STATE OF MICHIGAN

DEPARTMENT OF TREASURY

TREASURY BUILDING

LANSING, MICHIGAN 48922

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

(Replaces Revenue Administrative Bulletin 1989-66)

RAB-90-37. This bulletin summarizes Revenue Administrative Bulletin 1989-66 ("RAB-89-66"), which focused on exempt transfers between related persons. It adds a discussion of the application of use tax to transfers of jointly owned vehicles where one of the joint owners is the spouse, mother, father, brother, sister, or child of 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 Use Tax Act ("the Act") sets forth the relationships which exempt Michigan vehicle transfers from tax. [MCL 205.93(3); MSA 7.555(3)(3)]. This statute provides, in pertinent part:

> (3) No use tax shall be payable in cases of transfer or purchase:
>
> (a) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the transferor.

SUMMARY OF RAB-89-66

Before January 1, 1990, persons not specifically exempt under the statute were permitted to transfer vehicles exempt from use tax in one transaction if an exemption could have applied through two transfers. For example, an exemption was permitted when an individual directly transferred a vehicle to an in-law (such as a brother-in-law or a sister-in-law). The two transactions would consist of: (1) a transfer from an individual to his or her spouse, an exempt relationship, and (2) a transfer from the spouse to the spouse's brother or sister, an exempt familial relationship.

The following problems were associated with allowing an exemption for transfers not specifically provided under the Act:

1. These exemption claims were difficult to administer by the Department of State and the Department of Treasury.

2. There was widespread abuse of these exemption claims.

Beginning January 1, 1990, the Department of Treasury has exempted only those transfers occurring between related persons as specifically enumerated in the Use Tax Act. [MCL 205.93(3)(a); MSA 7.355(3)(3)(a)]. The Department of Treasury will not allow exemption on direct transfers between persons who are not related as provided in the Act. (See also Department of Treasury Sales and Use Tax Rule 1979 AC, R 205.135.)

Examples of Taxable Transfers

1. Transfers of vehicles between step-relatives (step-mother, step-father, step-brother, step-sister, etc.) are taxable.

2. Transfers of vehicles between in-laws (mother-in-law, father-in-law, brother-in-law, or sister-in-law) are taxable.

3. Transfers of vehicles to or from a legal guardian are taxable.

4. Transfers of vehicles to or from grandparents are taxable.

5. Transfers of vehicles to or from aunts, uncles, or cousins, are taxable.

PARTIALLY EXEMPT TRANSFERS

The following discussion, regarding jointly-owned vehicles and adding or dropping names from vehicle titles, is effective February 4, 1991. Treasury will not assess tax on these transactions occurring prior to February 4, 1991, if no tax was paid.

Jointly-owned Vehicles

Under Michigan law, each joint owner holds an undivided interest in the whole vehicle and cannot sell or transfer his or her interest without the consent of the other party. The transfer of a vehicle is entirely exempt from use tax only if the joint owners are married to each other and an exempt relationship exists between one of the joint owners and a party on the other side of the transaction.

Transfers Involving Married Joint Owners

The existence of a marital relationship between joint transferors or joint transferees will affect the application of MCL 205.93(3); MSA 7.555(3)(3) to a vehicle transfer. 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 fifty percent taxable. John and Bob are brothers, an exempt relation; but Frank is Bob's nephew, a non-exempt 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 non-exempt relation.

Adding Names

When names are simply added to a title, 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 fair market value of the vehicle. See Revenue Administrative Bulletin 1990-4.

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 twenty-five percent of the vehicle's fair 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 fifty percent of the 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 portion 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 (used for vehicles purchased from individuals), or Application for Michigan Title - Statement of Vehicle Sales, form RD108 (used for vehicles purchased from a dealer) pertaining to the original transaction.

If proof is not presented, tax is due on fifty percent of the 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 twenty-five percent if four people held title, etc.

As is the case when adding names, the use tax base when dropping a name from the title will be the fair 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 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 value of the vehicle because a 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.

5. Prior to 1990, Jane Jones adds her sister-in-law, Mary, to her title. No tax is paid on that transaction due to the manner in which the statute was enforced at that time. Jane drops her name from the title in 1990. Tax is due on fifty percent of the value of the vehicle because Jane and Mary are sisters-in-law, a non-exempt relationship.