1,000. Kurt pays 6% use tax (\$60) when he registers the vehicle with Michigan. The retail dollar value of the vehicle is \$10,000. Kurt is credited for the \$60 use tax payment, but he is liable for \$540 in equalization tax.

Transfers by new or used vehicle dealers that are licensed by the State of Michigan are not subject to the equalization tax. Therefore, a sale or transfer by a Michigan licensed dealer is only subject to use tax based on the purchase price. However, this does not include dealers not licensed in Michigan, such as a dealer located in another state. If a vehicle is purchased from a dealer that is not licensed in Michigan, the Equalization Act applies. Credit is given for any sales or use tax paid to another state or local jurisdiction that affords a like credit for Michigan sales and use tax.<sup>14</sup>

**Example 4.**<sup>15</sup> Robin purchases a vehicle for \$10,000 from a dealer in Florida that is not licensed in Michigan. Sales or use tax is paid on the \$10,000 purchase price to the state of Florida at a rate of 6%. Robin brings the vehicle back to Michigan and registers it. The retail dollar value of the vehicle is \$15,000. Robin receives credit toward Michigan use tax, and therefore equalization tax, for the \$600 of sales/use tax she paid to Florida. However, because the retail dollar value exceeds the purchase price of the vehicle and was purchased from an out-of-state dealer, she is liable for \$300 equalization tax on the difference of \$5,000.

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<sup>11</sup> MCL 205.179(3).

<sup>12</sup> Mich Admin Code R 205.135(5) states that “[t]he base price to be used in computing the tax liability shall not be less than its retail dollar value as listed in any recognized guide for use or appraisal purposes.” The Department uses the NADA guide to determine the property’s retail dollar value; however, see Conclusion III.

<sup>13</sup> All examples assume an exempt relationship under MCL 205.93(3)(a) or MCL 205.94bb does not exist.

<sup>14</sup> MCL 205.94(1)(e).

<sup>15</sup> This RAB, and this example in particular, does not discuss the presumptions in MCL 205.93(1)(a)-(b).

## **II. Establishing or Confirming “Retail Dollar Value”**

The Department will use the NADA valuation guides to establish or confirm the retail dollar value of a vehicle, ORV, manufactured home, snowmobile, or watercraft.<sup>16</sup> The Department will use the Aircraft Bluebook to establish or confirm the retail dollar value of aircraft.<sup>17</sup>

## **III. Rebutting the Department’s Retail Dollar Valuation**

Tax must be remitted to the Secretary of State at the time the title is transferred. If the Department determines that tax was not paid on the full retail dollar value of the property, it will send the purchaser a letter of inquiry stating the amount the Department believes is due. If the purchaser agrees with the Department’s determination he or she may remit the equalization tax as instructed by the letter of inquiry. If a purchaser disagrees with the Department’s determination of the retail dollar value of transferred property he or she may provide evidence to the Department to demonstrate that the Department’s valuation exceeds the retail dollar value of the property. However, any such evidence must establish the value of the property at the time of the transfer, and not some later date. The Department will consider all relevant information provided, including but not limited to the following (none of which are dispositive standing alone):

- A written appraisal of the item from a licensed dealer or repair shop, stating the retail dollar value of the vehicle at the time of transfer. The appraisal must specifically identify the property, and note its vehicle identification number (VIN) where appropriate.
- Receipts or estimates from a licensed dealer or repair shop listing the cost of repairs and specifically identifying the vehicle’s VIN, where appropriate. Repair receipts must be for repairs made after the date of transfer. In cases where repairs were not made, repair estimates may be presented regardless of the date the estimates were prepared.
- A bill of sale signed by the seller that states the purchase price and describes the condition of the property that substantiates a market value less than the retail value provided by the NADA or the Aircraft Bluebook.
- An alternate valuation by an industry-accepted pricing guide other than NADA or the Aircraft Bluebook (e.g., Kelly Blue Book).<sup>18</sup>
- A written insurance appraisal.
- Any other information relevant to ascertaining the retail dollar value of the property as asserted by the taxpayer.

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<sup>16</sup> Mich Admin Code R 205.135.

<sup>17</sup> Mich Admin Code R 205.135.

<sup>18</sup> It is solely within the Department’s discretion to determine if a pricing guide is industry-accepted.