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13
14 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 DEBORAH McEWEN, et al.

17 Plaintiffs,

18 v.

19 BOARD OF DIRECTORS OF THE
20 ARIZONA COMMERCE AUTHORITY, et
21 al.,

22 Defendants.

Case No. CV2025-001929

**DEFENDANT’S RESPONSE TO
MOTION FOR PRELIMINARY
INJUNCTION**

(Honorable Adele G. Ponce)

23 **I. INTRODUCTION.**

24 Defendant, the Arizona Department of Revenue (the “Department”), hereby
25 responds to Plaintiffs’ Motion for Preliminary Injunction. The Motion should be
26 denied. First, neither preliminary nor permanent injunctions should be issued against
the Department to prevent the collection of taxes, absent rare exceptions not present in
this case, and tax administration requires the Department to determine a taxpayer’s *net*
liability to Arizona—no more, and no less. Second, a preliminary injunction is not an
appropriate remedy here because Plaintiffs will not suffer any harm, much less

1 irreparable harm, from the Department’s payment of the Motion Picture Production
2 Program tax credits. The harm in a supposedly erroneous refund payment or reduction
3 in tax liability from applying the credit is at most pecuniary, and the Plaintiffs bear
4 none of that risk. Even as to the State, the risk is minimal. Should the tax ultimately be
5 found illegal, the Department’s regular procedures in the administration of taxes
6 provides methods for the return of any refund claimed or recovery of underpaid taxes
7 for those who claimed the credit. But placing returns in limbo by suspending return
8 processing for credit claimants—potentially for years pending a final adjudication—is
9 not a viable option. And, finally, as argued in the Arizona Commerce Authority’s
10 Motion to Dismiss, the credit does not violate the Gift Clause.

11 **II. LEGAL ARGUMENT.**

12
13 The Department incorporates the Arizona Commerce Authority (“ACA”)’s
14 statement of the position against Plaintiffs in its Motion to Dismiss for why the Gift
15 Clause does not apply to tax credits, that the issue has already been decided in
16 [*Kotterman v. Killian*, 193 Ariz., 273 \(1999\)](#), and that to apply it to tax credits would
17 upend Arizona’s tax administration. The Department, a mere tax administrator, does
18 not address or consider “public purpose” and “consideration” issues such as those in
19 [*Schires v. Carlat*, 250 Ariz. 371, 375, ¶¶ 8-14 \(2021\)](#) when it receives a tax filing
20 claiming a credit or deduction, and does not collect such data from tax filers. But recent
21 gift clause cases addressing the gift clause appear to be focused on contracts, not tax
22 credits. See [*Turken v. Gordon*, 223 Ariz. 342, 348 n. 4 \(2010\)](#) noting it does not
23 address “non-contractual public expenditures” like tax credits. The same holds true for
24 [*Schires*](#). *Id.* at ¶ 3. The Department allowing tax credits is not a contract with
25 taxpayers and it does not seem that these standards should apply to tax credits and
26 deductions. Certainly, no taxing authority requires evidence on “public purpose” and

1 “consideration” in processing returns claiming credits. Rather those policy concerns are
2 left to the Legislature.

3 Beyond the merits, Arizona law broadly prohibits the enjoining of state tax
4 collection, and the Plaintiffs have not satisfied the standards to obtain a preliminary
5 injunction.

6 **A. Arizona’s Prohibition Against Enjoining the Collection of Tax Applies**
7 **Here to Prevent Issuing Both the Preliminary and Permanent Injunction.**

8 The Court of Appeals, in *Church of Isaiah 58 Project of Ariz., Inc. v. La Paz*
9 *Cnty.*, 233 Ariz. 460 (App. 2013), explained the history of cases that form the
10 longstanding Arizona policy that prohibits courts from enjoining the executive branch’s
11 tax-related functions. “It is the ‘well-established policy of this state to prevent the
12 validity of a tax from being tested by injunctive means.’” *Church of Isaiah*, at 464 ¶ 17
13 (quoting *State ex rel. Lane v. Superior Ct.*, 72 Ariz. 388, 391 (1951)). Among the
14 stated reasons for this prohibition to be enshrined in statute “is that the government
15 should not be hampered or interfered with in collection of revenues to the sustenance of
16 governmental functions. *Church of Isaiah*, at 464 ¶ 17 (quoting [Drachman v. Jay](#), 4
17 [Ariz. 70, 73 \(1966\)](#)). Beyond interference with collection, enjoining the Department
18 from applying tax credits interferes with processing of returns, leaving the Department
19 and taxpayers in a sort of limbo. Should the Department not process returns? Should it
20 process all of the return but suspend or deny the application of the credit and demand
21 payment of any resultant tax balance if there is an underpayment after not applying the
22 credit? Any such suspense at a minimum leaves the Department liable for interest, and
23 possibly for attorney’s fees in resultant litigation. And in any actual taxpayer litigation
24 there may be legal issues raised outside of the instant challenge, including claims of
25 estoppel or claims asserting [A.R.S. § 42-2078](#).
26

1 For state income tax purposes, it is clear that Arizona begins with federal
2 adjusted gross income and then applies statutory additions and subtractions to reach
3 Arizona adjusted gross income. See [A.R.S. §§ 43-1121](#) (additions), [43-1122](#)
4 (subtractions); [Ariz. Admin. Code R15-2C-201](#). Once Arizona adjusted gross income
5 is determined, the deductions and exemptions are applied to compute Arizona tax, and
6 then credits are applied to determine the taxpayer's *net* individual income tax liability.
7 [Arizona Dep't. of Revenue v. Transamerica Title Ins. Co.](#), 124 Ariz. 417, 419–20, 604
8 P.2d 1128, 1130-31 (1979); [Stearns v. Arizona Dep't. of Revenue](#), 212 Ariz. 333, 334-
9 36, 131 P.3d 1063, 1064-65 (App. 2006). No component may be excised or skipped to
10 reach this calculation.

11 That policy is statutory in Arizona. [A.R.S. § 42-1254\(D\)](#)¹ states that in “[a]ny
12 appeal . . . taken to tax court, . . . an injunction . . . may not issue in any action in any
13 court . . . to enjoin the collection of any tax.” While this statute mentions that it applies
14 to appeals from administrative actions—the normal requirement to challenge a tax in
15 court, Plaintiffs cannot circumvent this statutory bar against injunctions by failing to
16 exhaust necessary administrative remedies as they have done here. Permitting a
17 taxpayer to proceed directly with a claim for preliminary injunction would gut the
18 mandatory exhaustion requirements for tax claims and violate the statutory policy
19 against enjoining the administration of taxes. It is completely predicable that if
20 injunctions start to be issued against disfavored taxes or tax benefits like credits that tax
21 it will not stop with just this particular credit. The result will be exactly what the rule
22 against tax injunctions seeks to avoid—interference with tax administration.

23 Another statute, [A.R.S. § 42-11006\(2\)](#), repeats the prohibition against injunction
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25
26 ¹ While the anti-injunction statutes are chaptered in Title 42 the operative language is not
limited to property taxes.

1 of taxes, saying that a “court may not issue an injunction . . . in any action . . . to
2 prevent or enjoin . . . [c]ollecting an imposed or levied tax.” The language of these two
3 statutes applies broadly to the Department’s administration of taxes, as computations of
4 amounts due from or to taxpayers after applying credits is part of “collection.” This
5 principle is not limited to specific tax types, or by the nature of the action seeking the
6 injunction. In addition, [A.R.S. § 12-1802\(4\)](#) also broadly prevents issuing an injunction
7 against the Department as it administers its tax statutes for the public benefit.

8 The Courts have addressed this anti-injunction rule and confirmed that it applies
9 broadly unless a narrow exception is met. That exception is that taxing officials must
10 have engaged in conduct so exceptional in nature that it “amounts to legal fraud or the
11 equivalent thereof. . . . [T]hat assessments which are unequal are the result of
12 systematic and intentional conduct.” [Church of the Isaiah at 466 \(quoting McCluskey v.
13 Sparks, 80 Ariz. 15, 19-20, \(1955\)\)](#). See also [State Tax Comm’n v. Superior Court in
14 and for Maricopa Cnty., 104 Ariz. 166, 168, 450 P.2d. 103, 105 \(1969\) \(quoting from
15 Santa Fe Trail Trans. v. Bowles, 62 Ariz. 177 \(1945\)\)](#).

16 Examples in which injunctions have been allowed typically involve trying to
17 collect a tax that does not exist or (in the case of property tax) trying to collect a tax on
18 property outside the jurisdiction. For example, in one case where an injunction was
19 approved, the court stated, “[t]he attempt of the commission to collect a tax which does
20 not exist is without authority of law, beyond its powers, is illegal and a proper subject of
21 injunction, the necessary elements for injunctive relief having been shown.” [Crane Co.
22 v. Arizona State Tax Comm’n, 63 Ariz. 426, 447 \(1945\)](#), overruled on unrelated issue by
23 [Duhamel v. State Tax Comm’n, 65 Ariz. 268 \(1947\)](#), overruled on unrelated issue by
24 [Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565 \(1998\)](#). “If a taxing
25 official were to arbitrarily assess a tax against an individual who was patently not liable
26

1 for the payment thereof, certainly no law would oblige that individual to pay the tax and
2 then sue to recover it. In that case an injunction would lie, because the official had acted
3 without semblance of authority.” *State ex rel. Lane v. Superior Court In & For*
4 *Maricopa Cnty.*, 72 Ariz. 388, 391 (1951). Most cases in which injunctions are sought
5 involve persons who were subjected to a tax contended to be illegal. Nevertheless, there
6 seems to be little reason to carve out an exception from anti-injunction principles for
7 third-parties seeking to enjoin parts of the tax code providing benefits to others.

8 This narrow “semblance of authority” exception to the anti-injunction rule is not
9 met here, and so the requested injunction should not be granted. The Department has
10 express statutory authority to grant the Motion Picture credits, pursuant to A.R.S. §§
11 [43-1082\(F\)](#) and [43-1165\(F\)](#), and has indicated only that it will grant the credit to
12 claimants pursuant to statute. This express authority is vastly more authority than
13 needed under the exception that would permit an injunction—the lack of a semblance of
14 authority.

15 Furthermore, Plaintiffs have not claimed that the Department acted without any
16 semblance of authority or that its conduct amounted to legal fraud and they cannot
17 successfully make such a claim here. The claim brought here—that the credit might be
18 later proven unconstitutional—is not equivalent to a claim that the Department has
19 acted fraudulently or that its action to pay tax credits under the statute lacks of any
20 semblance of authority. Because Plaintiffs do not meet the narrow semblance of
21 authority exception, injunctive relief is not available.

22
23 **B. The Taxpayers Do Not Meet the Requirements for a Preliminary**
24 **Injunction.**
25
26

1 Although the injunctive relief is not available here, if it were, then the taxpayers
2 do not meet any of the requirements for a preliminary injunction. Those requirements
3 are:

4 A party seeking a preliminary injunction must establish:

- 5 1) A strong likelihood that he will succeed at trial on the merits;
- 6 2) The possibility of irreparable injury to him not remediable by
damages if the requested relief is not granted;
- 7 3) A balance of hardships favors himself; and
- 8 4) Public policy favors the injunction.

9 *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 64, ¶
10 9 (App. 2011). Here taxpayers fail all four requirements, as discussed below.

11 **1. The Taxpayers Cannot Show a Strong Likelihood of Success at Trial
on the Merits.**

12 For all the reasons stated in the ACA Motion to Dismiss, the Gift Clause does
13 not apply to tax credits. Because it does not apply as a matter of law, the taxpayers do
14 not have a strong likelihood of success on the merits as required for an injunction.
15 Further, if the Gift Clause applies, it seems unlikely that the standards used for
16 contracts discussed in *Schires v. Carlat*, 250 Ariz. 371 (2021) and *Turken v. Gordon*,
17 223 Ariz. 342, 224 P.3d. 158 (2010) (noting it was not addressing “non-contractual
18 public expenditures”) will apply to tax credits. It is expected that the Commerce
19 Authority will have data supporting public benefits and benefits to the State if the
20 litigation reaches that stage. Should the Court deny the Motions to Dismiss, an
21 evidentiary hearing would seem to be necessary to evaluate what the benefisof the
22 credit are.

23 **2. Department’s Initial Processing of any Credits Here Would Not Cause
24 Irreparable Harm Because the Department Can and Does Seek
25 Repayment of Taxes Owed It, Including Those That Might Be Found
26 Illegal.**

1 Plaintiffs are not irreparably harmed if the Department processes any credits and
2 issues payments to taxpayers under this program. (Plaintiffs' Motion for Preliminary
3 Injunction at 13).

4 *First*, the Department's processing of these credits for *other taxpayers* has no
5 bearing on the constitutional rights of plaintiff taxpayers. For purposes of State taxes, a
6 taxpayer is defined as someone upon whom a State tax is imposed by statute. *See*
7 [A.R.S. § 43-104\(24\)](#). Except for tax amounts they might owe, or that are owed to them,
8 relating to their personal taxes, the taxpayers here have no right to, or claim over, the
9 State's other tax revenues. The State imposes income taxes to pay, in part, for the cost
10 of the maintenance of the State government. [A.R.S. § 43-202](#). The taxpayers are not
11 equivalent to the State government. The taxpayers have no claim or hold on the
12 revenues that the Department collects and administers as directed by statute. They have
13 no right to direct the disbursement of those fund. Even supposing that these credits
14 were found to be unconstitutional in a final, non-appealable judgment at some point in
15 the future, another individual or entity's payment into or refund from tax revenues of
16 the State does not implicate any rights of the Plaintiffs.

17 *Second*, plaintiff taxpayers cannot show that they, as individuals, are facing any
18 kind of harm—let alone irreparable harm—because they have no right to the State's tax
19 funds. (Plaintiffs' Motion for Preliminary Injunction at 13). The alleged harm by the
20 Department's payment of the tax credits at issue here is, at most, pecuniary because it
21 solely involves money—and not the Plaintiffs money. In reality, the Plaintiffs here do
22 not suffer any pecuniary harm either, because it was not their money that could be paid
23 out or not collected under this credit. But whatever harm they might suffer by someone
24 else getting a tax benefit can be easily remedied by eventual recovery if the credit is
25 adjudicated to be invalid, and so it is not sufficient to justify an injunction.
26

1 The size of the tax credits at issue here pales in comparison to the amounts that
2 the Department regularly handles on a yearly basis as part of its administration of taxes.
3 As stated in its last Annual Report the Department collected \$28,180,156,186 in total tax
4 revenues. (See the Department's Annual Report, FY 2024, Table 1). Of that amount,
5 the Department collected \$8,855,028,642 in individual and corporate income taxes.
6 (Department's Annual Report, FY 2024, Table 1). The Department processed
7 approximately 3.6 million individual returns, paid out 2.43 million refunds on those
8 returns, and paid out a total of 2.6 billion in refunds. *Id.* at 10. The Department's FY
9 2024 Annual Report showed that individual income tax credits paid out totaled
10 \$1,026,980,651, while corporate credits totaled \$176,894,488 applied and
11 \$2,326,116,779 carried forward.² *Id.* at 46, 49. The Complaint lists six post-approved³
12 credits totaling \$901,815. (Complaint Ex. 16.) Compared to the tax system as a whole
13 and other credits and refunds, the entire potential liability does not in any way indicate
14 any risk of irreparable harm to the state or any Plaintiff. In context, this lawsuit places a
15 small amount of money (to the State) at issue.

16 *And finally*, any potential harm here, in the event the credit is finally adjudicated
17 as invalid, can be remedied with seeking repayment of any associated refunds and/or
18 billing of any tax that was not paid due to the credit reducing liability. The Department
19 has various processes to seek the return of any taxes owed to it.

20 *First*, the Department may send a billing to any taxpayers that received these
21 credits. These types of demands for payments are authorized pursuant to A.R.S. § 42-
22 1109(B). The Department is also authorized by the same statute to bring a proceeding in
23 court to collect those amounts from the taxpayers. *Second*, the Department may audit
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26 ² Credit data from in the 2024 Annual Report was from tax year 2022.

³ Only post-approved credits can be claimed at the Department of Revenue.

1 any taxpayers that received these credits pursuant to [A.R.S. § 42-1108\(A\)](#). In an audit,
2 the Department may examine a taxpayer's books and records to determine the correct
3 amount of tax owed to the Department for these periods and issue an assessment under
4 [A.R.S. § 41-1108\(B\)](#). An audit allows the Department recover any amounts that are
5 owed to the Department under the credits among other amounts. *Third*, the Department
6 can initiate a suit against a taxpayer for any amounts found owing to it under [A.R.S. §](#)
7 [42-1114](#).

8 **3. The Balance of Hardships Does Not Favor Plaintiffs.**

9 The Plaintiffs point to no particular harm to the full tax base in Arizona,
10 erroneously relying on their individual angst that non-party taxpayers may get a refund
11 based on a credit they claim is unconstitutional. But the Court should not measure the
12 balance of hardships as to a handful of plaintiffs; rather, it should look to the harms to all
13 other implicated taxpayers, the damage to the credibility of the State in offering business
14 incentive programs, as well as to the effect an injunction would have on the
15 Department's ability to administer taxes. Taxpayers may have relied on the credits for
16 making decisions and may have already expended resources in Arizona related to
17 production of movies in Arizona in reliance on the receipt of the credits. Furthermore,
18 an injunction would harm to the Department's ability to administer taxes, causing it to
19 face uncertainty in the implementation of this and other tax laws. As shown above (Part
20 B.2.), there is very little relative hardship faced by these taxpayers by waiting until a
21 resolution of the case on the merits for the few credits at issue in this case.

22 On the other hand, Plaintiffs' demand to stop processing the credits places a great
23 risk on the Department. As a practical matter, returns claiming the credit either have to
24 be processed as filed (applying the credit) or the credit has to be denied, either expressly
25 or in effect (by holding the credit in suspense). As plead in the Complaint, the taxpayers
26

1 seeking the credit had to go through both pre-approval and post-approval processes,
2 paying both direct costs to the ACA and no doubt indirect costs to even apply for the
3 credit, as well as incurring qualifying expenses. Now, these unrelated Plaintiffs seek to
4 prevent the taxpayers from getting a statutorily-compliant credit. Regardless of the
5 merits of this particular credit—a subject best left to the Legislature—not the
6 Department as tax administrator, denying a credit on the books before final adjudication
7 would damage the reputation of Arizona as a place to do business. It tells businesses
8 that they cannot rely on the Department to honor facially valid credit claims.

9 At the Department level, it is not clear how an injunction can be administered
10 without hardship to the Department. Will the Department hold off on processing returns
11 claiming the credit, without lawful justification? Process returns without the credit (but
12 somehow do so without denying it)? Or deny it, forcing the taxpayers to either forgo the
13 credit or incur costs in protests and eventual litigation to claim the credit? No matter the
14 answer, granting Plaintiffs’ motion creates legal liability for an entire state agency,
15 whereas denying the motion creates no harm or burden to the Plaintiffs or the millions of
16 other taxpayers in the State.

17 **4. Public Policy Is Against Granting an Injunction Here.**

18 Public policy cautions against an injunction here. The cases discussing the policy
19 reasons for avoiding injunctions in tax cases typically focus on tax collections and the
20 need for stable, predicable funding, but also note that mere illegality does not suffice to
21 justify an equitable remedy—since refunds can be obtained, obviating any harm.

22 The limitation upon the powers of a court of equity in the matter of
23 restraining the collection of taxes has been settled for this court in the State
24 Railroad Tax Cases, 92 U. S. 575, 23 L. Ed. 663. In this case Mr. Justice
25 Miller laid down this general rule: ‘In addition to illegality, hardship, or
26 irregularity, the case must be brought within the recognized foundations of
equitable jurisdiction, and that mere errors or excess in the valuation, or

1 hardship or injustice of the law, or any grievance which can be remedied by
2 a suit at law, either before or after payment of taxes, will not justify a court
3 of equity to interpose by injunction to stay collection of a tax.'

4 *Cochise Cnty. v. Copper Queen Consol. Min. Co.*, 8 Ariz. 221, 231–32 (1903)

5 While, in this case, Plaintiffs do not, and cannot, claim the credit and any
6 associated refund, they rather want to enjoin *other* people from applying the credit or
7 refund. As discussed above, this attempt to throw a wrench into normal tax
8 administration leaves the Department in the position of either not processing returns or
9 processing them by removing the credit, potentially triggering protests and subsequent
10 litigation, and definitively angering the six potential credit claimants currently at issue—
11 including potentially denying credits due which would be lost if taxpayers failed to
12 timely protest any denial. The availability of remedies to pursue the recovery of funds
13 from taxpayers if the credit is finally adjudicated invalid would seem to make such an
14 unusual approach unnecessary and harmful.

15 **III. CONCLUSION.**

16 For the forgoing reasons, this Court should not grant either a preliminary or
17 permanent injunction against the Department's administration of these credits.

18 DATED this 29th day of August, 2025.

19 KRISTIN K. MAYES
20 Arizona Attorney General

21 /s/ Scot Teasdale
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23 Assistant Attorney General
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1 ORIGINAL of the foregoing e-filed with the
2 Court this 29th day of August, 2025.

3 COPY of the foregoing e-delivered
4 this 29th day of August, 2025, to:

5 Honorable Adele G. Ponce
6 Maricopa County Superior Court
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9 COPY of the foregoing has been electronically
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11 this 29th day of August, 2025, to:

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