



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

**OFFICE OF THE DIRECTOR**

1509 West Seventh Street, Suite 401  
Post Office Box 3278  
Little Rock, Arkansas 72203-3278  
Phone: (501) 682-2242  
Fax: (501) 682-1029  
<http://dfa.arkansas.gov>

May 20, 2019

Ms. Lauren Ballard  
Office of Revenue Legal Counsel  
Department of Finance and Administration  
P.O. Box 1272  
Little Rock, Arkansas 72203

RE: In the Matter of [REDACTED]  
Request for Revision  
Docket Number: 19-049

Ms. Ballard:

This letter is in response to your request for a revision of the Administrative Decision entered in the above-referenced matter on October 4, 2018 and delivered to you on October 8, 2018. Your letter, dated October 26, 2018, is considered a timely filed request for revision, and this letter will constitute the final decision of the Arkansas Department of Finance and Administration (the "Department") under the provisions of Ark. Code Ann. § 26-18-405 (Supp. 2017). Following a review of your revision request letter, the administrative decision, and the documentation contained in the case file, the administrative decision is reversed with respect to the hearing officer's denial of penalty.

**FACTS**

[REDACTED] ("Taxpayer") is a corporate entity that attempted to claim a motor vehicle tax credit under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) ("motor vehicle credit"), by presenting a bill of sale of a car owned by an individual ("first vehicle") against the purchase of a vehicle ("second vehicle") owned by the Taxpayer, a corporation. The individual who owned the first vehicle was, according to her testimony, the owner, incorporator, and organizer of the Taxpayer. The Taxpayer registered the second vehicle and when the credit was later disallowed, an additional \$162.50 in tax was assessed. In addition to interest, the auditor assessed a late payment penalty of 10% (\$16.25) under Ark. Code Ann. § 26-52-510(a)(4)(A) (Repl. 2014). The penalty reflected 10% of the amount of additional tax that was assessed from the disallowance of the motor vehicle tax credit.

Pursuant to the Taxpayer's request, a briefing schedule was established. The only evidence and testimony presented by the Taxpayer was a copy of an Affidavit of Gift that purportedly transferred the first vehicle from the individual to the Taxpayer. The Department argued that: (1) the corporation and the individual represented separate consumers and the credit was not applicable under the motor vehicle credit; (2) the Affidavit of Gift cited the wrong vehicle

Ms. Lauren Ballard

Re: In the Matter of [REDACTED]

May 20, 2019

Page 2 of 3

identification number (VIN) and did not include any contemporaneous documentation to prove that the title to the first vehicle was ever transferred; and (3) the Bill of Sale on the first vehicle submitted for the motor vehicle credit at the time the second vehicle was registered lacked a seller's signature, therefore, it was insufficient to meet the requirements of the motor vehicle credit.

The hearing officer issued a decision on October 4, 2018, which affirmed the disallowance of the motor vehicle credit and sustained the assessment of tax and interest on the Taxpayer. However, the hearing officer reversed the penalty assessed under Ark. Code Ann. § 26-52-510(a)(4)(A) (Repl. 2014), stating:

The late payment penalty is authorized by Ark. Code Ann. § 26-52-510(a)(4)(A) ... but is not applicable under the facts of this case. Ark. Code Ann. § 26-52-510(a)(4) ... provides, as follows:

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.

In the instant case, the Taxpayer registered Vehicle A and at the time of registration: (1) the Taxpayer erroneously claimed a motor vehicle tax credit with respect to the sale of Vehicle B; (2) the Taxpayer made a partial payment of sales tax before issuance of the title; and (3) the Department issued a license for Vehicle A. This factual scenario does not fit the circumstances under which the penalty is appropriate under the Arkansas Code section. Consequently, the late payment penalty of sixteen dollars and twenty-five cents (\$16.25) was not properly assessed against the Taxpayer.

### ANALYSIS

Arkansas Code Annotated § 26-52-510(a)(4) (Repl. 2014) provides, as follows:

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.

All sales of new and used motor vehicles are subject to sales and use tax unless a specific exemption applies. *See* Ark. Code Ann. §§ 26-52-301(1) (Supp. 2017), 26-52-302(a)(1) (Supp. 2017), and Arkansas Gross Receipts Tax Rule GR-12(A). Taxes are due on or before the time for

Ms. Lauren Ballard

Re: In the Matter of [REDACTED]

May 20, 2019

Page 3 of 3

registration after the purchase of a new or used motor vehicle. Ark. Code Ann. §§ 26-52-510(a)(1) (Repl. 2014). Liability for the payment of taxes imposed under any state tax law is on the taxpayer or person identified by the particular state tax law. Ark. Code Ann. §26-18-501(a) (Repl. 2012). The purchaser shall pay the tax due at the time of registration and application for certification of title. *See* Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2014) *and* GR-12(A)(1).

At the time that the Taxpayer registered its new vehicle, it claimed a credit to which it was not entitled under the law. Accordingly, the Taxpayer failed to pay the full amount of tax due at the time of registration and was subject to the penalty contained in Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014). The statute provides no exception to the penalty where a credit is erroneously claimed, a partial payment is made at the time the tax is due, or a license is then issued for the vehicle. Moreover, the statute does not require that the penalty allowed by Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014) be assessed prior to the issuance of a license. The penalty on this assessment was appropriately assessed by the Department.

### CONCLUSION

The administrative decision regarding the application of penalty is reversed. This concludes your administrative remedies under the Tax Procedure Act. Relief from this decision may be sought according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2017).

Sincerely,

Walter Anger  
Deputy Director and  
Commissioner of Revenue

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]