

INTERNAL POLICY DIRECTIVE 2015-1

Issued May 28, 2015

Updated November 1, 2016

USE TAX EXEMPTION FOR TRANSFERS OF CERTAIN PROPERTY TO AN “IN-LAW”

POLICY ISSUES

1. Who is an “in-law” for purposes of the use tax exemption for transfers of vehicles under 2014 PA 248?
2. What events create or terminate an “in-law” relationship?
3. Does same-sex marriage confer “in-law” status?
4. Does a common law marriage confer “in-law” status?

POLICY DETERMINATION

1. An “in-law” of a spouse is any blood relative, including an adopted¹ relative, of the other spouse. The use tax exemption for vehicle transfers limits the exemption to only these individuals: father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandparent-in-law of the transferor.
2. An “in-law” relationship is created when a blood relative marries. The “in-law” relationship terminates when an individual’s blood relative receives a final decree of divorce or annulment. If a marriage terminates because of the death of the blood relative, the “in-law” relationship continues with the “non-blood” surviving spouse until the surviving spouse remarries.
3. Same-sex marriages and “in-law” relationships created by same-sex marriages are recognized by the State of Michigan.
4. A common law marriage cannot be created in Michigan. However, Michigan recognizes common law marriages that are entered into in accordance with the laws of other states. Out-of-state common law marriages and the “in-law” relationships created by those marriages are recognized by the State of Michigan.

DISCUSSION

2014 PA 248 amended the Use Tax Act to provide an exemption for transfers of vehicles to certain “in-laws” and that exemption is retroactive to January 1, 2014. For purposes of this

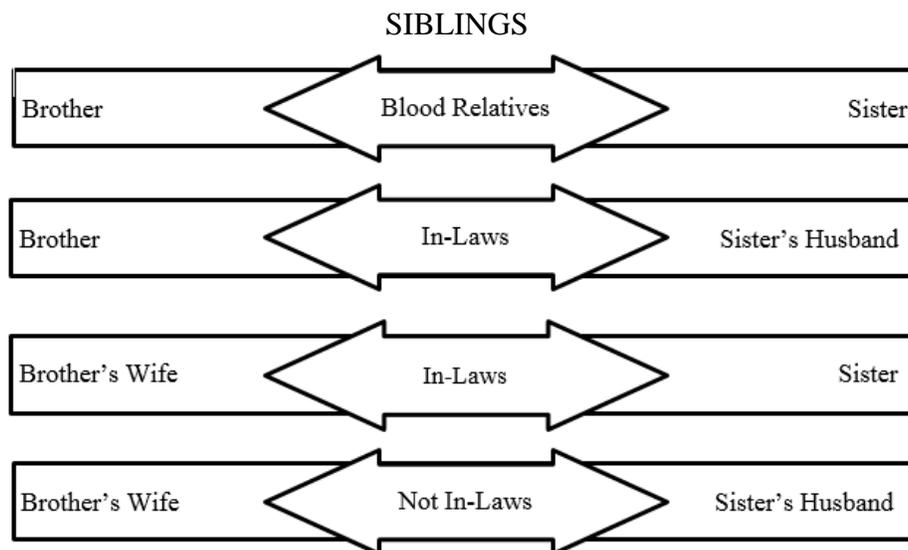
¹ Throughout this IPD, the use of the term “blood relative” includes an adopted relative.

Internal Policy Directive, “vehicle” means “vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft.” Generally, the transfer of a vehicle is subject to use tax.² The new law added certain “in-laws” to the list of transferees who are exempt from use tax. Specifically:

Beginning January 1, 2014, the tax under this act does not apply to a transfer of a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft if the transferee or purchaser is the father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandparent-in-law of the transferor. MCL 205.94bb.

Definition of “in-law.” The term “in-law” is not defined in the Use Tax Act or in any other Michigan statute. Michigan statutes generally describe biologically-related³ family members as being related by “blood” or “consanguinity” and family members related by marriage as related by “affinity.” Although there are no statutes defining “affinity,” Michigan case law defines “affinity” as “the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other.”⁴

Examples of in-law relationships. An in-law must be related by blood to one spouse in a marriage. For example, the brother of your spouse is your brother-in-law. However, your brother-in-law’s wife is not your in-law because his wife is not related by blood to either you or your spouse. Similarly, your stepdaughter’s husband is not your in-law because none of the parties are related by blood. The chart below provides examples.

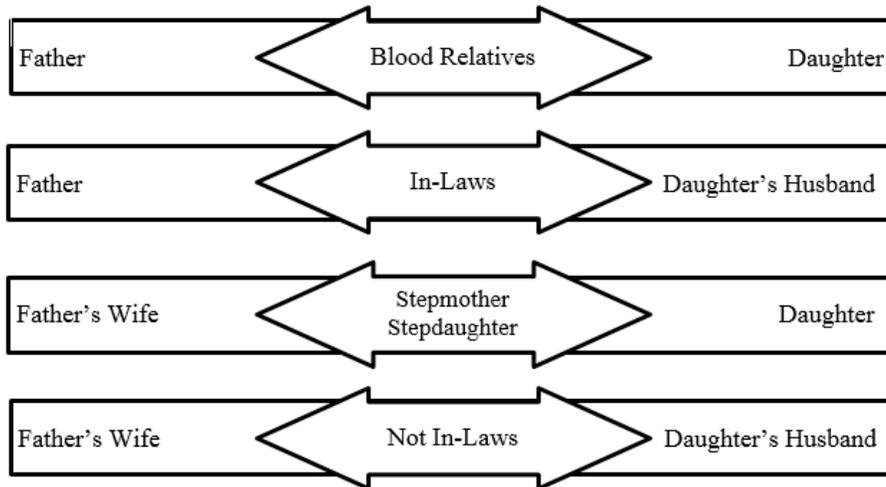


² MCL 205.93(2).

³ Adopted children have the same rights as the natural progeny of adoptive parents. MCL 710.610. Both are related to their families by “blood” or “consanguinity.”

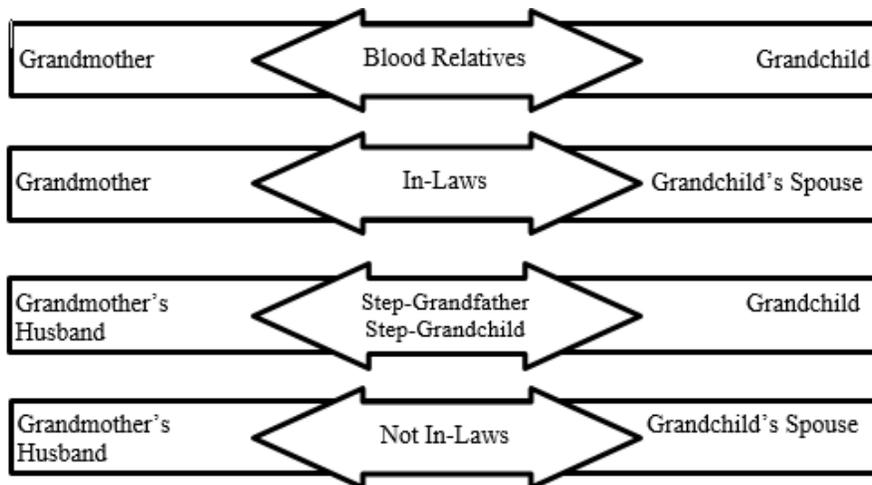
⁴ *People v Zajackowski*, 493 Mich 63 (2012).

PARENT AND CHILD



GRANDPARENT AND GRANDCHILD

The transfer of a vehicle *to* a grandparent by the grandchild's spouse (the grandchild-in-law) is exempt from use tax. However, the exemption does not apply in reverse. That is, there is no tax exemption for a transfer *from* a grandparent to a grandchild's spouse. Further, there is no tax exemption for a vehicle transfer that involves a step-grandparent, a step-grandchild or the step-grandchild's spouse.



Events that create or terminate an "in-law" relationship. The "step" and "in-law" terms are both affinity relationships; they just describe different family ties. Therefore, Revenue Administrative Bulletin 2002-19 guidance on use tax exemptions for step-relationships is applicable to "in-laws."

Revenue Administrative Bulletin 2002-19 established that step-relationships begin at the moment of marriage. The step-relationship terminates when the person's blood relative receives a final

decree of divorce. When marriage terminates because of the death of a spouse, rather than by court decree, the step-relationship continues with the “non-blood” surviving spouse. Treasury will apply the same reasoning to the new in-law use tax exemption. The surviving spouse is eligible for the in-law exemption until the surviving spouse remarries.

Similar to a step-relationship that terminates with divorce, a step-relationship and an in-law relationship terminate if the marriage is annulled. Although annulment treats the marriage as void from the start, transfers between a married person and a step-relation or an in-law will not be re-characterized as a taxable transaction if the transaction took place before the decree of annulment. The Department will accept the status of the persons as of the date of transaction. Transactions that occur on or after the date of an annulment decree will be taxable.

Married same-sex couples. On June 26, 2015, the Supreme Court of the United States invalidated the Michigan Constitution’s definition of marriage.⁵ Michigan’s Constitution defined marriage as the union of one man and one woman.⁶ As a result of the Supreme Court’s decision, Michigan recognizes the marriages of same-sex couples and their in-law relationships.

Civil unions. Same-sex couples that have entered into a civil union—that is not a marriage—would not have in-laws as a result of the civil union.

Common law marriage. 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.⁷ However, Michigan does recognize common law marriages that are entered into in accordance with the laws of other states.⁸ Transfers of property to persons related to an individual by virtue of a valid common law marriage are exempt from use tax.

Domestic partnerships. Registration as a domestic partnership (permitted in certain Michigan municipalities) does not constitute marriage under Michigan law.

⁵ *Obergefell et al v Hodges, Director, Ohio Dep’t of Health et al*, 576 US __; 135 S Ct 2584; 192 L Ed 2d 609 (2015).

⁶ M.C.L.A. Const. Art. 1, § 25

⁷ MCL 551.2.

⁸ *Matter of Brack’s Estate*, 121 Mich App 585 (1982).