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

(Replaces Revenue Administrative Bulletin 1998-4)

RAB 2002-19. This bulletin describes the use tax exemption when vehicles are transferred between certain family members and reflects the amendments to the Use Tax Act (UTA), MCL 205.93(3), by Public Act 67 of 1995. This bulletin discusses the application of use tax to transfers of jointly owned vehicles where one of the joint owners is related to a party on the other side of the transaction. Finally, it discusses the application of use tax where names are added to or dropped from titles or registrations. For purposes of this bulletin, the term "vehicle" means motor vehicles, aircraft, watercraft, mobile homes, off-road vehicles, and snowmobiles.

Law

The UTA sets forth the relationships that exempt Michigan vehicle transfers from tax. MCL 205.93(3).

(3) The following transfers or purchases are not subject to use tax:

- (a) When the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

Only those transfers occurring between related persons as specifically enumerated in the UTA are exempt. MCL 205.93(3)(a). Because exemptions must be strictly construed and cannot be expanded by interpretation or implication, a person claiming an exemption has the burden of proving entitlement to the exemption claimed. *Evanston YMCA Camp v State Tax Comm.*, 369, Mich 1, 8 (1962). Exemption treatment also cannot be extended from exempt persons to nonexempt persons. *Daguanno v Dep't of Treas.*, 203 Mich App 130 (1993). The Department's latitude in administering exemption is strictly constrained to the express language of the statute. *Gainey v Dep't Treas.*, 209 Mich App 504, 507 (1995). Thus, in the context of vehicle transfers, the UTA clearly provides no exemption for transfers between persons who are not specifically enumerated in section 3(3)(a). Examples of nonexempt, taxable vehicle transfers include the following:

1. Transfers of vehicles between in-laws (mother-in-law, father-in-law, brother-in-law, or sister-in-law) are taxable.
2. Transfers of vehicles to or from aunts, uncles, or cousins, are taxable.
3. Transfers where the exempt relationship is predicated on a temporary legal relationship that no longer exists are taxable. This includes transfers between divorced couples except where the transfer is in accordance with a final decree of divorce. Taxable transfers also include step-relationships where the natural parent is divorced from the stepparent.

A common and ordinary understanding of step-relationships is that they begin at the moment when a parent with a child from a previous marriage remarries. The law is less clear as to whether a step-relationship ends upon the death of a parent. Judicial law has provided ambiguous guidance. Similarly, the Revised Probate Code and other non-tax areas of law provide varying descriptions of family relationships. No definitions were provided in the 1995 amendment that added step-relationships to the use tax exemption provision.

Michigan's former Inheritance Tax Act determined that step-relationships were to continue to have tax effect after the death of the parent or stepparent. MCL 205.202. A similar treatment of stepparents and stepchildren is warranted for use tax exemption purposes and the death of a stepparent or parent that was married at the time of death will not terminate the stepparent-stepchild relationship for the purposes of the UTA. By contrast, divorce constitutes a legal termination of a step-relationship. There is nothing to conclude that the Legislature intended to include relationships that have no legal basis within the exemption.

The use tax base for a vehicle purchase is generally its selling price. However, section 3 establishes a unique exception in establishing a tax base "floor" for vehicle transfers, providing that the "price tax base" cannot be lower than its retail dollar value at the time of purchase. MCL 205.93 (2). See also RAB 1990-4, "Use Tax Base for Vehicles, Aircraft, Watercraft, Mobile Homes, Off-Road Vehicles, and Snowmobiles".

Examples:

1. John Doe and Jane Doe are married. John Doe's mother, Susan Doe, transfers her vehicle to her daughter-in-law Jane Doe. This is a taxable transfer as there is no exempt relationship between Jane Doe and Susan Doe. (NOTE: A transfer of a vehicle between in-laws, including Susan Doe to Jane Doe, that occurs in a two steps will be exempt. If Susan Doe transfers the vehicle to John Doe, her son, the transfer would be exempt from tax. If John Doe subsequently transfers the vehicle to Jane Doe, his wife, this second transfer would also be exempt.)
2. John Doe and Jane Doe received a final decree of divorce in January of 1997. In July of 1998 John Doe transfers his vehicle to Jane Doe. This transfer is taxable as it was not a transfer in accordance with a final decree of divorce and John and Jane no longer have an exempt relationship as of the date of transfer.

3. Mary Walk and Wilson Run are stepbrother and sister through the marriage of their parents James Walk and Renee (Stumble) Walk. Wilson is Renee's natural son and Mary is James' natural daughter. James and Renee obtain a final decree of divorce. Mary and Wilson no longer have an exempt relationship after the final decree of divorce. A vehicle transfer from stepbrother to stepsister would be taxable after the divorce but not before.
4. The same relationships exist as in example 3 above. Rather than by a divorce, the marriage between James Walk and Renee (Stumble) Walk is ended by the death of James. Renee inherits a vehicle previously in James Walk's name in the administration of his estate. Renee transfers the vehicle to Mary Walk. The transfer is exempt as the step-relationship continues to exist between Renee and Mary. A separate exemption is provided by statute "When the transfer is a gift to a beneficiary in the administration of an estate." MCL 205.93(3)(b). As there is no relationship requirement for this exemption, Mary would have no tax liability had the vehicle been transferred directly to her as a gift in administration of the estate of James.

Transfers Involving Married Joint Owners

In a transaction involving the transfer of a vehicle by or to joint owners married to each other, no tax will be imposed where an exempt relationship exists between one of the joint owners and a person on the other side of the transaction.

Example:

1. Bob Smith transfers a vehicle to his brother, John Smith, and John's wife, Helen. This transfer would be entirely exempt from tax because Bob and John are brothers, and John and Helen are married to each other.

Transfers Involving Non-Married Joint Owners

A portion of the transaction is taxable where the joint owners are not married to each other.

Examples:

1. Bob Smith transfers a vehicle to his brother, John, and John's son, Frank. This transaction would be 50 percent taxable. John and Bob are brothers, an exempt relation; but Frank is Bob's nephew, a nonexempt relation.
2. Bob Smith transfers a vehicle to his brother, John, and John's two sons, Frank and Bill. This transaction would be 66.66 percent taxable. John is Bob's brother, an exempt relation; but Frank and Bill are Bob's nephews, a nonexempt relation.

Adding Names

When names are added to a title, a co-owner has been added, and a portion of the transaction is taxable unless a statutory exemption as described above applies. The use tax base when adding a name to the title will be the retail market value of the vehicle.

Examples:

1. Bob Smith and his wife, Mary, add their son, Tom, to their title. This transaction would be exempt from tax because both Bob and Mary have an exempt relationship with Tom.
2. Bob and Mary add their son, George, and his wife, Vickie, to their title. This transaction would also be exempt because both Bob and Mary are in an exempt relationship with George, and because George and Vickie are married to each other.
3. Bob and Mary add their son, Homer, and his girlfriend Shirley, to their title. The tax on the title transfer will be based on 25 percent of the vehicle's retail market value. Homer is their son, an exempt relationship, but Shirley is not an exempt relation to either Bob or Mary, nor is she married to Homer.
4. Scott Keller adds his girlfriend, Maria Vaughn, to his title. Tax is due on 50 percent of the retail value of the vehicle due to the lack of an exempt or marital relationship between them.

Dropping Names

When dropping a name from a title, a co-owner has been dropped, and a part of the transaction would be taxable, unless both (or all) individuals paid tax on the original transaction, or unless a valid exemption applies to the current transaction. No tax is due when dropping a name from the title if tax was paid by all parties on the original transaction and proof of payment is presented.

Proof that all parties paid tax on the original transaction must be presented to the Secretary of State at the time the taxpayer applies for a new title reflecting the dropped name. To prove that all parties paid tax on the original transaction, the taxpayer must present a copy of the "Application for Certificate of Title and Registration", form TR-11C, or "Application for Michigan Title--Statement of Vehicle Sales", form RD108. If proof is not presented, tax is due on 50 percent of the retail value of the vehicle if, before the drop, two people hold title. If three people held title, tax is due on 33.33 percent; tax is due on 25 percent if four people held title, etc.

As when adding names, the use tax base when dropping a name from the title will be the retail market value of the vehicle.

Examples:

1. Ed Nichols wants to buy a car, but has difficulty obtaining financing. His best friend, Al Rowe, can get financing, but doesn't want to co-sign the loan, so Al places his name on the title with Ed. After Ed pays off the loan, Al drops his name from the title. Because tax was paid on the transaction when both names were listed on the title, no tax is due when Al drops his name from the title, provided that proof of payment of tax on the original transaction is presented.
2. In the example where Scott Keller added his girlfriend, Maria Vaughn, to his title, tax was due on fifty percent of the retail value of the vehicle. If Scott were to subsequently drop his name from the title, tax would again be due on fifty percent of the retail value of the vehicle because complete transfer from Scott to Maria was effected.

3. If, in the example above, Maria Vaughn dropped her name from the title held jointly with Scott Keller, no tax would be due on that transaction because Scott was the original owner.
4. John Jones loans money to his brother, Ralph. In return, Ralph adds John to his title. No tax is due on this transaction because John and Ralph are brothers, an exempt relationship. When Ralph repays the loan, John drops his name from the title. Again, no tax is due because John and Ralph are brothers, an exempt relationship.

Burden of Proof:

Persons claiming an exempt relationship when registering a vehicle may subsequently receive a letter from the Department requesting proof of the exempt relationship. When proof is asked for, documentation must be provided. The types of documents accepted include: marriage licenses, birth certificates, and certified letters of guardianship issued by a court. Again, without sufficient documentation establishing entitlement to an exemption, the Department is, by law, precluded from permitting an exemption. *Evanston YMCA, supra., Gainey, supra., and Daguanno, supra..*

Example:

1. Jack Doe transfers his vehicle to Wanda Black. Wanda claims exemption from tax as being Jack's sister. Two weeks later, Wanda receives a letter requesting proof of the exempt relationship. Wanda documents her claim by providing birth certificates for herself and Jack showing John Doe and Jane Doe as mother and father of both of them. Wanda also provides a marriage license showing her name as Wanda Doe being married to Phillip Black. This documentation is acceptable proof that Wanda is entitled to the exemption being claimed.