Jonathan Riches (025712)
Timothy Sandefur (033670)
Parker Jackson (037844)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

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

DEBORAH HEWITT f/k/a DEBORAH McEWEN; JAN MITTELSTAEDT, Plaintiffs, vs. BOARD OF DIRECTORS OF THE ARIZONA COMMERCE AUTHORITY, an agency of the State of Arizona; et al., Defendants.	Case No. CV2025-001929 **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** (Assigned to The Honorable Adele Ponce)

The Arizona Motion Picture Production Program ("Program") unconstitutionally subsidizes private filmmakers at taxpayer expense. It will imminently inflict irreparable harm on Taxpayers because once the subsidies are processed and paid, there is no way for Taxpayers to recover the unlawful outlays, and only any injunction from this Court can prevent that.

Defendants rest their defense almost entirely on dicta from a single, distinguishable case, claiming—wrongly—that dressing up these subsidies as refundable "tax credits" makes them constitutional. It does not. Taxpayers satisfy every requirement for injunctive relief, and Defendants' counterarguments, including their misplaced reliance on Arizona's Anti-Injunction Act, which has no application to this case, are unavailing.

I. The Gift Clause applies to the elimination of tax liabilities.

As explained in Plaintiffs' Response to Defendants' Motion to Dismiss ("MTD Resp."), the Gift Clause prohibits the transfer of public resources to private parties. MTD Resp. at 5–12. The constitutional text is both broad and plain: the state shall not "ever … make any donation or grant, *by subsidy or otherwise*, to any individual, association, or corporation." Ariz. Const. art. IX, § 7 (emphasis added). For over a century, Arizona courts have applied this provision to prevent the government from *both* the transferring of public assets *and* the elimination of liabilities that subsidize private parties. MTD Resp. at 6–9 (summarizing cases).

ACA's claim that *Kotterman v. Killian*, 193 Ariz. 273 (1999), "held that tax credits do not implicate the Gift Clause," ACA MTD at 1, is totally false. *Kotterman* never said any such thing—and, contrary to Defendants' contention, the Clause is not "focused on contracts [as opposed to] tax credits." Def.'s Resp. to Mot. for Prelim. Inj. (Def.'s PI Resp.) at 2. On the contrary, Arizona courts have often applied the Clause in cases involving tax credits[1]—for example, in *Maricopa County v. State*, 187 Ariz. 275, 279–81 (App. 1996), and *Pimalco, Inc. v. Maricopa County*, 188 Ariz. 550, 559 (App. 1997)—and have applied it in cases where no contract was involved, such as *Puterbaugh v. Gila County*, 45 Ariz. 557, 564 (1935), and *Mechanic v. State*, No. CV 2023-009364, 2025 WL 1547623 at *6 (Maricopa Cnty. Super. Ct. May 29, 2025) (declaring unconstitutional and enjoining direct legislative appropriation to a nonprofit). And in *Neptune Swimming Foundation v. City of Scottsdale,* 256 Ariz. 551 (2024), the court held that the government violates the Gift Clause by subsidizing a private business even if the subsidy "does not cost the [government] anything" and involves no expenditure of money. *Id*. at 560 ¶ 27.

Kotterman never said that the Gift Clause is inapplicable to all tax credits. It said the particular tax credit at issue *in that case* wasn't an unconstitutional gift. But that tax credit was markedly different. That case involved a (1) *non*-refundable (2) charitable

[1] Tax-exemption subsidies were, in fact, one of the principal evils giving rise to the Gift Clause. *See* Timothy Sandefur, *The Origins of the Arizona Gift Clause*, 36 Regent U. L. Rev. 1, 33–38, 43–51 (2024).

program for (3) private donations to private third parties for (4) educational purposes, which (5) did not reduce the taxpayer's liability in any degree. The court said that the "evils" targeted by the Gift Clause—namely, "the 'extravagant dissipation of public funds' by government in subsidizing private enterprises … in the guise of 'public interest'"—did not exist in that circumstance. 193 Ariz. at 288 ¶ 52. Yet those "evils" *are* present here.

Kotterman did say that "[o]ne cannot make a gift of something that one does not own," *id.*, but that phrase is inapplicable, because refundable tax payments, such as are provided by the Program challenged here, *do* give away something the government owns: they directly transfer public money to private recipients whose credits exceed their tax liabilities. A.R.S. §§ 43-1082(F), 43-1165(F). *See also* A.R.S. § 42-1118. Not only do such beneficiaries get a check from the government, but the Program also wipes out *previously incurred*[2] tax liabilities. That structure explains why both pre- *and post*-approvals are required: recipients must first complete their in-state film production projects, thereby incurring tax liabilities, before obtaining the credit to cancel tax obligations on prior-year returns. *See, e.g.,* A.R.S. § 41-1517(H), 43-1082(D)(4)–(5). That makes this case like *Maricopa County, supra*, and *Pimalco, supra*, both cases in which the state zeroed out tax liability—and in which the courts examined whether that violated the Gift Clause. (It did not, because in those cases, the public received a proportionate benefit; here, the opposite is true.)

That's important because while the government did not "own" the money at issue in *Kotterman*, it *does* "own" a tax liability. Contrary to Defendants' contention (MTD at 6), this is not a situation in which the state "forgoes revenues that it could have chosen to

[2] Defendant ACA erroneously argues that the Program credits are "prospective" in that they somehow "reduce taxpayers' tax liability *in advance*." ACA Resp. to Amicus Curiae Petersen at 4. But that's not correct. Program credits are designed to reimburse companies for *previously incurred* taxable production expenses, and credits are *not* available to filmmakers in advance of production. *See, e.g.,* A.R.S. § 43-1082(A) (Program credits are "allowed against production costs paid by a motion picture production company in this state that are subject to taxation by this state and that are directly attributable to a motion picture production.")

collect in the future by changing its laws prospectively," *Maricopa County* 187 Ariz. at 280. Rather, this is a situation where the government is forgiving an *ascertained debt that's owed to it*. That's the equivalent of a gift—and triggers Gift Clause scrutiny. *Puterbaugh, supra; Rowlands v. State Loan Bd. of Ariz.*, 24 Ariz. 116, 122–23 (1922).

Here, income derived from film production may be taxable *before* the credit applies. *See, e.g., Helvering v. Horst*, 311 U.S. 112, 115–16 (1940) (income taxable when realized); A.R.S. § 43-102(A)(4) (taxable income intended to be subject to taxation "wherever derived"); A.R.S. §§ 43-1001, -1101 (Arizona taxable income starts with federal adjustable gross income for the taxable year (for individuals), or federal taxable income (for corporations), then is modified by additions, subtractions, and deductions, *but not credits*); *Stearns v. Ariz. Dep't of Revenue*, 212 Ariz. 333, 335 ¶ 12 (App. 2006) (explaining general operation of those statutes and distinguishing "taxable income" from "ultimate tax liability"). *Cf.* A.R.S. §§ 43-1021(16), -1121(24) (adding any motion picture production costs deducted from federal taxable income back into the calculation of Arizona taxable income). That means the Program zeroes out a *particular debt* to the government. Thus, even ignoring the "refundable" aspect of the credits (which plainly implicate the Gift Clause as direct expenditures of taxpayer funds) the Program adds to the film companies' bottom line—i.e., subsidizes them. And, of course, the "refund" payments issued under the Program are simply transfers of public money from the public treasury into recipients' private pockets. That squarely violates the Gift Clause.[3]

There are other distinctions between the Program and the charitable tax credit at issue in *Kotterman*. For one thing, the latter applied to *all* individual income taxpayers, whereas the Program gives a special privilege to just one particular private party or industry. And *Kotterman* concerned public education—a quintessentially public purpose—whereas the Program here subsidizes private businesses that are operating for private profit. The court reiterated in *Neptune* that one of the primary purposes of the Gift

[3] Again, Program subsidy payments are *not* traditional tax refunds, i.e., the return of an excess payment. Rather, they are direct expenditures of public funds to private filmmakers whose tax liability was either nonexistent or extinguished.

Clause is to prevent "'giving advantages to special interests.'" 256 Ariz. at 559 ¶ 24 (citation omitted). Yet, the Program here is designed to, and in fact does, give special advantages to special interests by subsidizing the operations of film companies.

The text, history, and precedent interpreting the Gift Clause make clear that *any* public transfer to private enterprise—whether styled as a donation, grant, subsidy, or otherwise—triggers Gift Clause scrutiny.[4] Whatever the technical method by which the subsidy is carried out is irrelevant. And as the Supreme Court has emphasized time and again, in Gift Clause challenges courts must examine "'the realities of the transaction,'" *Turken v. Gordon*, 223 Ariz. 342, 345 ¶ 8 (2010) (citation omitted), and "overlook neither the forest nor the trees." *Gilmore v. Gallego*, 258 Ariz. 38, 44 ¶ 26 (2024).

Here, the reality is that the Program transfer $125 million in taxpayer resources to private film companies for the sole purpose of subsidizing their private operations. The Gift Clause applies.

II. Arizona's anti-injunction statutes do not apply to unconstitutional expenditures or the non-collection of income taxes.

Defendants make the startling argument that statutes prohibiting courts from enjoining the collection of property taxes under certain circumstances somehow prevent this Court from enjoining an unconstitutional statutory subsidy. *See* Defs' PI Resp. at 4–5. The Court should reject this improperly expansive reading of Arizona's anti-tax-injunction statutes and policies.

Defendants' argument is misplaced for at least two reasons: *first*, nothing in this case prevents ADOR from *collecting* income taxes, *id.* at 3–4, which is the point of the anti-injunction statutes; and, *second*, the anti-injunction statutes only apply to certain types of taxes and tax-related proceedings, not to every case that challenges the constitutionality of a tax law. *See id*. at 4–5 & n. 1.

Each of the three statutes Defendants cite have clear and limited applications.

[4] *See* Sandefur, *supra* at 56 ("Arizona's Gift Clause was the most comprehensive ban on government aid to private enterprise ever fashioned.")

Section 42-1254(D) applies *solely* to appeals to the Tax Court from administrative actions: "Any appeal that is taken to tax court pursuant to this section is subject to the following provisions … ." Defendants concede this, but then baselessly (and without citation to authority) claim that Taxpayers are "circumvent[ing]" this statutory bar by failing to exhaust administrative remedies. Defs' PI Resp. at 4. This is wrong because no such remedies exist here. *Mills v. Arizona Bd. of Tech. Registration*, 253 Ariz. 415, 421 ¶ 14 (2022) ("a litigant is required to exhaust administrative remedies only if he has access to a statutorily prescribed administrative remedy.").

Taxpayers challenge *the constitutionality of the Program itself*, not the assessment or refund of any particular taxes. Reviewing the constitutionality of statutes is a judicial function and requires no administrative prerequisite. Courts enjoin unconstitutional or unlawful taxes all the time. *See Fann v. State*, 251 Ariz. 425 (2021) (declaring a statewide income tax unconstitutional and remanding for an injunction against the tax)[5]; *Vangilder v. Arizona Dep't of Revenue*, 252 Ariz. 481 (2022)[6] (affirming injunction against unlawful tax); *McCluskey v. Sparks*, 80 Ariz. 15, 20–21 (1955) (injunction granted because "Plaintiff[s] are not seeking to enjoin the assessor from assessing their property … . They are seeking to require these officials to comply with the statutes and constitutions."); *S. Pac. Co. v. Cochise Cnty.*, 92 Ariz. 395, 403 (1963) (injunction proper because it was "'sought not to prevent the execution of the statute but to prohibit wrongful action on the part of the defendants under the guise of its enforcement or execution.'" (citation omitted)).[7]

---

[5] *Fann* found a statewide *income* tax increase "facially unconstitutional." 251 Ariz. at 435 ¶ 31. That case was brought by taxpayers prior to the assessment of taxes; they sought declaratory and injunctive relief. On remand, the statute was enjoined in its entirety. *Fann v. State*, No. CV2020-015495, 2022 WL 2981553, at *1 (Maricopa Cnty. Super. Ct. July 26, 2022). The state argued that the Anti-Injunction statute barred this relief (*see* Answering Br. by Appellees State of Arizona and ADOR, No. CV 21-0058-T/AP, 2021 WL 2354712 (Mar. 15, 2021)). The court was not persuaded.

[6] In *Vangilder*, ADOR argued that the Anti-Tax Injunction Act barred injunctive relief; the tax court rejected that argument and ruled for the plaintiffs. *See Vangilder v. ADOR*, No. TX 2017-000663 (Aug 2, 2018).

[7] *Cf. SolarCity Corp. v. Arizona Dep't of Revenue*, 243 Ariz. 477, 479 ¶ 4 (2018) (declaratory judgment against illegal tax); *State v. Levy's*, 119 Ariz. 191, 191–92 (1978) (same).

Section 42-11006 only applies to property taxes, as it's located in the property tax chapter (Chapter 11) of Title 42. *See State Comp. Fund v. Symington*, 174 Ariz. 188, 192 (1993) (finding predecessor to section in same chapter applied only to property taxes). Income taxes are not property taxes. Defendants' claim that the statutory location of this provision does not matter, Defs' PI Resp. at 4 n.1, is unavailing. In fact, courts often rely on statutory location when interpreting statutes. *See, e.g., State v. O'Laughlin*, 239 Ariz. 398, 401 ¶ 6 (App. 2016); *Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*, 218 Ariz. 293, 296 ¶ 10 (App. 2008); *Manic v. Dawes*, 213 Ariz. 252, 255 ¶ 16 (App. 2006). And the text itself shows that Section 42-11006 only applies to property taxes.

In any event, Section 42-11006 only bars injunctions against "[e]xtending an assessment on the tax roll" or "[c]ollecting an imposed or levied tax," and neither is implicated here. **An injunction would not prevent ADOR from *collecting* imposed taxes. It would only prevent ADOR from *issuing* credits and payments.** Arizona's anti-tax-injunction statutes cannot be read to bar equitable relief against unconstitutional tax *credits* or *payments* of money.

Finally, Section 12-1802(4) prohibits injunctions that "prevent enforcement of a public statute by officers of the law for the public benefit." Defendants argue that this "broadly prevents issuing an injunction against the Department as it administers its tax statutes for the public benefit." Defs' PI Resp. at 5. But unconstitutional statutes aren't for the public benefit, and implementation of them is contrary to public policy. Injunctive relief is proper where a statute, or actions under it, are unconstitutional and failure to enjoin them would cause irreparable harm, as it would here. *City of Tucson v. Landry*, 108 Ariz. 106, 107 (1972). Blocking unconstitutional government action "'is always in the public interest.'" *Toma v. Fontes*, 258 Ariz. 109, 127 ¶ 90 (App. 2024) (citation omitted).[8]

[8] There is also an exception to the Anti-Tax Injunction Act that permits relief where state officials act with "no semblance of authority." *State ex rel. Lane v. Superior Ct*, 72 Ariz. 388, 391 (1951). Officials have no authority to act unconstitutionally. *Tohono O'odham Nation v. Ducey*, 130 F. Supp.3d 1301, 1308–09 (D. Ariz. 2015). Because the Program violates the Gift Clause in a direct and obvious manner; it lacks any semblance of authority.

Moreover, injunctive relief is proper where unconstitutional acts will produce multiplicity of actions at law if not restrained. *See City of Glendale v. Betty*, 45 Ariz. 327, 331 (1935). That's true here, because the longer ADOR processes credits and payments, the more complex recovery and reversal of illegal payments becomes.

In any event, the Anti-Tax Injunction rule doesn't apply on its own terms, because this case does not seek to enjoin tax assessment or collection and doesn't involve a disputed assessment, refund, or valuation. It's a pure constitutional claim. It challenges *expenditures*—and unconstitutional expenditures certainly *are* subject to an injunction. *Rodgers v. Huckelberry*, 247 Ariz. 426, 429 ¶ 11 (App. 2019).

There is simply no statutory or equitable barrier to enjoining the Program.

III. Taxpayers are irreparably harmed by ADOR's processing of Program credits, and the balance of hardships favors Taxpayers here.

Defendants argue that Taxpayers suffer no irreparable harm from ADOR's processing of Program credits. That's wrong. Taxpayers will suffer irreparable injury if Defendants give out the credits/payments under the Program, *first* because constitutional violations "unquestionably constitute[] irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Associated Gen. Contractors of Calif., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) ("'[A]lleged constitutional infringement will often alone constitute irreparable harm.'" (citation omitted)), and *second* because the harm from the Program's unconstitutional subsidies cannot be qualified *ex ante*. The amount involved is uncertain, and that means there's no adequate remedy at law. *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 65 ¶ 10 (App. 2011) ("where a loss is uncertain, monetary damages may be inadequate.").

Defendants' position rests on four flawed premises: (1) ignoring the constitutional harm to Taxpayers, when constitutional violations are *always* irreparable harm; (2) denying that Taxpayers' money is at stake; (3) minimizing the harm by comparing the dollar amount the State expends on the Program with total state revenues; and (4) relying

on the assertion that ADOR has *discretionary* tools to recoup improper payments. Each point fails.

First, Gift Clause violations are irreparable injuries, as noted above. *See also Am. Trucking Ass'ns v. City of L.A.*, 559 F.3d 1046, 1058 (9th Cir. 2009) ("constitutional violation alone, coupled with the damages incurred, can suffice to show irreparable harm."). And Taxpayers have no realistic way to recoup these credits if and when they are ruled unconstitutional, which could be years from now. A business that receives a subsidy and then relocates to another state, for example, or goes out of business prior to a final determination of constitutionality, could escape judgment altogether. Nor is it clear that Taxpayers would have standing to seek recovery on their own in some future proceeding.

Second, Taxpayers plainly have money at stake—their tax dollars fund these subsidies. It's black-letter law that "taxpayers[] [have an] equitable ownership of [public] funds and … [are] liab[le] to replenish the public treasury for the deficiency which would be caused by [a] misappropriation." *Ethington v. Wright*, 66 Ariz. 382, 386 (1948). That's why "the almost universal rule" is "that taxpayers … may enjoin the illegal expenditure" of public funds. *Id.* at 386-87. *See further* MTD Resp. at 14–17.

Program credits deplete the public treasury in exactly the same way as direct appropriations: every dollar offset against a private company's tax liability is one less dollar available for public use, and every refundable payment is drawn directly from taxpayer funds. ADOR admits this in an annual report that it must produce pursuant to state law. *See* A.R.S. § 42-1005(A)(4). As explained on ADOR's website:

> Tax expenditures are provisions within the law designed to encourage certain kinds of activity or to aid taxpayers in certain categories. These provisions are generally known as exemptions, exclusions, deductions, subtractions, **credits** and preferential rates. **Such provisions result in a loss of tax revenues, thereby reducing the amount of revenues available for state (and, in some circumstances, local) programs. In effect, the fiscal impact of implementing tax expenditure would be similar to a direct expenditure of state funds.**[9] (Emphasis added).

[9] https://azdor.gov/reports-statistics-and-legal-research/tax-expenditure-reports.

The Program is therefore not insulated from Gift Clause scrutiny merely because it is styled as a "credit." Tax payments that are refundable are obvious direct expenditures that harm Taxpayers. But even ignoring the refundable aspect, processing these tax credits inflicts a pecuniary loss on Taxpayers in precisely the same way as a direct expenditure, by ADOR's own admission.

Third, the constitutional harm is in no way reduced merely because the amount of Taxpayers' loss is small relative to the State's overall revenues. The Constitution forbids all gifts, not just those that happen to be a large fraction of the state's total tax haul. Defendants say that "[t]he size of the tax credits at issue here pales in comparison to the amounts that the Department regularly handles … [such as last year's] $28,180,156,186 in total tax revenues. Defs' PI Resp. at 9. But so what? The subsidy in *Schires v. Carlat*, 250 Ariz. 371, 378 ¶ 21 (2021), was only $2.6 million, and in *Gilmore*, 258 Ariz. 41 ¶ 11, less than half a million per year, but they were still unconstitutional.

Anyway, the stakes here are anything but trivial: Program credits may rise as high as $125 million annually. A.R.S. § 41-1517(I)(3). That's more than ADOR's entire annual operating budget.[10] And the State anticipates that the Program could result in a loss of General Fund revenue as high as that statutory cap. *See* Compl. ¶ 60; Compl. Ex. 8.

Fourth, ADOR's *discretionary* enforcement powers cannot cure the injury. Defs' PI Resp. at 9–10. Taxpayers cannot rely on bureaucratic grace to vindicate their constitutional rights. ADOR has already demonstrated why: that agency, through counsel, initially assured Taxpayers that it would not process credits during the pendency of this litigation without notice, leading Taxpayers to forgo seeking preliminary relief.[11] Then, ADOR reversed course, and began processing credits before its own notice period expired! Exhibit 1. Such arbitrary and capricious behavior shows that Taxpayers cannot

[10] State of Arizona, *Executive Budget, State Agency Budgets* (Jan. 2024), https://www.azospb.gov/Documents/2024/FY%202025%20Agency%20Detail%20Book.pdf#page=381.

[11] Application for OSC at 1; Application for OSC Exs. 1 & 2.

trust ADOR to enforce the law.[12] Nor is it clear that ADOR, as a practical matter, *could* recoup tax credits issued under the Program, potentially years down the road.

Thus, the balance of harms tips in Taxpayers' favor. ADOR faces no hardship from collecting the full amount of taxes owed absent the credit. Indeed, *that* is the status quo, and it's precisely what's contemplated by the very anti-injunction statutes the agency cites. By contrast, Taxpayers face irreparable constitutional injury with no adequate remedy at law. *See IB Prop. Holdings*, 228 Ariz. at 65 ¶¶ 10–11.

The Court should preliminarily enjoin the Program, or at a minimum, enjoin ADOR from processing credits while this case proceeds.

IV. Public policy—namely, the state constitution—supports an injunction here.

"[Courts] discern public policy from our constitution." *CSA 13-101 Loop, LLC v. Loop 101, LLC*, 236 Ariz. 410, 412 ¶ 8 (2014). That includes the Gift Clause, which enunciates the state's fundamental public policy against subsidies to private enterprises. Ariz. Const. art. IX, § 7. Defendants try to distract the Court by addressing what they call the public policy of the anti-injunction laws, but those policies—rooted in property tax caselaw and in specific statutory provisions pertaining to refund actions—do not override the basic constitutional command against giving or lending public resources to private industry "by subsidy or otherwise." Defendants' remaining concerns—regarding purported administrative disruption, potential protests by third parties, or even that some credit claimants might be "anger[ed]," Defs' PI Resp. at 12—must yield to the state's fundamental law.

CONCLUSION

The Court should *grant* Plaintiffs' Motion for Preliminary Injunction.

[12] Indeed, in *Vangilder, supra,* ADOR *conceded* that the tax at issue was unlawful—but insisted on collecting it anyway.

RESPECTFULLY SUBMITTED this 8th day of September 2025.

GOLDWATER INSTITUTE

/s/ *Parker Jackson*
Jonathan Riches (025712)
Timothy Sandefur (033670)
Parker Jackson (037844)
Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 8th day of September 2025, with a copy delivered via the ECF system to:

Scot G. Teasdale
Arizona Attorney General's Office
2005 North Central Avenue
Phoenix, Arizona 85004
Scot.teasdale@azag.gov
Counsel for Defendant Arizona Department of Revenue

Andrew G. Pappas
Eric M. Fraser
David Rosenbaum
Gideon Cionelo
Osborn Maledon
2929 N. Central Ave., Ste. 2000
Phoenix, Arizona 85012
apappas@omlaw.com
efraser@omlaw.com
drosenbaum@omlaw.com
gcionelo@omlaw.com
Counsel for Board Defendants

/s/ *Kris Schlott*
Kris Schlott, Paralegal

From: Teasdale, Scot
To: Jonathan Riches; Parker Jackson
Cc: "Andrew Pappas"; Eric M. Fraser
Subject: RE: McEwen
Date: Wednesday, August 6, 2025 4:43:21 PM
Attachments: image001.png

Johnathan,

I was just informed today that DOR started processing credit claims without waiting the full 30 days from July 11. Obviously I feel professional embarrassment about this, though I can only convey the information I am given.

My understanding is that six credit claims for TY2024 went through post approval at ACA and are therefore eligible for processing if filed at DOR but not all six have been processed. Therefore your motion is not mooted.

I will of course correct the record for the court in my response, and we can discuss what else needs to be done. I will be in a hearing all tomorrow but we can discuss this on Friday if needed.

I am sorry for this snafu. However, I am not sure it makes much difference. DOR routinely pursues debts from taxpayer underpayments, and if the credit is held to be invalid there are multiple options to recover any money paid out, or to pursue any debt from an underpayment caused by applying the credit to a larger tax liability. (In either scenario the state would be owed money in the amount of the credit applied.) Essentially, such pursuit of debts that is entirely routine for the DOR in any underpayment scenario. FYI, there is a 4 year statute of limitations to audit and assess any deficiency, as one option, and this case will be concluded long before then, I presume.

Scot

Scot G. Teasdale
Tax Unit Chief, Health, Education, and Tax Section, State Government Division

Arizona Attorney General Kris Mayes
15 S 15th Ave
Phoenix, AZ 85007
Mailing Address:
2005 N. Central Ave
Phoenix, AZ 85004
Desk: 602-542-8382
Scot.Teasdale@azag.gov
http://www.azag.gov

Exhibit 1