

November 1, 2023

Robert Woods, Director of the Arizona Department of Revenue  
Attn: Hsin Pai, Esq., General Counsel  
1600 West Monroe Street  
Phoenix, Arizona 85007  
hpai@azdor.gov  
*VIA EMAIL AND U.S. MAIL*

**Re: Violation of 2023 Ariz. Laws ch. 147; Cease and Desist; Litigation Hold Notice; Public Records Request**

Dear Director Woods:

This firm represents Warren Petersen, in his capacity as President of the Arizona Senate, and Ben Toma, in his capacity as the Speaker of the Arizona House of Representatives. We write on their behalf to call your attention to direct and apparently willful defiance of Arizona law by your Department, presumably in concert with the Governor's Office.

As you know, the fiscal 2024 budget embodies an amalgamation of complex, carefully negotiated, and interdependent compromises between the legislative and executive branches. Among those bargains was an agreement that “[n]o letter relating to the Arizona families tax rebate issued under this section shall . . . reference the governor’s office.” 2023 Ariz. Laws ch. 147, § 3(G) (S.B. 1734). Animating this provision was the Legislature’s concern that the Governor would subvert a commonsense policy measure into a self-serving political stunt on the taxpayers’ dime.

Those apprehensions were well-founded. Your Department has distributed, apparently to all individuals who are eligible for the Families Tax Rebate, a letter that advises them to “visit the Arizona Department of Revenue’s online claim portal ([www.azgovernor.gov](http://www.azgovernor.gov)) . . .” The advertised URL, however, not only explicitly references the Governor but directs users to the Governor’s own website. Further, clicking the designated link on the homepage brings the user not to the Department’s portal, but rather to *another* webpage in the [azgovernor.gov](http://azgovernor.gov) domain that features a video of self-congratulatory bloviations from the Governor. In addition to contravening the plain terms of S.B. 1734, this publication of the Governor’s homepage is gratuitous. The Department could have—and, to ensure compliance with S.B. 1734, should have—simply instructed recipients to visit the designated page on the Department’s own website (to wit, <https://familyrebate.aztaxes.gov>).<sup>1</sup> Instead, the Department impermissibly misdirected rebate recipients on a detour through the Governor’s curated, self-promotional online platform. This is a clear violation of Arizona law.

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<sup>1</sup> It also bears noting that this particular subpage prominently displays a photograph of the Governor. Curiously, the Governor’s image is absent from other subpages on the same site, many of which are designed to *collect* tax payments.

While any violation of a controlling statute is troubling in its own right, the Department's letter compounds an institutional insult with injury to Arizona taxpayers by unlawfully expending significant sums of public money to disseminate what is, in part, a political message. Underscoring public officials' sacrosanct duty to safeguard the resources they hold in trust for the public, Arizona law holds individual state officers and employees *personally* liable for illegally expended funds, "plus a penal sum of twenty per cent thereof." A.R.S. § 35-196. In addition, the Attorney General possesses—for up to five years—a broad right of action to enjoin impermissible disbursements and to pursue specific public agencies, officials or employees to recover illegally paid funds (in addition to penalties, costs and attorneys' fees). *See* A.R.S. § 35-212; *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, 13 (2022) (holding that claims brought by the Attorney General under A.R.S. § 35-212 are subject to a five-year statute of limitations, rather than a one-year statute of repose).

Subject to and without waiving their own right to pursue all available recourse, the Speaker and President hope and expect that the Attorney General will thoroughly investigate the genesis of the Department's letter and initiate all available remedial proceedings against the responsible persons.<sup>2</sup>

In addition, the Speaker and President demand that the Department immediately cease and desist from printing or disseminating the above-referenced letter, as well as any other public communications that do not comply with S.B. 1734.

Finally, the Speaker and President request that the Department promptly provide to them, pursuant to the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, and other applicable law, the following records in the Department's possession, custody or control:

1. All documents and communications (including but not limited to communications with any staff member or agent of the Governor's Office) between March 1, 2023 and the present concerning or referencing the Families Tax Rebate.
2. All documents and communications (including but not limited to communications with any staff member or agent of the Governor's Office) between March 1, 2023 and the present concerning or referencing any provision of S.B. 1734 in its introduced, amended or enacted form.
3. All communications between the Department (including any officer, employee or agent of the Department) and the Governor or any staff member or agent of the Governor's Office between March 1, 2023 and the present that contain any or all of the following terms: (a) "tax credit," (b) "tax rebate," (c) "families rebate," or (d) "budget."
4. All drafts (whether in full, partial, incomplete or final form) of any letter intended for distribution to Arizona residents concerning the Families Tax Rebate, and any documents containing or reflecting actual or potential edits or modifications to such drafts.

Further, because the Speaker and President reasonably anticipate litigation arising out of this matter, please ensure that the Department (to include its officers, employees and agents) preserve all documents, records, electronic information and other evidence that may be relevant in any way to the subject matter of this letter.

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<sup>2</sup> If the Attorney General refuses to do so, taxpayers may act in her stead. *See* A.R.S. § 35-213.

The Department's enabling of the Governor's inappropriate and unlawful use of taxpayer funds for her own self-promotion is deeply disappointing to the Speaker and President. The fiscal 2024 budget was a hard-won demonstration of unity in a fractious political environment. The Administration's unfortunate decision to renege on one of the key compromises underlying that agreement substantially corrodes the dynamics of trust and reciprocity that are especially critical during this period of divided government.

Thank you for your attention to this important matter.

Respectfully,

*s/ Kory Langhofer*

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Kory Langhofer

*s/ Thomas Basile*

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Thomas Basile

cc. Josh Bendor, Solicitor General of Arizona