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

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' MOTION FOR PRELIMINARY INJUNCTION** **(EXPEDITED RULING REQUESTED)** **(ORAL ARGUMENT REQUESTED)** (Assigned to The Honorable Michael Herrod)

Pursuant to Rule 65 of the Arizona Rules of Civil Procedure, Plaintiffs Deborah Hewitt f/k/a Deborah McEwen and Jan Mittelstaedt ("Taxpayers") move for an order preliminarily enjoining Defendants from issuing any tax credits or payments under the Arizona Motion Picture Production Program.

INTRODUCTION

The Arizona Motion Picture Production Program ("Program"), codified at A.R.S. §§ 41-1517, 43-1082, and 43-1165, provides unconstitutional subsidies to film production companies in the form of "refundable tax credits." Companies seeking such credits must obtain pre- and post-approval for their projects from the Arizona Commerce Authority ("ACA"), then claim the credits on their tax filings, which are processed by the Arizona Department of Revenue ("ADOR"). The "refundable" nature of the credits means

that not only is a company's tax liability reduced, but if the credit amount exceeds the amount of income taxes the company owes, then the state pays out the difference to that company. In other words, the Program directly subsidizes filmmakers at taxpayer expense.

Under the Arizona Constitution's Gift Clause (Art. IX § 7), the government may not give public resources to private parties "*by subsidy or otherwise*," *id.* (emphasis added), unless: (1) the expenditure serves a public purpose; and (2) the government receives in return direct, measurable consideration that is proportionate to the government outlay. *Schires v. Carlat*, 250 Ariz. 371, 374–75 ¶ 7 (2021); *Turken v. Gordon*, 223 Ariz. 342, 345 ¶ 7, 348 ¶ 22 (2010). These requirements apply both to direct government expenditures, and to the elimination of liabilities owed to the state, including tax liabilities. *See, e.g., Pimalco, Inc. v. Maricopa Cnty.*, 188 Ariz. 550, 559–60 (App. 1997) (tax exemption); *Maricopa Cnty. v. State*, 187 Ariz. 275, 279–81 (App. 1996) (refund of lawfully collected tax revenue); *Rowlands v. State Loan Bd.*, 24 Ariz. 116, 123 (1922).

Given the refundable nature of the tax credits at issue here, the Program does both—and violates the Gift Clause for two reasons. First, the state receives no objectively quantifiable consideration in return for these subsidies. Second, the state cannot show that the credited funds will serve a public purpose because it surrenders control and supervision over the funds to private film companies. This is true both for the Program as a whole and for the two specific credits that are the subject of Taxpayers' as-applied challenges.

Taxpayers meet all the requirements for preliminary injunctive relief: They can show a likelihood of success on the merits, irreparable harm not remedied by damages; a balance of hardships in their favor; and public policy favoring a preliminary injunction.

A preliminary injunction is appropriate at this time because ADOR's counsel, after initially representing that ADOR would voluntarily refrain from processing any claimed Program credits (which obviated the need for an injunction at the outset of the case), has now informed Taxpayers' counsel that ADOR now intends to begin processing the first

Program credits on or about August 11, 2025.[1] *See* Application for Order to Show Cause. Once credits are issued, Taxpayers will have no direct remedy should this Court declare the Program or either of the two specified credits unconstitutional.

The Court should enjoin the Program and the challenged tax credits.

BACKGROUND

The Program is the latest in a series of failed experiments to prop up the state's film industry. Compl. ¶¶ 29–52. It was enacted amid intense budget negotiations in a year when the Legislature was searching for ways to appropriate surplus tax dollars. *See id.* ¶¶ 54–58. The Legislature knew the Program would result in a "loss of General Fund revenue" up to $125 million per year. *Id.* ¶¶ 60, 76.

The Program is administered by the ACA and ADOR. *See, e.g., id.* ¶¶ 62, 70, 77–78, 81–82, 97. The ACA handles pre- and post-approval for eligibility, and ADOR ultimately processes credits along with the production company's tax return,[2] and issues payments to beneficiaries. *Id.* ¶¶ 70, 81–82.

Film companies must meet certain qualifications to claim refundable tax credits, such as filming and/or producing a project in the state and acknowledging this in the film's credits. But **recipients are not required to actually release or distribute any subsidized film** to receive the credit or payment. *Id.* ¶¶ 64–68, 102–04, 110.

Taxpayers are two Arizona income taxpayers whose tax dollars pay for the Program subsidies and who have a legal obligation to replenish the public coffers for unlawful disbursements. *Id.* ¶¶ 1, 3–4, 146. *See also* Declaration of Jan Mittelstaedt. They allege that the Program's authorizing statutes facially violate the Gift Clause, and that two

[1] ADOR's counsel provided notice on July 11, 2025, that ADOR would move forward with processing tax returns claiming the credit after 30 days. Taxpayers subsequently offered to forego this motion if ADOR would agree to not process any credits relevant to the two as-applied challenges. That offer was rejected on July 25, 2025.

[2] A.R.S. §§ 43-1082 and -1165 are parallel provisions that make Program credits available to a "motion picture production company" (as defined in A.R.S. § 41-1517), regardless of whether the company files income tax documents as an individual or as a corporation.

specific credits (one pre- and one post-approved by the ACA)[3] violate the Gift Clause as applied. *Id.* ¶¶ 125–58.

After Taxpayers filed their Complaint, Defendant ACA moved to dismiss, which ADOR joined. That motion has been briefed[4] and a hearing has been scheduled for September 12, 2025.[5]

ARGUMENT

A party seeking a preliminary injunction must show 1) a likelihood of success on the merits; 2) the possibility of irreparable harm if relief is not granted; 3) balance of hardships favoring the moving party; and 4) public policy weighs in favor of injunctive relief. *Fann v. State*, 251 Ariz. 425, 432 ¶ 16 (2021). Courts apply a sliding scale rather than a strict balancing of the four factors in determining whether to issue a preliminary injunction. *Smith v. Arizona Citizens Clean Elections Comm'n,* 212 Ariz. 407, 410–11 ¶ 10 (2006). Thus, to warrant a preliminary injunction the plaintiff must "establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party." *Id*. (citation modified). Each preliminary injunction factor supports granting Taxpayers preliminary injunctive relief.

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[3] The identity of the applicants are unknown to Taxpayers at this time because Defendants have withheld all information gathered from applicants pursuant to A.R.S. § 41-1517(J). However, the ACA assigns "Priority Placement Numbers" and has released the amounts pre- and post-approved for the two challenged credits. The preapproval letter for the credit designated MoPic-2023-008 is attached as Exhibit 1. The post-approval letter for MoPic-2023-008 is attached as Exhibit 2. And the preapproval letter for MoPic-2024-004 is attached as Exhibit 3. MoPic-2023-008 was preapproved for up to $464,582, and ultimately post-approved for $394,113. Ex. 1; Ex. 2. MoPic-2024-004 has been pre-approved for up to $1,220,624. Ex. 3.

[4] Defendants still have an opportunity to reply to the amicus brief filed by Senate President Warren Petersen.

[5] Given that the briefing on the Motion to Dismiss is essentially complete, and many of the issues overlap, Taxpayers suggest consolidating oral argument on the Motion to Dismiss with any hearing on this preliminary injunction motion, assuming the Court has adequate time available before ADOR plans to process any credits.

I. Plaintiffs will prevail on the merits of each of their claims.

A. The Program facially violates the Gift Clause.

The Gift Clause forbids the government from "mak[ing] any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." Ariz. Const. art. IX, § 7. The purposes of this Clause are to prevent the "depletion of the public treasury or inflation of public debt by [public entities] engag[ing] in non-public enterprise," *Town of Gila Bend v. Walled Lake Door Co*., 107 Ariz. 545, 549 (1971) (citation omitted), and to prevent government entities from "giving advantages to special interests," *Wistuber v. Paradise Valley Unified School District*, 141 Ariz. 346, 349 (1984). *See also Indus. Dev. Auth. v. Nelson*, 109 Ariz. 368, 372 (1973) (The Gift Clause was "designed to prevent the economic losses of the 19th century suffered by municipal corporations which gave money, credit *or other valuable advantages* to railroads, canal companies, etc." (emphasis added; citation omitted)).

The Gift Clause applies not only to direct payment of funds to a recipient, but also to the elimination of a private party's current or future liabilities—including tax liabilities. *See Pimalco, supra*; *Maricopa Cnty, supra*; *Rowlands, supra*; *Texas & New Orleans Ry. Co. v. Galveston Cnty.*, 161 S.W.2d 530, 532 (Tex. App. 1942), *aff'd,* 169 S.W.2d 713 (Tex. 1943) (prospective indemnification of a business's future tort liability was an unconstitutional gift).

Although the government may not give away public funds or subsidize private businesses with them, it may *buy* goods or services from a private business. To distinguish unconstitutional gifts from constitutional purchases, the Supreme Court has established a test: To survive a Gift Clause challenge, a transfer of public funds or the grant of a valuable tax benefit to a private entity must (1) serve a public purpose and (2) be in exchange for objectively valued adequate consideration tendered by the recipient. *Schires*, 250 Ariz. at 374–75 ¶ 7; *Turken*, 223 Ariz. at 345 ¶ 7, 348 ¶ 22. These are conjunctive requirements, so a failure of either requirement will violate the Gift Clause. *Id.* The Program fails both.

1. The Program doles out credits and payments without requiring direct, proportionate consideration in return.

This case can most easily be resolved on the adequacy of consideration prong alone, because the film subsidies "so clearly flunk … [that] more demanding" test. *Gilmore v. Gallego*, 258 Ariz. 38, 47 ¶ 39 (2024). To survive Gift Clause scrutiny, the allocation of public resources must be supported by adequate consideration. *Id.* That means the recipient must give the public in exchange some value that is direct, and objectively proportionate to what it receives.[6]

To resolve this part of the analysis the Court "focuses on what the public is giving and getting from an arrangement and then asks whether the 'give' so far exceeds the 'get' that the government is subsidizing a private venture." *Schires*, 250 Ariz. at 376 ¶ 14. The Court must "compare the public expenditure to what the government receives." *Turken*, 223 Ariz. at 348 ¶ 22. And when it does this, the Court "should not give deference to the public entity's assessment of value but should instead identify the *fair market value* of the benefit provided to the entity and then determine proportionality." *Schires*, 250 Ariz. at 378 ¶ 23 (emphasis added). Additionally, "anticipated indirect benefits"—such as economic improvement that the government hopes may result from a development project—cannot be included in this analysis. *Id.* at 377 ¶ 16. Instead, the comparison "focuses … on the objective fair market value[s]" on both sides. *Id.* at 376 ¶ 14 (citation omitted).

The question the Court must answer is therefore a simple one**: What do Program credits cost the state and its taxpayers, and what is the state *directly* receiving in return, measured by the *objective fair market value* of that return?** If the value of what the state receives is disproportionate to what it spends, the arrangement is unlawful because it amounts to a gift, akin to spending $100 to buy a hammer worth only $10.

[6] The consideration analysis is designed to ensure that when government buys things, the purchase price doesn't work as a concealed gift. Paying $100 for a $10 hammer, for example, would be grossly disproportionate and would equate to a gift of $90 to the seller of the hammer.

Here, the state provides up to **$125 million annually** in subsidies, yet it receives **nothing** of comparable fair market value in return. A mere acknowledgment that a film was shot or produced in Arizona carries no measurable value—or, at best, is wildly disproportionate to the public expense.

The statutes authorizing the Program require the state to provide substantial public subsidies to private filmmakers who "simply promise[] to engage in their respective private businesses." *Schires*, 250 Ariz. at 377 ¶ 16. If a film company merely "use[s] a qualified production facility" in Arizona, *e.g.*, A.R.S. § 41-1517(B)(1), or "primarily" films a movie "at a practical location" in Arizona, *e.g.*, A.R.S. § 41-1517(B)(2), then the state *must* provide the subsidies. *See* A.R.S. §§ 41-1517(G)–(H), 43-1082(A), 43-1165(A).

This arrangement is nearly identical to the one the Supreme Court declared unconstitutional in *Schires*. In that case, the City of Peoria provided a $2.6 million subsidy to a private university so that the university would locate its campus in Peoria rather than some other location. 250 Ariz. at 374 ¶¶ 2–4. The City defended that subsidy by arguing that the university would not have located its campus in Peoria but for the public aid, and that locating the campus in Peoria would result in positive economic impact to the city. *Id.* at 377 ¶¶16–18. The Court rejected both arguments. It held that "[i]t makes no difference that [the university] would not have opened a campus in Peoria … absent public funding." And that the supposed "economic impact" from the project "is an 'anticipated indirect benefit' that is valueless" under the consideration prong of the Gift Clause. *Id.* ¶¶ 16–17.

The same is true here. The apparent purpose of the Program is so that film production facilities will operate in Arizona, rather than some other state. *See* Ariz. Sess. Laws 2022, Ch. 387, at 28 (*see* Compl. Ex. 7) (Legislature's purpose and intent was "to create a competitive motion picture production industry presence and market in this state that will develop a substantial motion picture production industry workforce and encourage major capital investment in qualified production facilities in this state, and … to provide a program that creates long-term economic benefits to this state, including the development of high-paying employment opportunities for residents of this state"). The

idea is that in so doing, the companies will stimulate the economy. *See id.* But neither justification is constitutionally relevant, and neither qualify as consideration under the Gift Clause. *Schires,* 250 Ariz. 377 ¶¶ 16–17. Thus, the purported benefits the Program supposedly offers are "valueless"—and that makes the state subsidies unconstitutional.

The ACA may contend that the statute also requires that the film companies include an acknowledgement that the movie was filmed or produced in Arizona, and that this counts as consideration. *See* A.R.S. § 41-1517(B)(3). But that contention fails for several reasons.

First, there is no requirement that subsidy recipients ever actually release or distribute any film created as a result of the Program. *See* Compl. ¶¶ 64–68, 102–04, 110; Exhibit 4 (Notice of Adoption for ACA Rule No. 23-01), at 7. So, the state may end up subsidizing films that no one will ever see, and if no one sees the film, no one will see the credits. Any potential benefit to the state that such an acknowledgment might provide will be zero in such cases. And without enforceable controls in place to ensure that a public program actually accomplishes the public good it is supposed to accomplish, that program is unconstitutional under the gift clause. *Kromko v. Arizona Bd. of Regents*, 149 Ariz. 319, 321 (1986).[7]

But even assuming some films will be released, and that somebody will see a line in the credits, it's impossible to quantify the fair market value of this. Professor Michael Thom of the University of Southern California's Sol Price School of Public Policy, who is an expert on film subsidy programs and their economic impact, testifies that "it is reasonable to assign **no fair market value** to a filming location acknowledgment" in the end credits of Arizona-based motion picture productions. Exhibit 5 at 2 (emphasis added).

[7] In *Kromko*, the court held that a government program subsidizing the operation of a hospital was constitutional because "its operations are still subject to the control and supervision of public officials," 149 Ariz. at 321, who would ensure that the hospital was serving the general public. *Accord, Gilmore*, 258 Ariz. at 47 ¶ 38 (government-funded program must be under government's "direct control and supervision" to ensure public purpose is accomplished). The lack of any statutory requirement that a film receiving subsidies actually be released for public viewing is alone sufficient to doom the Program under the Gift Clause.

Dr. Thom explains that any purported advertising or tourism benefits from a film acknowledgment to the state rest on a string of speculative assumptions. Namely, a viewer must observe the acknowledgment, understand its meaning, and plan travel to the state that he or she would not have otherwise taken in order for the state to see *any* benefit from the acknowledgment. *Id.* at 1. What's more, a film produced in Arizona must actually have an Arizona-based setting rather than be filmed in-state and actually set elsewhere. As a result, "[a]ny induced tourism … is no more than a marginal increase over what would transpire without an acknowledgment, which is insufficient to justify the program's cost." *Id.*

Likewise, the statutory requirement to "maintain the motion picture production company's production labor positions in this state," A.R.S. § 41-1517(B), carries no fair market value. *See* Ex. 5 at 2–3. "Economic development," including potential private job creation or "stimulus" to the local economy, do not count as consideration for Gift Clause purposes, because they are (a) indirect rather than direct public benefits, (b) speculative and unmeasurable, and (c) not actually mandated by an enforceable contract. *Schires*, 250 Ariz. at 376–77 ¶¶ 15–17. In short, hoped-for economic improvement is not enough.[8]

Neither is anticipated tax revenue from hoped-for economic improvement, because the obligation to pay taxes is a pre-existing duty, and therefore a promise by the recipient of public funds to pay taxes does not count as consideration for purposes of the Gift Clause test. *Id*. at 377 ¶ 18; *Turken*, 223 Ariz. at 350 ¶ 38.

Simply put, by *any* measure, the subsidies that companies receive from the Program are grossly disproportionate to the indirect and speculative "benefits" that they purportedly provide to taxpayers in exchange. This means the Program as a whole, and the specific subsidies challenged here, are unconstitutional.

[8] These hopes are misguided, anyway. Professor Thom, citing various peer-reviewed studies, testifies that "motion picture industry incentives do not create a significant number of jobs (if any)," and that, "unequivocal[ly,] … tax incentives for the motion picture industry are revenue-negative." Ex. 5 at 3. *See also* Compl. ¶¶ 60–61; Compl. Exs. 8, 9.

2. The Program's credits and payments serve no cognizable public purpose because the state maintains inadequate control or supervision over how the funds are spent.

Not only does the Gift Clause require that the government get something back for its payments (or its elimination of liabilities) that is of proportionate value, but also the thing the government is paying the private recipient for must actually serve a public benefit. "'Public funds are to be expended only for 'public purposes' and cannot be used to foster or promote the purely private or personal interests of any individual.'" *Turken*, 223 Ariz. at 347–48 ¶¶ 19–20 (citation omitted); *see also Proctor v. Hunt*, 43 Ariz. 198, 201 (1934) ("It is, of course, axiomatic that money raised by public taxation is to be collected for public purposes only, and can only legally be spent for such purposes and not for the private or personal benefit of any individual"). In other words, the Gift Clause expressly forbids the use of public funds "to foster or promote the purely private or personal interests of any individual." *Walled Lake Door*, 107 Ariz. at 549.

Although courts defer to some degree to the government's assertion that its expenditures (or its elimination of liabilities) serve a public purpose, that deference is limited, because "determining whether governmental expenditures serve a public purpose is ultimately the province of the judiciary." *Turken,* 223 Ariz. at 346 ¶ 14.

One "essential criterion in determining [a] public purpose" is whether the recipient of the public benefit is under the "direct control and supervision" of the government, to ensure that public purposes actually are accomplished with those funds. *Gilmore*, 258 Ariz. at 47 ¶ 38 *see also Kromko,* 149 Ariz. at 321. But as noted earlier, there are no such controls here.

Under the Program, the state relinquishes control and supervision over the allocation of public funds after they are transferred to private film companies. Once a company meets the (meager) criteria to qualify for a subsidy, the state *must* provide it, and the state then has no say whatsoever as to how those funds will be used. A.R.S. § 41-1517(G)–(H) (the ACA "*shall* issue" preapproval letters to qualified applicants and "*shall* provide" post-approval to companies that have met the eligibility requirements (emphasis

added)); *id.* §§ 43-1082(A), -1165(A) (ADOR "*shall*" determine the credit amount according to the statutory formulae (emphasis added)).

The consequence is that film companies can use these public resources[9] to add to their bottom line without serving *any* public function. The companies can use these taxpayer resources for private profit, to pay employee bonuses, or in any way the company sees fit. Indeed, as described above, subsidy recipients are **not even obligated to release a film** after receiving the subsidy. True, the ACA administers the pre- and post-approval processes, and ADOR reviews tax filings for compliance, but those duties are ministerial. Once an applicant demonstrates compliance with the statutory criteria—which generally means the company is merely promising to do what it already does by making films[10]—neither the ACA nor ADOR have discretion to deny the applicant a subsidy. As a result, there is simply *no* control or supervision over the allocation of taxpayer resources to ensure that a public purpose will be accomplished.

Thus, the Program expends millions of dollars in taxpayer funds with no government control or supervision over how those funds are spent. That is not adequate control or supervision under the public purpose prong of the Gift Clause test.

Because the state exercises no control or supervision over the use of tax credit monies, including refundable payments, the Program does not serve a public purpose. It violates the Gift Clause for this reason as well.

What's more, the production of for-profit entertainment movies by private companies is simply not a public purpose. It is a "purely private or personal interest[]." *Walled Lake Door*, 107 Ariz. at 549. In *City of Tombstone v. Macia*, 30 Ariz. 218 (1926),

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[9] To emphasize: not only do recipients receive a reduction of taxes already owed, but if the credit is of greater amount than the taxes owed, the state sends the recipient a check for the difference—a direct payment of public money. "Refundable" is therefore something of a misnomer. Qualifying production companies can receive payments from the state *even if they have never paid a dime in state income taxes. See* A.R.S. §§ 43-1082(F), -1165(F) ("…or if there are no state income taxes due …").

[10] In *Schires*, the Supreme Court explained that when subsidized parties "simply promise[] to engage in their respective private businesses" or "to invest in their own businesses[,] … they provide no bargained-for direct benefit" to the public body and such "obligations" therefore don't count as consideration under the Gift Clause. 250 Ariz. at 377–78 ¶¶ 16, 20.

the Supreme Court listed some examples of undertakings that do not qualify as public purposes: "[b]onds issued in payment of land purchased to aid in a private enterprise in holding annual fairs are not for public purposes; nor those issued as a donation in assisting a company to embark in the manufacture of linen fabrics … ." *Id.* at 222–23 (internal citations omitted). The production of films for profit is a major private industry, like the manufacture of linen fabric, is a private enterprise, and not a public purpose. Nothing in the statute requires that the films produced with the subsidies be instructional or educational videos, or films for government use, or for purposes of informing the public. This is simply a subsidy to private, for-profit companies.

B. The Program credits designated MoPic-2023-008 and MoPic-2024-004 violate the Gift Clause as applied.

In addition to their facial challenge, Taxpayers challenge the $394,113 post-approved credit designated MoPic-2023-008[11] and the $1,220,642 pre-approved credit designated MoPic-2024-004 as-applied. *See* Exs. 1–3; Compl. at 20–21, ¶¶ 148–158.

For the same reasons that the Program as a whole violates the Gift Clause, these individual subsidies also violate the Clause. That is, they do not further a public purpose because the state exercises no control or supervision over how these funds will be used, and any purported return benefit for these subsidies.[12] The statute requires distribution of the subsidies if a film company satisfies the nominal requirements of the Program. As a

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[11] MoPic-2023-008 was post-approved by the ACA on December 20, 2024, and counts against the 2023 Program year cap. Ex. 2. It is Taxpayers' understanding that this credit is eligible to be claimed on the recipients 2024 tax filings and is therefore likely among those to be processed imminently by ADOR. *See* Compl. ¶¶ 149–50.

[12] Although Taxpayers requested public information about these individual subsidies, the ACA and ADOR refused to provide anything other than the large pre- and post-approved credit amounts. To the extent Defendants argue that the state is receiving additional direct consideration or exercise additional control or supervision over these subsidies above and beyond what the statute requires, Taxpayers would respectfully request that the current stay on discovery pending the motion to dismiss be partially lifted to allow for limited discovery on those issues. Taxpayers note, however, that any action to alter the requirements of the statute would likely be unlawful. *See* May 27, 2025 Minute Entry Order at 7, *Mechanic, et al. v. State of Arizona*, No. CV-2023-009364 (Maricopa County Superior Court) (The plain language of state law directs the state to distribute the money to the private recipient, and the state "does not have the authority to attach [its] own conditions or terms to the distribution of the money.").

result, individual subsidies under the Program, including MoPic-2023-008 and MoPic-2024-004, are also unconstitutional and should be enjoined.

II. Irreparable harm will result unless the Program is enjoined.

Taxpayers will be irreparably harmed if ADOR is permitted to process credits and issue subsidy payments under the Program. That's because Taxpayers cannot be compensated at law for violations of their constitutional rights and duties. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (the deprivation of a constitutional right "unquestionably constitutes irreparable injury"); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2009) ("'[C]onstitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm.'" (citation omitted)); *Bd. of Educ. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 241 n.5 (1968) (officials were injured by being forced "to choose between violating their oath [of office] and … refus[ing] to comply with [the challenged law]."). Because the Program and its expenditures violate the Constitution, Taxpayers face irreparable injury absent an injunction.

Taxpayers cannot adequately be compensated by money damages, making it a quintessential irreparable injury. *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd.*, 228 Ariz. 61, 65 ¶¶ 10–11 (App. 2011). Once the individual credits are processed, Taxpayers have no mechanism by which they can compel private parties to return the money to replenish the public coffers should completed expenditures later be found unconstitutional. Thus, Taxpayers' constitutional claims with respect to the individual credits will be effectively extinguished once the subsidies are issued.

III. The balance of hardships and the public interest favor Plaintiffs.

When a government entity is a party to a lawsuit, it is appropriate to "consider the balance of equities and the public interest together." *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018).[13] Although it is not necessary for this Court to address these factors

[13] *See Flynn v. Campbell*, 243 Ariz. 76, 80 ¶ 9 (2017) ("Although a federal court's interpretation of a federal procedural rule is 'not binding in the construction of our rule,' we recognize its instructive and persuasive value and that 'uniformity in interpretation of

(because Taxpayers have a strong likelihood of success on the merits), any violation of the Constitution is also a hardship that tips the balance in favor of Taxpayers, and enforcing the Constitution is always in the public interest. *See, e.g.*, *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (citation modified)).

ADOR, by contrast, faces no significant hardship by continuing to stay the processing of Program credits. It has already been doing this for months now. Thus the balance of equities favors Taxpayers. Their rights under the Gift Clause are being violated, and they face the risk of greater injury to the public funds in which they have an equitable interest[14] if ADOR proceeds with its plans to hand out their money to private recipients. Indeed, their as-applied claims could well be extinguished should ADOR process those credits and issue payments.

Enjoining the Program is in the public interest. The public policy of this state is expressed first and foremost in its constitution, which prohibits subsidies and other gifts of public resources. *CSA 13-101 Loop, LLC v. Loop 101, LLC*, 236 Ariz. 410, 412 ¶ 8 (2014) ("We discern public policy from our constitution.").

Conversely, *failure* to enjoin the Program would incentivize unconstitutional behavior by government entities.

The balance of hardships and the public interest each favor Taxpayers and injunctive relief.

IV. Plaintiffs meet all requirements for preliminary relief, and no bond should be required.

A plaintiff seeking preliminary relief must usually post a bond "in such amount as the court considers proper to pay," Ariz. R. Civ. Proc. 65(c), but the Court has discretion

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our rules and the federal rules is highly desirable.'" (quoting *Orme Sch. v. Reeves*, 166 Ariz. 301, 304 (1990)).

[14] Taxpayers have "'equitable ownership of [public] funds,'" and "'illegal expenditures made or threatened by a public agency'" constitute injury to taxpayers which they have standing to enjoin. *Rodgers v. Huckelberry*, 247 Ariz. 426, 429 ¶ 11 (App. 2019) (citations omitted).

to waive this requirement where doing so serves the interests of justice. *In re Wilcox Revocable Trust*, 192 Ariz. 337, 341 ¶¶ 17–20 (App. 1988); *see also Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2004) ("requiring nominal bonds is perfectly proper in public interest litigation."). Anything more than a nominal bond will have a chilling effect on efforts to ensure legal compliance. *Cf. Wistuber*, 141 Ariz. at 350 (Attorney fees should not be awarded "[w]here aggrieved citizens, in good faith, seek a determination of the legitimacy of governmental actions … [c]ourts exist to hear such cases; we should encourage resolution of constitutional arguments in court rather than on the streets."). The Court should waive the bond requirement or set it at a nominal amount.

CONCLUSION

This Court should grant Taxpayers' Motion and enter a preliminary injunction enjoining the Program and the processing and issuance of tax credits under the Program, until the Court has the opportunity to consider and enter a permanent injunction.

RESPECTFULLY SUBMITTED this 5th day of August 2025.

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CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 5th day of August 2025, with a copy delivered via the ECF system to:

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ARIZONA
COMMERCE AUTHORITY

November 7, 2023

[redacted]

RE: Pre-Approval Certification for Motion Picture Production Tax Credits

[redacted] [redacted]

Program Cap Year: 2023
Priority Placement Number: MoPic-2023-008
Pre-Approved Tax Credit: $464,582

Dear [redacted]

Thank you for submitting an initial pre-approval application request for tax credits under the Arizona Motion Picture Production Program (the "Program") pursuant to A.R.S. §41-1517. The Arizona Commerce Authority (the "Authority") is pleased to advise that the Production Company referenced above has met the requirements for pre-approval under the Program, pursuant to which the Authority is reserving **four hundred sixty four thousand five hundred eighty two dollars ($464,582)** in refundable tax credits for the Production Company. This Pre-Approval Certification ("Certification") does not guarantee the receipt of tax credits.

To maintain Certification, the Production Company must begin production within nine (9) months after this Certification letter. To verify production has begun and avoid lapse of Certification, the Production Company must submit a nine (9) month notification report via the Authority's electronic application system and required documentation, no later than **August 7, 2024**.

Failure to maintain Certification will void the Production Company's pre-approval for this tax incentive and return the reserved pre-approved tax credit amount to the calendar year's fund.

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Exhibit 1

ARIZONA
COMMERCE AUTHORITY

To receive post-approval, the Production Company must submit an application for post-approval via the Authority's electronic application system and demonstrate that the Production Company has satisfied the eligibility requirements of A.R.S. §41-1517(H), including, among other matters:

- A statement completed by a Certified Public Accountant, who is licensed in Arizona and who is approved by the Authority, to certify the total amount of eligible Production Costs associated with the Production including applicable labor costs and any other information requested by the Authority.

- A viewable copy of the pre-approved Production, that verifies the Production Company has included in the on-screen credits an acknowledgement the Production was filmed in Arizona and meets the content restrictions set forth in A.R.S. §41-1517(F).

The reserved tax credit amount specified above is the maximum pre-approved tax credit amount for the Production from the **2023** calendar year cap. The post-approved amount of tax credits will be determined by the amount of qualified production costs documented after completion of the production and confirmation of compliance with other Program requirements. You are strongly encouraged to thoroughly review the Authority's Rules and Guidelines for the Program to ensure a complete understanding of all requirements for final post-approval of the tax credits offered by the Program.

Upon receipt of post-approval, the Production Company may claim the tax credits under A.R.S. §43-1082 or 43-1162 by filing an original income tax return with the Arizona Department of Revenue ("Revenue") accompanied by Revenue Form 334 and a copy of the Post Approval Certification letter.

If you have any questions, please contact the Program Manager, Cindy Grogan, [redacted] via email at cindyg@azcommerce.com.

Sincerely,

Angie R. Valenzuela
Director, Financial Programs

CC: Alexandra Kusen, Arizona Department of Revenue

ARIZONA
COMMERCE AUTHORITY

December 20, 2024

[redacted]

RE: Post-Approval for Motion Picture Production Tax Credits

[redacted] [redacted]

Program Cap Year: **2023**
Priority Placement Number: **MoPic-2023-008**
Post Approved Tax Credit: **$394,113**

Dear [redacted]

Thank you for submitting an application for post-approval on December 19, 2024, for tax credits under the Motion Picture Production Tax Credit Program (the "Program") pursuant to A.R.S. §41-1517. The Arizona Commerce Authority (the "Authority") is pleased to advise that the Motion Picture Production Company as referenced above has met the requirements for post-approval under the Program. The post-approval applies to the Production as identified above and listed in the initial pre-approval.

The Motion Picture Production Company is eligible to claim **Three Hundred Ninety-Four Thousand One Hundred Thirteen Dollars ($394,113)** in income tax credits with the Arizona Department of Revenue ("Revenue") for the taxable year in which post-approval was issued. The allocation applies against the **2023** calendar year cap.

The Motion Picture Production Company has successfully demonstrated through the submission of the post-approval application that it has satisfied the eligibility requirements of A.R.S. §41-1517(H).

In addition, the Motion Picture Production Company submitted a viewable copy of the pre-approved Production, that verified the Motion Picture Production Company had included in the on-screen credits an acknowledgement that the Production was filmed in Arizona and meets the content restrictions set forth in A.R.S. §41-1517(F).

Exhibit 2

The tax credits may be claimed by the Production Company by filing an original tax return for the taxable year in which this post-approval has been issued, with the Arizona Department of Revenue ("Revenue") accompanied by Revenue Form 334 and a copy of this Post-Approval Certification.

Please note that this Post-Approval Letter does not guarantee the receipt of tax credits. Further, the calculation of any refund due to the Motion Picture Production Company from Revenue will be based on the allowable tax credits and the income tax liability of the Motion Picture Production Company for the current tax year.

Any refund otherwise payable by Revenue is subject to setoff under A.R.S. §42-1122. Additionally, if Revenue determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to A.R.S. §42-1108.

If you have any questions, please contact the Program Manager, Cindy Grogan, [redacted]

Sincerely,

Angie R. Valenzuela
Director, Financial Programs

CC: Alexandra Kusen, Arizona Department of Revenue

ARIZONA
COMMERCE AUTHORITY

August 12, 2024

[redacted]

RE: Pre-Approval Certification for Motion Picture Production Tax Credits

[redacted]

Program Cap Year: 2024
Priority Placement Number: MoPic-2024-004
Pre-Approved Tax Credit: $1,220,624

Dear [redacted]

Thank you for submitting an initial pre-approval application request for tax credits under the Arizona Motion Picture Production Program (the "Program") pursuant to A.R.S. §41-1517. The Arizona Commerce Authority (the "Authority") is pleased to advise that the Production Company referenced above has met the requirements for pre-approval under the Program, pursuant to which the Authority is reserving **One Million Two Hundred Twenty Thousand Six Hundred Twenty- Four Dollars ($1,220,624)** in refundable tax credits for the Production Company. This Pre-Approval Certification ("Certification") does not guarantee the receipt of tax credits.

To maintain Certification, the Production Company must begin production within nine (9) months after this Certification letter. To verify production has begun and avoid lapse of Certification, the Production Company must submit a nine (9) month notification report via the Authority's electronic application system and required documentation, no later than **May 12, 2025.**

Failure to maintain Certification will void the Production Company's pre-approval for this tax incentive and return the reserved pre-approved tax credit amount to the calendar year's fund.

[redacted]

Exhibit 3

ARIZONA
COMMERCE AUTHORITY

To receive post-approval, the Production Company must submit an application for post-approval via the Authority's electronic application system and demonstrate that the Production Company has satisfied the eligibility requirements of A.R.S. §41-1517(H), including, among other matters:

- A statement completed by a Certified Public Accountant, who is licensed in Arizona and who is approved by the Authority, to certify the total amount of eligible Production Costs associated with the Production including applicable labor costs and any other information requested by the Authority.

- A viewable copy of the pre-approved Production, that verifies the Production Company has included in the on-screen credits an acknowledgement the Production was filmed in Arizona and meets the content restrictions set forth in A.R.S. §41-1517(F).

The reserved tax credit amount specified above is the maximum pre-approved tax credit amount for the Production from the **2024** calendar year cap. The post-approved amount of tax credits will be determined by the amount of qualified production costs documented after completion of the production and confirmation of compliance with other Program requirements. You are strongly encouraged to thoroughly review the Authority's Rules and Guidelines for the Program to ensure a complete understanding of all requirements for final post-approval of the tax credits offered by the Program.

Upon receipt of post-approval, the Production Company may claim the tax credits under A.R.S. §43-1082 or 43-1162 by filing an original income tax return with the Arizona Department of Revenue ("Revenue") accompanied by Revenue Form 334 and a copy of the Post-Approval Certification letter.

If you have any questions, please contact the Program Manager, Cindy Grogan, [redacted] via email at cindyg@azcommerce.com.

Sincerely,

Angie R. Valenzuela
Director, Financial Programs

CC: Alexandra Kusen, Arizona Department of Revenue

ARIZONA
COMMERCE AUTHORITY

NOTICE OF ADOPTION

RULE NO. 23-01

1. Rule.

Arizona Motion Picture Production Program

2. Date of Posting Notice of Rule Making.

January 23, 2023

3. Public Comment Period.

January 23, 2023 to February 22, 2023

4. Hearing Date.

None

5. The deadline for the Authority to file a Notice of Adoption.

July 22, 2023

6. Notice of Adoption Posting Date.

May 17, 2023

7. Preamble.

An explanation of the agency's action pertaining to the Rule
The proposed Rules will govern the Arizona Motion Picture Production Program. The Rules are necessary to implement the program, created by the Legislature in 2022. Eleven (11) comments were received from nine (9) submitters.

8. Amendments.

Eleven (11) comments were received; changes were required to: clarify definitions and consistent use of defined terms, provide further explanation of tax incentive limitations and calendar year cap management considerations, further explanation of program eligibility requirements, update the pre-approval and post-approval process based on industry-specific terminology, more clearly define program eligible production costs. Additional administrative changes were made for clarity and readability.

The Arizona Commerce Authority hereby gives notice that Rule 23-01, as amended, has been adopted. The effective date of the Rule is May 17, 2023.

Nathan A. Prince
General Counsel

Exhibit 4

ARIZONA
COMMERCE AUTHORITY

ARIZONA MOTION PICTURE PRODUCTION PROGRAM
RULES & GUIDELINES

SECTION 1. OVERVIEW

The Arizona Motion Picture Production Program (A.R.S. § 41-1517) was established by the Arizona state legislature in 2022 to promote the workforce development and expansion of the commercial motion picture industry in Arizona. The goal of the Program is to create a competitive Motion Picture production industry presence and market in Arizona that will develop a substantial Motion Picture production industry workforce and encourage major capital investment in Qualified Production Facilities in Arizona. The Program accomplishes this goal by providing a refundable income tax credit under A.R.S. § 43-1082 or § 43-1165 to qualified Motion Picture Production Companies.

The Arizona Commerce Authority (the "Authority") may certify Motion Picture Production Companies that produce one or more Motion Pictures in Arizona beginning from and after December 31, 2022 through December 31, 2043.

SECTION 2. ELIGIBILITY REQUIREMENTS

A. A Motion Picture Production Company is eligible for tax credits upon Completion of the Motion Picture Production and compliance with the requirements of A.R.S. § 41-1517.

B. To qualify for tax credits, a Motion Picture Production Company must:

1. Do either of the following:

a. Use a Qualified Production Facility in Arizona to produce the Motion Picture Production or

b. If the portion of the Motion Picture Production filmed in Arizona, is filmed primarily at a Practical Location, produce and film the Motion Picture Production primarily in Arizona and perform **all** preproduction, postproduction and editing at an Industry Standard Facility in Arizona, if such a facility for those functions is available. For the purpose of this section, "primarily" shall mean more than fifty percent (50%) of the total filming activity.

In the event the Motion Picture Production Company believes that an Industry Standard Facility is unavailable within the state, it may request, in writing, an

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exception to this requirement. An Industry Standard Facility will be deemed unavailable if: (I) consideration has been paid for its use or is currently under an agreement with an option for use by another business, entity, or person and, in either circumstance, such period of use includes the applicant's estimated start date of principal photography; or (ii) such facility does not possess capacity, due to personnel or equipment, reasonably necessary to satisfy the pre-production, post-production or editing requirements of the Motion Picture Production Company.

2. Maintain the Motion Picture Production Company's Production Labor positions in Arizona.

3. Include in the on-screen credits for each Motion Picture Production an acknowledgment that the production was filmed in Arizona, except in the case of a Motion Picture Production, such as a Commercial advertisement message, when on-screen credits are not practicable. The Motion Picture Production Company will coordinate with the Authority's Film Office to utilize any necessary artwork, files, logos, releases, etc. to provide acknowledgement that the production was filmed in Arizona in the Motion Picture's credits.

4. Submit a Substantially Complete Application and receive a pre-approval certification from the Authority.

5. Provide supporting statements and records requested by the Authority to demonstrate that the Motion Picture Production Company satisfies the requirements of A.R.S. § 41-1517(B).

6. Begin production on the Motion Picture Production listed in the pre-approval application within nine (9) months of approval and include the Authority's Film Program Director on the daily call sheet distribution list.

7. Submit a post-approval application and receive approval from the Authority.

8. Once post-approval is received, the tax credits may be claimed by filing a tax return with the Arizona Department of Revenue ("Revenue").

SECTION 3. TAX CREDIT CALCULATION

A. Under A.R.S. § 43-1082 and 43-1165, for years beginning from and after December 31, 2022, a tax credit is allowed against the Production Costs paid by a Motion Picture Production Company in Arizona that are subject to taxation and that are directly attributable to a Motion Picture Production under A.R.S. § 41-1517.

B. The amount of the tax credit for a qualified Motion Picture Production Company shall be determined as follows:

1. An amount equal to a percentage of the total amount of the Qualified Production Costs as approved by the Authority, as follows:

    a. 15% tax credit for Production Costs up to $10,000,000

    b. 17.5% tax credit for Production Costs more than $10,000,000 but less than $35,000,000

    c. 20% tax credit for Production Costs more than $35,000,000

2. An additional 2.5% of the Motion Picture Production Company's Production Labor costs related to positions held by residents of Arizona as approved by the Authority.

    a. For the purpose of these Rules and Guidelines, Arizona residency shall mean an employee residing in Arizona who is legally authorized to work in the U.S.

3. An additional 2.5% of the Motion Picture Production Company's Qualified Production Costs if the Motion Picture Production Company either:

    a. Uses a Qualified Production Facility in Arizona to produce the Motion Picture Production.

    b. Films primarily at a Practical Location, produces and films the Motion Picture Production primarily in Arizona and performs all preproduction, postproduction and editing at a Qualified Production Facility in Arizona.

4. An additional 2.5% of the total amount of Qualified Production Costs as approved by the Authority if the Motion Picture Production is produced and filmed in association with a Long-Term Tenant of a Qualified Production Facility. Claiming of this additional credit excludes eligibility for the credit described in Section 3(B)(3).

SECTION 4. TAX INCENTIVE LIMITATIONS AND CALENDAR YEAR CAP MANAGEMENT

A. The Authority may not pre-approve tax credits exceeding the following amounts in a calendar year, of which up to $25,000,000 in each calendar year may be used for Motion Picture Productions that qualify for the Program pursuant to A.R.S. § 41-1517 (B)(1)(b):

1. In calendar year 2023, $75,000,000.

2. In calendar year 2024, $100,000,000.

3. In calendar year 2025, and each calendar year thereafter, $125,000,000.

B. The pre-approval priority shall be based on the date and time that the Motion Picture Production Company submits an initial Substantially Complete Application to the Authority. The date and time stamp on an application determines the order in which the Authority approves and allocates the calendar year cap.

C. The pre-approval amount applies against the applicable dollar limit for the calendar year in which the Initial Application was submitted regardless of whether the pre-approval period extends into the following year or years.

1. If sufficient cap is unavailable when an initial Application is submitted to the Authority, the qualified Motion Picture Production Company may receive any remaining cap amount.

2. The pre-approval amount shall not apply against expenses accrued prior to the calendar year in which the pre-approval application was received. Expenses accrued prior to the date of pre-approval, and within the same calendar year as the date of application, are eligible for tax credit consideration.

SECTION 5. INITIAL APPLICATION PROCESS FOR PRE-APPROVAL CERTIFICATION

A. All pre-approval certification applications must be submitted through the Authority's electronic application system.

B. The application shall include:

1. The name, address, telephone number and website of the Motion Picture Production Company.

2. The name, and address of an individual who will maintain records of expenditures in Arizona.

3. The projected first pre-production date and last production date in Arizona.

4. The production office address and office telephone number in Arizona.

5. The estimated total budget of the production.

6. The estimated total Production Cost expenditures in Arizona.

7. The estimated total percentage of the production that will take place in Arizona.

8. The estimated number and duration of full-time Production Labor employment positions in Arizona based on industry standard for the type of production.

9. The estimated number of employees who are residents of Arizona in the cast and crew.

10. The estimated median wage of Production Labor employment positions in Arizona.

11. A script or synopsis, the name of the proposed director and a preliminary list of the cast and producer.

12. An affidavit that the Motion Picture Production Company will meet all of the requirements to qualify for the tax credits, including that the Motion Picture Production Company will use a Qualified Production Facility in Arizona to produce the Motion Picture Production **or** the Motion Picture Production will film primarily at a Practical Location in Arizona and use an Industry Standard Facility or the Motion Picture Production will film primarily at a Practical Location in Arizona and has received an exception from using an Industry Standard Facility as no facility is available to meet the Motion Picture Production's schedule and, or requirements as provided in A.R.S. § 41-1517 (B)(1).

C. During the review of a Substantially Complete Application, the Authority may request additional information, conduct a site visit, or discuss the Application with the Motion Picture Production Company. If the Motion Picture Production Company does not satisfy the request within the allotted timeframe (maximum 28 calendar days), the Application will be considered inactive and withdrawn by the Motion Picture Production Company.

D. If a Motion Picture Production Company fails to provide any requested additional information by the end of the term of an extension granted by the Authority, the application will be deemed denied.

E. The Authority shall deny an Application if the Authority determines that:

1. The Motion Picture Production Company does not meet all the established criteria in A.R.S. § 41-1517 (B).

2. The Production would constitute an obscene motion picture film or obscene pictorial publication under Title 12, Chapter 7, Article 1.1.

3. The Production violates the obscenity Laws under Title 13, Chapter 35.

4. The Production would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor under Title 13, Chapter 35.1.

F. If the Authority denies an Application, the applicant may first request a reconsideration, and then if the decision remains a denial, the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If the Authority determines that a Motion Picture Production Company qualifies for the Motion Picture Production Tax Credits, the Authority shall issue the Motion Picture Production Company a pre-approval certification and transmit a copy of the pre-approval certification to the Arizona Department of Revenue ("Revenue").

H. Prior to issuing a pre-approval certification, the Program Manager will request the company remit a non-refundable processing fee equal to one percent (1%) of the pre-approved credit amount, not to exceed $100,000, and an additional administration fee equal to one percent (1%) of the pre-approved credit amount. The administration fee is refundable if the Authority is notified within 90 days from the pre-approval certification date that production will not commence. The fee payments may be made by credit card by accessing the Authority's payment portal or made by check, ACH, or wire transfer.

I. After receipt of the requested processing and administration fees, the Authority will issue a pre-approval certification to the Motion Picture Production Company, and the Authority shall send a copy of the pre-approval certification to Revenue.

J. A pre-approval certification does not guarantee a company's ability to claim tax credits. Final eligibility for tax credits is determined in accordance with the post-approval completion process.

K. Any information gathered from Motion Picture Production Companies is considered confidential taxpayer information.

SECTION 6. PRE-APPROVAL PERIOD

A. Within nine (9) months after pre-approval the Motion Picture Production Company must begin production and notify the Authority that the pre-approved production has begun on the Motion Picture Production, which the Authority may verify through a site visit. To verify production has begun, and avoid lapse of pre-approval, the Motion Picture Production Company shall provide one of the following:

1. Notice and declaration of Commencement of Principal Photography with an estimated start date signed by the producer, the shooting schedule (when available).

2. Documentation of its Arizona expenditure of the lesser of:

    a. Ten percent (10%) of the estimated total Arizona budget of the pre-approved production.

    b. Two hundred fifty thousand dollars ($250,000).

3. A Certificate of Insurance for the pre-approved Motion Picture Production. In addition, the Motion Picture Production Company must provide one of the following to the Authority:

    a. A copy of a contract, loan out agreement, or deal memo with cameraperson(s) and crew.

    b. A copy of the crew call sheet for the first day of production.

    c. Evidence that residents of this state have been paid a total of at least five thousand dollars ($5,000) for work on the pre-approved Motion Picture Production.

    d. A copy of the contract or agreement directly attributable to the pre-approved Motion Picture.

B. If the company fails to begin production and notify the Authority within nine (9) months, the pre-approval shall lapse, all applicable fees collected will be forfeited, and the company will not be eligible for tax credits. Any such reserved credits may then be eligible for distribution for other applicants.

C. A pre-approval certification is effective for nine (9) months from the date of issuance of the pre-approval certification, and the expiration date shall be stated in the pre-approval certification.

D. A Motion Picture Production Company may apply to the Authority to extend the pre-approval certification period if the Motion Picture Production Company can demonstrate that an act of force majeure occurred, and that the pre-approval certification will expire before the production activities begin.

SECTION 7. POST-APPROVAL APPLICATION SUBMITTAL AND PROCESSING

A. On Completion of the Motion Picture Production, a Motion Picture Production Company that is pre-approved for the Motion Picture Production tax credits must submit a post-approval application through the Authority's electronic application system. A production does not need to be released or distributed to be considered complete and to generate tax credits.

B. The post-approval application shall include:

1. A complete and viewable copy of the pre-approved Motion Picture Production, in a format acceptable by the Authority (e.g., final picture locked viewing copy)

2. An audited statement completed by a Certified Public Accountant, who is licensed in Arizona and who is approved by the Authority, to certify the total amount of Qualified Production Costs associated with the production. This statement shall include, but is not limited to the following information:

    a. The total amount of Qualified Production Costs associated with the production.

    b. Labor costs related to positions held by residents of Arizona as approved by the Authority, if applicable.

    c. Any other information or combinations of information requested by the ACA.

C. The Authority will endeavor to process post-approval within sixty (60) days, however, during the review of an application for post-approval, the Authority may request additional information, conduct a site visit, or otherwise discuss with the Motion Picture Production Company any issue related to or arising during the review.

D. If a Motion Picture Production Company fails to provide any requested additional information by the earlier of (I) 14 calendar days after request by the Authority (or up to the number of additional days that may be expressly granted by the Authority if the Motion Picture Production Company seeks and receives an extension within the initial 14-day period.)

E. The Authority shall provide post-approval to the Motion Picture Production Company that the company has met the eligibility requirements of A.R.S. § 41-1517(H) and notify the Arizona Department of Revenue ("Revenue") that the Motion Picture Production Company may claim the tax credits under A.R.S. §43-1082 or 43-1165.

F. Co-owners of a Motion Picture Production Company, including partners in a partnership, members of a limited liability company and shareholders of an S corporation, as defined in Section 1361 of the IRC, may each claim the pro rata share of the tax credit allowed based on ownership interests. The total of the tax credits allowed for all such owners may not exceed the amount that would have been allowed a sole owner.

G. The amount of the tax credits not used to offset Arizona income tax liability shall be paid pursuant to A.R.S. §43-1082(F).

H. If the Authority denies a post-approval Application, the applicant may first request a reconsideration, and then if the decision remains a denial, the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.

SECTION 8. DEFINITION OF PROGRAM TERMS

A. For purposes of applying for and maintaining eligibility for the Motion Picture Production Tax Program, the following terms are defined by the Authority, and/or defined by A.R.S. § 41-1517. If a term is not defined, the most commonly accepted meaning will apply.

1. "Application" means the electronic application system form, and all required uploads an applicant must submit to apply for the tax credit.

2. "Begin production" means a production company has either:

    a. Notice and declaration of Commencement of Principal Photography with an estimated start date signed by the producer, the one-liner shooting schedule (when available), and the commitment to include the Authority's Film Program Director on the daily call sheet distribution list.

    b. Has Arizona expenditures of the lesser of:

        i. Ten percent of the estimated total Arizona budget of the production.

        ii. Two hundred fifty thousand dollars.

    c. Attained a Certificate of Insurance demonstrating coverages and policies are in place on behalf of an Insured/Production. In addition, one of the following must have occurred:

        i. Entered into a contract, loan out agreement or deal memo with cameraperson(s) and crew.

        ii. The crew call has completed the first day of production.

        iii. Has paid residents of Arizona a total of at least five thousand dollars for work on the pre-approved Motion Picture.

        iv. Entered into a contract or agreement directly attributable to the pre-approved Motion Picture.

3. "Certificate of Insurance" is a document which serves as the demonstration of coverages and policies in place on behalf of an Insured/Production and is often issued to 3rd Parties to provide proof of coverage. The certificate is issued on a standard form (ACORD 25) and should include the Insured/Production Company name, legal address, the broker/producer name, address, and contact information, applicable carriers, coverages and limits, policy numbers, and effective dates of all relevant policies and be signed by a responsible party for the broker/carrier.

4. "Commencement of Principal Photography" means the first date within Arizona of principal ongoing filming of significant portions of a qualified film which is intended to be incorporated into the final product.

5. "Commercial advertisement" means an advertising message designed for delivery through either:

    a. A Motion Picture film or video medium to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event, or cause.

    b. Still photography that is used in national or international print media to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event, or cause.

6. "Completion of the Motion Picture Production" means the completion of Principal Photography and a complete and viewable copy of the Motion Picture (e.g., final picture locked viewing copy) is available.

7. "Full-time employee" means an individual who works an average of at least 8 hours a day (during his/her employment periods) on productions identified in the pre-approval application throughout the pre-approval period and for whom a qualified company or its authorized payroll service company is required to remit federal or state withholding tax.

8. "Industry Standard Facility" means a facility that, in the judgment of the Authority, has the required equipment and capabilities that meet generally minimal requirements followed by establishments primarily engaged in producing motion pictures, videos, television programs, or commercial advertisement messages. These specialized capabilities may include but are not limited to mixing facilities, Automated Dialogue Replacement (ADR) rooms, screening facilities, flexible technical creative spaces designed to support picture, sound, visual effects, color or sound workflows, pre-production and post-production support office spaces, secure data centers/technical hubs, operations support centers and

maintenance facilities, and is supported by appropriate power, connectivity, water, security and related technical infrastructure. The Authority will maintain a non-exhaustive list of qualifying facilities for reference.

9. "Long-Term Tenant" means a person that enters into a lease of at least five years for the use of a Qualified Production Facility.

10. "Motion Picture" means a single medium or multimedia program, including a commercial advertisement, music video or television series.

    a. Motion Picture does not include any production featuring actual news, current events, weather, locally produced and locally broadcast television productions, financial market reports, concerts, internet broadcasts, talk shows and interviews, game shows, sporting events, award or other gala events, a production whose sole purpose is fundraising, podcast, a production used for corporate or organizational training or in-house corporate advertising or other similar production activities.

11. "Motion Picture Production" means a single medium or multimedia program, including a feature film, episodic series, or commercial advertisement message, that:

    a. Is created by production activities conducted in this state.

    b. Can be viewed or reproduced.

    c. Is intended for commercial distribution or licensing in the delivery medium used.

12. "Motion Picture Production Company" means any person or business entity primarily engaged in the business of producing motion pictures and that has a physical business office in this state.

13. "Music video" means a filmed or videotaped rendition of a song or songs, portraying musicians performing the song or other visual images set to the lyrics of the song.

14. "Practical Location" means a physical location at which a Motion Picture Production is filmed, that is not and that does not use an industry standard sound stage or production facility to produce and film the Motion Picture Production.

15. "Production Costs" means the following costs that are incurred and taxable in Arizona:

a. All compensation paid to talent, writers, directors, and management; paid via payroll or loan out business entity

b. All compensation paid for Production Labor; paid via payroll or loan out business entity

c. Set construction and operation costs paid pursuant to construction contracts with contractors who are licensed under Title 32, Chapter 10

d. Wardrobe, props, accessories, and related services.

e. Photography, sound synchronization, lighting, and related costs.

f. Editing and related services.

g. Rental of Qualified Production Facilities.

h. Rental of equipment.

i. Catered food, drink and condiment purchased from a Qualified Production Facility, while production is taking place at a Qualified Production Facility.

j. Catered food, drink and condiment purchased from a licensed caterer when production activities are taking place at a Practical Location.

k. Insurance loss and damage expenses.

l. Other direct in-state costs of producing the Motion Picture Production pursuant to Rules adopted by the Authority.

m. Does not include payments for penalties and fines or fees or deposits established by the Authority or the Revenue to administer the Program.

16. "Production Labor" means all laborers working on a production that are not talent, writers, producers, or management.

17. "Program" means the Arizona Motion Picture Production Program implemented pursuant to A.R.S. § 41-1517

18. "Qualified Production Facility" means a structure that is built for film industry purposes, is located in this state, and contains dedicated soundstage space that at least ten thousand (10,000) contiguous square feet which may be partitionable, and meets generally accepted

industry standards, including standards for soundproofing, lighting, air conditioning, and Motion Picture Production quality technology for producing, filming or otherwise creating a Motion Picture Production.

19. "Script" means the storyline, dialogue, scenes and directions written for a Motion Picture.

20. "Substantially complete" means all questions in the initial application are fully addressed by the company and all documents required by the Authority are attached or can be supplied within a timely manner after receipt of notification by the Authority of any deficiencies, as described in Section 5(C).

21. "Synopsis" means a condensed written outline or summary of the Motion Picture.

22. "Television series" means a group of productions created or adapted for television broadcast with a common series title, related to each other in subject or theme, which is produced seasonally for and with or without a predetermined number of episodes. Such programming is broadcast or distributed via over-the-air, satellite, cable, or streaming service. Television series includes a pilot production for promotion or introduction of a television series.

EXPERT REPORT
Arizona Motion Picture Production Program

Michael Thom, Ph.D.

My name is Michael Thom. I earned a Doctor of Philosophy in political science from Michigan State University in 2012. I am currently an associate professor at the University of Southern California's Sol Price School of Public Policy, which has employed me since 2012. My primary research field is public finance, and I am the author of two books on tax policy and the author or co-author of seventeen peer-reviewed studies. Outside of my teaching and research responsibilities, I am the director of the Price School's professional doctorate program in policy, planning, and development.

ISSUE 1: The value of including an Arizona filming acknowledgment within the end credits for film and television programs produced in the state.

The Arizona Motion Picture Production Program's enabling legislation requires that certain productions "[i]nclude in the credits for each motion picture production an acknowledgment that the production was filmed in Arizona." In theory, the acknowledgment induces tourism within Arizona that generates economic activity and tax revenue for the state and its municipalities. Critically, the enabling legislation appears to compel the acknowledgment within productions filmed "on location" in Arizona but not from productions filmed within a state-based facility.

Productions Filmed "On Location" in Arizona

There is no reason to believe the acknowledgment will trigger substantive tourism-induced economic activity and tax revenue. Indeed, that would require that a viewer:

- Observes the acknowledgment at the end of a credits sequence, and
- Understands the acknowledgment's meaning, and
- Plans a trip to Arizona rather than another visually similar filming location(s) that they would not otherwise take at any point during their lifetime.[1]

If the probability of each event in the sequence is 50 percent, then the chance that all three events occur—the conditional probability—is just 12.5 percent.[2] Taken another way, only one out of every eight viewers will travel to Arizona at some point because of the acknowledgment.

Yet that estimate depends on unrealistic assumptions. If ten percent of viewers see the acknowledgment, 100 percent understand it, and two percent plan a trip, the conditional probability is only 0.2 percent, or one out of 500 viewers.[3] If one percent see the acknowledgment and the other assumptions hold, the conditional probability drops to 0.02 percent, or one out of 5,000 viewers.

Even those approximations may be too optimistic. Most streaming services automatically play the next episode of a series before the previous episode's credits conclude. In that scenario, zero percent of viewers see filming acknowledgment(s). Even if a viewer watches the entire credit sequence, they may

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[1] This further assumes that the acknowledgment-induced traveler is a net gain to Arizona tourism (e.g., that they don't "bump" another tourist from a hotel room).
[2] The conditional probability is 50% multiplied by 50% multiplied by 50%.
[3] A 2010 study referenced a New Mexico report that found less than two percent of potential and actual tourists mentioned that a New Mexico-based film or television shaped their destination choice.

not notice the filming location(s). Notably, the enabling legislation does not stipulate (1) the size of the acknowledgment's text and/or graphics, (2) the length of time it must appear on the screen, or (3) whether it must identify the state, relevant municipality(ies), or both.

The preceding discussion assumes that productions filmed "on location" in Arizona have an Arizona-based setting. But the enabling legislation includes no such condition. Thus, productions may use Arizona as a substitute for another location *That* location—not Arizona—is more likely to benefit from tourism, however negligible, yielding no economic activity in Arizona. This practice is commonplace. For example, Netflix's "Stranger Things" is set in Indiana but filmed and subsidized by the state of Georgia, Paramount's "Yellowstone" is set in Montana but primarily filmed in and was subsidized by Utah, and Warner Brothers's "Batman v Superman: Dawn of Justice" was set in two fictional cities but primarily filmed in and was subsidized by Michigan.

Productions Filmed at an Arizona-based Facility

The absence of a filming acknowledgment precludes tourism, related economic activity, and consequent tax revenue, yielding no benefit to the state of Arizona.

Summary

Given all the above, it is reasonable to assign no fair market value to a filming location acknowledgment. The absence of an acknowledgment in productions that use Arizona-based facilities simply cannot induce tourism. Any induced tourism from an acknowledgment in productions filmed "on location" in Arizona is no more than a marginal increase over what would transpire without an acknowledgment, which is insufficient to justify the program's cost.

ISSUE 2: The value of mandating that qualified motion picture productions "maintain" employment positions within Arizona.

The Arizona Motion Picture Production Program's enabling legislation requires that qualifying productions "maintain ... labor positions in this state." In theory, the requirement stimulates Arizona-based entertainment industry employment, which benefits the state by facilitating economic activity and tax revenue. That tax revenue should, in theory, outweigh the state's incentive costs—mainly tax expenditures.

That is implausible for three reasons. First, the enabling legislation fails to define "maintain." For example, it does not specify the number of positions a production must maintain, the duration of employment that the state considers sufficient to "maintain" a position, or whether the positions are part- or full-time.[4] Without statutory or regulatory clarity, it is impossible to project any employment impact. Consequently, it is also impossible to assign any fair market value to the jobs purportedly maintained because of Arizona's incentive.

Second, the enabling legislation does not include any wage requirement for each job a production purportedly maintains in Arizona. That could lead to job creation at a wage sufficiently low to qualify employee(s) state-funded welfare benefits. The cost of those benefits is, of course, in addition to the cost of the incentive's tax expenditure.

[4] Arizona's threshold for full-time is extremely low. The Arizona Commerce Authority defines a "full-time employee" as one who works "at least 8 hours a day (during his/her employment periods) on productions." For example, a production can likely count an individual working an eight-hour shift on one production as a "full-time employee."

Third, there is no evidence that tax incentives like those described in the legislation—i.e., refundable tax credits—create jobs. My first peer-reviewed study on the effects of refundable and transferrable tax credits for the motion picture industry found that the latter evoke modest, temporary wage gains for the existing workforce and have no stimulative impact on employment.[5] Other peer-reviewed studies published in 2019, 2020, and 2021, written by different authors using unique datasets and methodologies, come to a similar conclusion: motion picture industry incentives do not create a significant number of jobs (if any).[6]

Those studies, plus cost-benefit evaluations conducted by over 20 state governments, are unequivocal on another point: tax incentives for the motion picture industry are revenue-negative.[7] In every case, the incentive's cost to the sponsoring government is far greater than the benefit of stimulated economic activity.[8] There is no plausible reason to expect Arizona's experience will differ; rather, the cost of Arizona's incentive will almost certainly be disproportionately negative compared to the benefits the state earns (i.e., new tax revenue).

Importantly, the enabling legislation and regulatory text create an environment prone to industry and agency abuse. To wit:

(1) The legislation allows the disbursing agency to author its own performance assessment based partly on an unspecified "third-party review" of economic benefits that rely on "input-output economic modeling" known to exaggerate tax incentives' beneficial effects.
(2) The legislation delays a formal audit of the program to the beginning of its fifth year, by which point Arizona may have expended over $250 million on it.
(3) All performance reports apparently depend on employment data the incentivized industry provides, which is a clear conflict of interest.

Given all the above, it is reasonable to assign no fair market value to the legislation's provision regarding Arizona-based employment. The state will not recover tax revenue lost to the incentive program through new revenue from associated economic activity (e.g., new motion picture industry employment).

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July 28, 2025

[5] Michael Thom (2018), "Lights, Camera, but No Action? Tax and Economic Development Lessons From State Motion Picture Incentive Programs," American Review of Public Administration 48(1): 33-51.
[6] Patrick Button (2019), "Do Tax Incentives Affect Business Location and Economic Development? Evidence from State Film Incentives," Regional Science and Urban Economics 77: 315-339; John Charles Bradbury (2020), "Do Movie Production Incentives Generate Economic Development?" Contemporary Economic Policy 38(2): 327-342; Patrick Button (2021), "Can Tax Incentives Create a Local Film Industry? Evidence from Louisiana and New Mexico," Journal of Urban Affairs 43(5): 658-684; John Charles Bradbury (2020)
[7] Michael Thom (2021), "Does Program Evaluation Affect Program Termination? Insights from the Repeal of Corporate Tax Incentives for the Motion Picture Industry," Policy Studies Journal 49(4): 1135-1159.
[8] For example, many states find that each $1 in incentive cost generates between five and 20 cents in new tax revenue.