



March 29, 2017

**Re: Rule 39-22-516 – Innovative Motor Vehicle and Truck Credits**

On behalf of the American Financial Services Association (“AFSA”),<sup>1</sup> thank you for the opportunity to comment on the Department of Revenue’s (“DOR”) draft Rule 39-22-516 for Innovative Motor Vehicle and Truck Credits (“the rule”). We appreciate DOR’s efforts to clarify the innovative motor vehicle credit, but we are concerned that, as written, the rule creates ambiguity for the application of the credit within existing business practices in the indirect vehicle finance market.

Consumers who opt to finance the purchase or lease of a vehicle may seek to obtain such financing on their own—typically directly from a bank, credit union, or other financial institution—or more commonly, the consumer will apply for indirect financing through the dealership’s Finance and Insurance (F&I) Department, which submits the consumer’s information to various financial institutions that may offer to purchase the retail installment sale contract (RISC) or lease from the dealer. These financial institutions may include large banks, credit unions, captive (manufacturer-owned) finance companies, independent finance companies or smaller community banks. The dealer then typically sells the RISC or lease to a financial institution of its choosing and assigns it the contract.

According to data from the National Automobile Dealers Association, approximately 70 percent of consumers opt for the dealer-assisted indirect financing described above, and we believe it is crucial that any adopted rule not create ambiguity in such a significant portion of the vehicle finance industry and adequately account for the distinct roles of dealers and sales finance companies in the indirect financing process.

*39-22-516(2)(b) “Financing Entity” has the same meaning as in §§ 39-22-516.7(1)(k.5) and 516.8(1)(r.5), C.R.S.*

We request additional clarity regarding the definition of “Financing Entity,” particularly with regard to whether both vehicle dealers and financial institutions purchasing RISCs or leases from dealers may be considered a “Financing Entity.” In its current form, it is unclear whether a sales finance company may take assignment of the credit from the Purchaser.

*39-22-516(5) **Titling and Registration.** The Credit is allowed only with respect to motor vehicles, trucks, and trailers titled and registered in Colorado in accordance with § 42-3-103, C.R.S.*

We request confirmation whether the credit is available to a Purchaser who is not a Colorado resident, but does register the vehicle in Colorado. For the Credit to be granted, is it necessary for the vehicle to be titled and registered in Colorado AND for the Purchaser to be a Colorado resident?

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

*39-22-516(11)(b) For a Credit assigned under this paragraph (11), the Financing Entity must compensate the Taxpayer for the full amount of the assigned Credit, less an administrative fee not to exceed one hundred fifty dollars that the Financing Entity may retain.*

We request additional guidance regarding whether the administrative fee is the sole compensation a “Financing Entity” may receive for assignment. For instance, would it prevent the “Financing Entity” from charging a higher interest rate to cover the risks associated with the process? One potential risk associated with the process is that the Credit may only be claimed if the vehicle is titled in Colorado. Given the nature of indirect auto financing, a sales finance company may have no way of knowing where the consumer ultimately titles the vehicle and may find itself taking assignment of a tax credit that cannot be redeemed pursuant to 39-22-516(11)(f).

*39-22-516(11)(c)(II) Within 30 days of its execution, the Financing Entity must submit the information contained in the election statement to the Department in the electronic form the Department prescribes.*

We request information regarding when DOR anticipates creation of the mechanism to receive the Election Statement data electronically.

Thank you for your consideration of our comments and the time your office has taken to speak with AFSA members about the Innovative Motor Vehicle Credit in the past. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org).

Sincerely,



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