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DEPARTMENT OF TREASURY

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**REVENUE ADMINISTRATIVE BULLETIN 2018-5**

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**USE TAX EXEMPTION ON THE TRANSFER OF MOTOR VEHICLES, OFF-ROAD VEHICLES, MANUFACTURED HOMES, AIRCRAFT, SNOWMOBILES, OR WATERCRAFT BETWEEN RELATIVES AND OTHERS**

(Replaces Revenue Administrative Bulletin 2002-19)

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 2018-5.** This Revenue Administrative Bulletin (RAB) describes the use tax exemption for vehicles and certain other property transferred between family members and reflects amendments to the Use Tax Act in MCL 205.94bb made by 2014 PA 248. This bulletin also discusses the application of use and equalization tax to transfers involving jointly-owned vehicles. Additionally, it discusses the application of use and equalization tax when names are added to or removed from titles or registrations.

**INTRODUCTION**

Use tax is imposed for the privilege of using, storing or consuming in Michigan a vehicle, off-road vehicle (ORV), manufactured home, aircraft, snowmobile, or watercraft.<sup>1</sup> When a used vehicle (or other tangible personal property discussed in this RAB) is transferred or sold between individuals, the transferee or purchaser generally owes use tax.<sup>2</sup> An additional tax is imposed under the Streamlined Sales and Use Tax Revenue Equalization Act (“Equalization Act” or “equalization tax”). Section 9 of the Equalization Act imposes a tax on the privilege of storing, registering, or transferring ownership of any vehicle (other than a vehicle stored, registered, or transferred by a licensed dealer), ORV, manufactured home, aircraft other than a qualified aircraft under MCL 205.181,<sup>3</sup> snowmobile or watercraft in Michigan.<sup>4</sup> The two taxes interact to

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

<sup>2</sup> See also Michigan Administrative Code Rules 205.13(2); 205.54(2); and 205.135(2).

<sup>3</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>4</sup> MCL 205.197.

ultimately tax the retail dollar value of the property transferred when that value exceeds the price<sup>5</sup> paid.<sup>6</sup> Although use and equalization taxes are sometimes collected by another state agency, Treasury is responsible for administering them.

Michigan exempts from use tax a transaction or portion of a transaction for the transfer or purchase of any taxable property between certain relatives.<sup>7</sup> 2014 PA 248 extended an exemption to certain “in-laws” of the transferor when the property transferred is a vehicle, ORV, manufactured home, aircraft, snowmobile, or watercraft.<sup>8</sup> Resale and other exemptions available under the use tax act—including the exemptions discussed in this RAB—also apply to the equalization tax.<sup>9</sup> Therefore, each reference in this RAB to an exemption from use tax will also apply to the equalization tax.

## ISSUES

- I. What property qualifies for the exemption?
- II. To which individuals may exempt transfers be made?
- III. What events create or terminate an eligible relationship?
- IV. Eligibility of same-sex and common-law marriages and domestic partnerships
- V. Special transactions: joint ownership and adding or dropping names from a title or registration
- VI. How to “claim” the exemption; Secretary of State’s role in verifying eligibility
- VII. Burden of proof; recommended forms of documentation

## CONCLUSIONS

**I. Types of Property.** The following tangible personal property may be eligible for an exemption when transferred to a person listed in Conclusion II.

- Vehicles. For purposes of this RAB, vehicle may also be used broadly to encompass other types of eligible property listed in this Conclusion.
- Off-Road Vehicles (ORVs)

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<sup>5</sup> As defined in MCL 205.92(f).

<sup>6</sup> The amount to be taxed when no exemption applies is separately discussed in RAB 2017-26, *Tax Base for the Transfer of a Vehicle, ORV, Manufactured Home, Aircraft, Snowmobile, or Watercraft*.

<sup>7</sup> MCL 205.93(3)(a).

<sup>8</sup> MCL 205.94bb.

<sup>9</sup> MCL 205.179(2).

- Manufactured homes subject to use tax<sup>10</sup>
- Aircraft
- Snowmobiles
- Watercraft

**II. Exempt Relationships.** The transfer of eligible property discussed in Conclusion I to any of the following relations is exempt:

- Spouse
- Parent
- Sibling
- Child
- Grandparent
- Grandchild
- Legal ward
- Legally appointed guardian with certified letter of guardianship
- Stepparent
- Stepchild
- Stepsibling.<sup>11</sup>

Example 1: Dave's biological son is Shay. Dave is married to Fran, who is not Shay's biological or adoptive parent. If Fran transfers a vehicle to Shay, the transfer is exempt because Shay is the stepson of Fran.

Transfers of eligible property discussed in Conclusion I *made on or after January 1, 2014*, to any of the following relations are exempt:

- Parent-in-law
- Sibling-in-law
- Child-in-law
- Grandparent-in-law.<sup>12</sup>

Example 2: Shay is married to Sarah. Taylor is married to Tim. Shay and Taylor are siblings. All four individuals own vehicles, each titled separately. If Shay transfers a vehicle to Tim or vice versa, or if Sarah transfers a vehicle to Taylor or vice versa, the transfers are exempt. There are qualifying sibling-in-law relationships between Shay and Tim, and between Sarah and Taylor. However, the transfer of a vehicle between Sarah and Tim is not exempt.

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<sup>10</sup> MCL 205.93(1); See RAB 2016-4, "Determination of Property as Tangible Personal Property or Real Property for Purposes of Sales and Use Tax." Some manufactured homes may not be tangible personal property and thus may not be subject to use tax.

<sup>11</sup> MCL 205.93(3)(a).

<sup>12</sup> MCL 205.94bb.

Examples of *nonexempt* relationships include transfers to a:

- Niece or nephew
- Aunt or uncle
- Cousin
- Great-grandparent
- Great-grandchild
- Stepgrandparent
- Stepgrandchild
- Grandchild-in-law

Example 3: Dave's biological son is Shay. Dave is married to Fran, who is not Shay's biological parent. Fran's father is Frank. If Frank transfers a vehicle to Shay, the transfer is not exempt because Shay is the stepgrandson of Frank.

### **III. Events That Create or Terminate an Eligible Relationship.**

#### **A. Creation of an Eligible Relationship**

A common and ordinary understanding of step- and in-law relationships is that they begin at the moment when the marriage used to make the connection commences. Relationships eligible for the exemption via step- or in-law relationships will be determined under the same premise.

#### **B. Termination of a Relationship by Divorce**

Divorce and annulment constitute legal termination of a marriage, step- or in-law relationship, and generally terminate a relationship eligible for the exemption. The Department will look to the status of the related persons as of the date of the transaction. However, where the transfer of a vehicle is ordered by a court in a final decree of divorce and is a transfer to an otherwise qualifying related person, the transfer remains exempt. Also, although annulment treats a marriage as void from the start, transfers between a married person and their spouse or qualifying step-relationship or in-law will not be re-characterized as taxable if the transaction took place before the decree of annulment.

Example 4: Tom and Jennifer received a final decree of divorce in February 2016. In July 2016, Tom transfers his vehicle to Jennifer. Tom and Jennifer no longer have a relationship eligible for the exemption at the time of the transfer. If the transfer is not in accordance with the final decree of divorce, the transfer is taxable. Conversely, if the transfer is ordered by the decree of divorce, the transfer is exempt.

Example 5: Mark and Sue married in 2001. Mark has a son, Derek, who became Sue's stepson upon her marriage to Mark. Mark and Sue separate in June of 2015 and divorce in September 2016. After moving out, Sue decides to give her snowmobile to Derek. Ownership of the snowmobile changes in May 2016. Because the transfer occurred before Mark and Sue's divorce was final, the transfer is exempt.

### C. Termination of a Relationship by Death and Remarriage

While the Use Tax Act does not define the step- and in-law relationships with regard to the exemption, another Michigan tax statute<sup>13</sup> supports the continuance of those relationships after the death of the connecting married person. Similar treatment shall apply to this exemption. That is, for purposes of the Use Tax Act, the death of a person who was married at the time of death—and who connected through marriage a qualifying step- or in-law relationship—will not terminate the qualifying relationship. However, remarriage of the living spouse will terminate the qualifying relationship.

Example 6: Alice, Judy's sister, marries Richard, making Judy the sister-in-law of Richard. Alice dies in September of 2014. If Richard was married to Alice at the time of her death and has not yet remarried when he transfers a vehicle to Judy, the transfer is exempt.

## IV. Eligibility of Same-Sex and Common-Law Marriages and Domestic Partnerships

### A. Same-Sex Marriage

Qualifying relationships in Conclusion II may be established by virtue of a same-sex marriage, regardless when and in what state the same-sex marriage took place.

### B. Common Law Marriage

A common law marriage cannot be created in Michigan. Marriage under Michigan law requires three components: (1) consent of the parties; (2) a marriage license; and, (3) solemnization. A common law marriage consists of the consent of the parties but lacks a marriage license and solemnization. After January 1, 1957, a legal marriage cannot take place in Michigan without all three components.<sup>14</sup> However, Michigan recognizes common law marriages that are entered into in accordance with the laws of other states.<sup>15</sup> Qualifying relationships in Conclusion II may be established by virtue of a valid common law marriage and those relationships are eligible for the exemption.

### C. Domestic Partnership

Registration as a domestic partnership (permitted in certain Michigan municipalities) does not constitute marriage under Michigan law. Therefore, transfers to persons related by virtue of a domestic partnership entered into under local Michigan laws are not eligible for the exemption. However, Michigan will recognize a domestic partnership that is entered into in accordance with the laws of another state if the

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<sup>13</sup> MCL 205.202(1) (granting exemption from Michigan's inheritance tax to the stepchild of a decedent grantor, which exemption and relationship continue after the death of the stepparent).

<sup>14</sup> MCL 551.2.

<sup>15</sup> *Matter of Brack's Estate*, 121 Mich App 585 (1982).

other state's laws confer the rights of a spouse to a domestic partner. Qualifying relationships in Conclusion II may be established by virtue of a Michigan-recognized domestic partnership.

## V. Special Transactions

### A. Transfers Involving Married Joint Owners

In a transaction involving the transfer of a vehicle by or to joint owners married to each other that is not otherwise fully exempt through one of the relationships set forth in Conclusion II, no tax will be due where an exempt relationship exists between one of the joint owners and a person on the other side of the transaction.

Example 7: Shay is married to Sarah. Taylor is married to Tim. Shay and Taylor are siblings. Shay and Sarah together own and are titled on a vehicle, which they sell to Tim. Normally, a transfer from Sarah to Tim (or in this case, a portion of a transfer) would be taxable because there is no qualifying "in-law" or other exempt relationship between them. However, because the vehicle is jointly titled by married individuals (Shay and Sarah) and there is a qualifying relationship between Shay and Tim (brother-in-law), the transfer is exempt.

### B. Transfers Involving Non-Married Joint Owners

A transaction is taxable where joint owners are not married to each other and at least one of the transferees is not a qualifying relation. Tax is due in proportion to the ownership acquired by the non-qualifying transferee(s).

Example 8: Bob transfers a vehicle to his brother, John, and John's son, Frank. This transaction is 50 percent taxable. John and Bob are brothers, an exempt relation; but Frank is Bob's nephew, a nonexempt relation.

### C. Adding Names to a Title

When a name is added to a title, an owner has been added and the transaction is taxable unless a statutory exemption applies. Tax is due in proportion to the ownership acquired by the non-qualifying transferee(s).

Example 9: Bob and Mary add their son (Homer) and his girlfriend (Shirley) to their title. The tax due to the addition of owners is based on 25 percent of the vehicle's tax base. Homer is their son, which is an exempt relationship, but Shirley is not an exempt relation to either Bob or Mary, nor is she married to Homer.

### D. Dropping Names from a Title

When removing a name from a title, an owner has been dropped and the transaction is taxable unless a valid exemption applies to the current transaction. Tax is due in proportion to the ownership acquired by the non-qualifying remaining owner(s).

Example 10: Scott owned a car and then added his girlfriend (Maria) to the title. At that time, tax was due on fifty percent of the tax base of the vehicle because there was no exempt relationship between Scott and Maria. If Scott were to subsequently drop his name from the title, ownership of his interest in the vehicle transfers. Tax would be due from Maria based on fifty percent of the tax base of the vehicle because no exempt relationship exists between Maria and Scott.

Example 11: As part of a financial agreement, Ralph added his brother (John) to his vehicle title. No tax was due on that transaction because John and Ralph are brothers, an exempt relationship. Later, John removes his name from the title. Again, no tax is due because John and Ralph are brothers, an exempt relationship.

**VI. How to Claim the Exemption.** When claiming an exemption from tax on a vehicle, ORV, manufactured home subject to tax, snowmobile, or watercraft transferred between related persons, a transferee is not required to bring supporting documentation to the Secretary of State office. The same is true for transfers of aircraft (for which payments on taxable transactions are made directly to the Department of Treasury). No exemption form or application is necessary. Instead, a party to the transaction may be required to provide documentation in support of an exempt relationship or the value used to compute the tax, if later requested by the Department.

**VII. Burden of Proof.** Persons claiming an exempt relationship when registering or titling a vehicle may receive a letter from the Department requesting proof of the exempt relationship. When proof is requested, documentation must be provided or the transaction may be taxed.<sup>16</sup> The types of documents accepted include marriage licenses, birth certificates, and certified letters of guardianship issued by a court.

Example 12: Jack Doe transfers his vehicle to Wanda Black. Wanda claims exemption from tax as Jack's sister. Subsequently, Wanda receives a letter requesting proof of the exempt relationship. Wanda documents her claim by providing a copy of Jack's birth certificate showing John Doe as his father and Jane Doe as his mother. Wanda also provides a copy of her marriage license, which shows that she is married to Phillip Black and that her parents are John and Jane Doe, the same as Jack's.<sup>17</sup> This documentation is acceptable proof that the transfer of the vehicle to Wanda is exempt.

Example 13: Joe Young is married to Kelly Young and buys a vehicle from Kelly's sister (Mary Jones). Joe is Mary's brother-in-law so the transfer is exempt. If the Department requests substantiation, Joe should provide a copy of his marriage license, which should include Kelly's parents' names.<sup>18</sup> Joe should

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<sup>16</sup> The burden of proving entitlement to an exemption rests with the taxpayer. *Andrie, Inc v Dep't of Treasury*, 496 Mich 161, 171 (2014) (internal citations omitted).

<sup>17</sup> If the marriage license does not provide the names of the licensee's parents, the individual should instead provide his or her birth certificate.

<sup>18</sup> See footnote 17.

also provide a copy of Mary's birth certificate in order to prove Mary and Kelly are sisters (by showing that they have the same parents).