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February 3, 1982

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable Jeffrey J. Hill
Arizona State Senate
State Capitol, Senate Wing
Phoenix, Arizona 85007

Re: I82-015 (R81-187)

Dear Senator Hill:

In your letter of December 18, 1981, you asked for our opinion whether a windmill is a solar energy device for which a tax credit should be allowed by the Department of Revenue pursuant to Arizona's tax statutes. It is our opinion that a windmill or wind operated mechanism is not a solar energy device for which a tax credit should be allowed under relevant tax statutes.

Although the federal Internal Revenue Code does allow residential and business energy credits for renewable energy source property that uses solar, geothermal or wind energy (I.R.C. Sec. 44C and Sec. 46(a)(2)), comparable Arizona tax statutes allow a credit only for solar energy devices (A.R.S. §§ 43-1074, 43-1161, 43-1162). The Arizona provisions allow a "solar" credit as contrasted with the broader federal "energy" credit from any renewable source.

This difference between the federal and Arizona tax law is not contrary to the general legislative intent expressed in the Arizona Income Tax Act of 1978 to base the taxation of income in Arizona upon the federal method of computing gross income -- the so-called "piggyback" approach. The 1978 Arizona Income Tax Act, which became effective on January 1, 1979, establishes the federal adjusted gross income computed pursuant to the federal Internal Revenue Code as the Arizona gross income for resident individuals. (A.R.S. § 43-1001.2). For corporations, estates, trusts and partnerships, the Arizona

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gross income is taxable income pursuant to the Internal Revenue Code. (A.R.S. §§ 43-1101, 1301 and 1401).

However, Arizona gross income based on federal computations is then subject to modifications specified in the Arizona tax law. (See A.R.S. §§ 43-1101, 43-1301, and 43-1401). The basic Arizona gross income figure, which is derived from the federal return, is modified by certain additions, subtractions, exemptions, deductions and credits authorized by the Arizona tax law. The fact that the allowable Arizona solar energy credit does not correspond exactly to the federal energy credit does not violate the "piggyback" concept which only relates to the income computation.

The differing language in the Arizona and federal tax law relating to solar and energy credits illustrates the differing intent of the Arizona Legislature and Congress in establishing these credits. The federal credit is designated as an energy credit (I.R.C. Sec. 44C) and a credit for investment in energy property (I.R.C. Sec. 38 and Sec. 46(a)(2)). The state credits are designated as a credit for solar energy devices or solar application credit, (A.R.S. §§ 43-1074, 43-1161, and 43-1162).

Pursuant to I.R.C. Sec. 44C(a), a credit is allowed against tax in an amount equal to the sum of the qualified energy conservation expenditure plus the qualified renewable energy source expenditures. Renewable energy source expenditure means an expenditure for renewable energy source property installed in connection with a dwelling unit. (I.R.C. Sec. 44(C)(2)(A)).~~X~~ I.R.C. Sec. 44C(c)(5) provides in pertinent part:

The term "renewable energy source property" means property

(A) which, when installed in connection with a dwelling, transmits or uses

(i) solar energy, energy derived from the geothermal deposits (as defined in section 613(e)(3)), or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water

or electricity for use within such dwelling,
or

(ii) wind energy for nonbusiness residential
purposes

In this section, Congress clearly recognized the difference between solar, geothermal and wind energy and chose to specifically include all of the renewable energy source properties that use these various forms of renewable energy within the credit provision. Similarly, the federal provision authorizing a credit for investing in energy property specifically differentiates and includes solar, wind, geothermal and ocean thermal property in the investment energy credit provision. (See Code Sec. 46(a)(2)(B) and (C)).

The proposed federal income tax regulation § 1.44C-2 relating to I.R.C. Sec. 44C also separately defines solar energy property and wind energy property. The federal definition of solar energy property is as follows:

(f) Solar energy property. The term "solar energy property" includes equipment and materials (and parts solely related to the functioning of such equipment) which, when installed in connection with a dwelling, transmit or use solar energy directly to heat or cool the dwelling or to provide hot water for use within the dwelling. Generally, this is accomplished through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans which circulate the hot liquids or air), and heat exchangers (to utilize hot liquids or air to create hot air or water). Property which uses, as an energy source, fuel or energy which is indirectly derived from solar energy, such as fossil fuel or wood, is not considered solar energy property. Solar energy property includes 'passive solar systems' as well as 'active solar systems', or a combination of both types of systems...." (Emphasis added.)

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It is critical to note that the term "solar energy property" does not mean property that uses, as an energy source, fuel or energy that is indirectly derived from solar energy. Thus, a windmill that uses wind energy that is indirectly derived from the solar flux is not a solar energy property under the federal regulation. The windmill only qualifies for a federal credit because a specific provision qualifies wind energy property for a credit.

The Arizona tax statutes relating to credits show that the intent of the Legislature was to provide a special incentive for the use of solar energy devices as opposed to the federal incentive for the use of all renewable energy devices. A.R.S. § 43-1074 (which also provides the definition of solar energy device for A.R.S. §§ 43-1161 and 43-1162) states:

"Solar energy device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive systems shall be clearly designed as a solar energy device such as a trombe wall and not merely a part of a normal structure such as a window.

Under the common and ordinary meaning of the words in this definition, a solar energy device collects and transfers solar generated energy, not other types of energy such as wind generated energy. In construing a statute, words must be given their ordinary common meaning unless it appears from the context or otherwise that a different meaning is intended. Ross v. Industrial Commission, 112 Ariz. 253, 540 P.2d 1234 (1975).

A further indication of legislative intent to confine the credit in question to devices directly related to

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utilization of solar energy is the language in
A.R.S. § 43-1074.F.1:

To qualify for the credit allowed by this
section:

1. The collectors, heat exchangers and
storage units of a solar energy device and
their installation shall be warranted for a
period of not less than two years.

A.R.S. § 43-1074.G. defines collector as a component of a solar
energy device used to absorb solar radiation, convert it to
heat and transfer the heat to a heat transfer fluid; heat
exchanger as a component used to transfer heat from one fluid
to another; storage unit as a component used for storing heat
for later use.

This language does not contemplate a windmill as a
solar energy device. Rather, the Legislature envisioned the
solar collectors, heat exchangers and storage units commonly
used in the direct utilization of solar radiation.

The scope of Arizona tax statutes providing tax
credits for solar energy devices that directly utilize solar
energy by means of collectors, heat exchangers and heat storage
units contrasts with the definition of solar energy in Title
41, Article 6, which establishes a solar energy commission and
its duties. A.R.S. § 41-571 provides that solar energy as used
in Article 6 means energy recently originated in the sun
including direct and indirect solar radiation and intermediate
solar energy sources such as fuel or energy derived from wind,
sea thermal gradients, products of photosynthetic processes,
organic wastes and the combination of such fuels or energy with
waste or process heat. The Legislature could have adopted the
definition of solar energy used in the context of the solar
energy commission for the tax credit provision, but it
specifically enacted a different definition for solar energy
device.

Moreover, the federal energy credit provisions were
enacted and became effective prior to the enactment of
Arizona's 1978 Income Tax Act. The federal provisions became
effective for taxable years ending on or before April 20,
1977. The state provisions became effective January 1, 1979.

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The option of enacting a broader energy credit similar to the federal version was before the Legislature when it enacted the narrower solar energy credits in the 1978 tax law.

We therefore conclude that the Legislature did not intend a windmill or other wind operated mechanism to be considered a solar energy device for purposes of being eligible for a tax credit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

ROBERT K. CORBIN
Attorney General