

9. Taxpayers' property is not serviced by a public utility for electricity.
10. Taxpayers are dependent on a different source of electricity for their power needs.
11. Taxpayers installed a solar device to provide power to a 400 square foot dwelling on their property in 1997.
12. Taxpayers did not take any Arizona state income tax credit for the device they installed in 1997 for tax 1997 or later tax years.
13. Taxpayers installed a solar energy device in 2004 to provide electricity to a newly constructed 1,100 square foot dwelling.
14. At the hearing in this matter Taxpayers provided a listing from [REDACTED] showing the costs of the various components for the [REDACTED] Home Off-Grid Solar Power System.
15. The Off-Grid Solar Power System installed by Taxpayers in 2004 was comprised of, among other things, the following components:
 - a. Solar panels, with a cost of \$[REDACTED];
 - b. Base for the solar panels that allowed the panels to remain perpendicular to the sun during the day, with a cost of \$[REDACTED];
 - c. Inverters that converted direct electrical current from the solar panels to 120 volts alternating current, with a cost of \$[REDACTED];
 - d. Batteries to store the electricity produced by the solar panels, at a total cost of \$[REDACTED]; and
 - e. Charge controllers that regulate the amount of electricity going to the batteries to keep the batteries from overcharging and burning out, with a total cost of \$[REDACTED].
16. Taxpayers testified that Taxpayer [REDACTED] designed and installed the 2004 solar device.

17. Taxpayers were the final owners of the solar energy device they installed in 2004.
18. An installation fee was shown in the listing from [REDACTED], but Taxpayers testified the installation fee was waived because Taxpayers installed the device.
19. The device installed by Taxpayers in 1997 continued to provide electricity to the 400 square foot dwelling.
20. Both the solar device installed in 1997 and the solar device installed in 2004 use the batteries installed in 2004 to store the electricity produced by their solar panels through their own separate charge controller.
21. Taxpayers filed an Arizona credit form 310 with their 2004 Arizona income tax return and claimed a cost for the solar device of \$[REDACTED].
22. Twenty-five percent of \$[REDACTED] is \$[REDACTED].
23. The total cost of the components listed in Finding of Fact No. 15 is \$[REDACTED].
24. Taxpayers testified that in completing form 310 they calculated a very conservative cost amount because the maximum credit was limited to \$1,000.00, and their costs far exceeded the amount that would produce the maximum credit.
25. Taxpayers claimed a solar device credit on their 2004 Arizona individual income tax return in the amount of \$[REDACTED].
26. Taxpayers claimed a solar device credit on their 2006 Arizona individual income tax return in the amount of \$[REDACTED].
27. Taxpayers claimed a total solar device credit on their 2004, 2005 and 2006 Arizona individual income tax returns in the amount of \$1,000.00.

CONCLUSIONS OF LAW

1. A.R.S. § 43-1083(A) provides a credit for installing a solar energy device, as defined in A.R.S. § 42-5001, during the taxable year in the taxpayer's residence located in Arizona.

2. The total maximum credit that may be taken for the same residence is \$1,000.00. A.R.S. § 43-1083(B).
3. If the allowable tax credit exceeds the taxes otherwise due under Title 43, A.R.S. on the claimant's income, the amount of the claim not used to offset taxes may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability. A.R.S. § 43-1083(C).
4. To qualify for the credit, the solar energy device and its installation are required to meet the requirements of A.R.S. §§ 44-1761 and 44-1762. A.R.S. § 43-1083(F).
5. To the extent relevant here, a solar energy device is defined by A.R.S. § 42-5001(15) as a system or series of mechanisms designed primarily to produce electrical power by means of collecting and transferring solar generated energy into such uses either by active or passive means, and may also have the capability of storing solar energy for future use.
6. The solar energy device installed by Taxpayers in 2004 consisting of the solar panels, the base for the panels, and the inverter, even without the charge controllers and batteries, constituted a solar energy device as defined by A.R.S. § 42-5001(15).
7. The listing from [REDACTED] was sufficient to establish the cost of the solar energy device Taxpayers installed in 2004.
8. The solar energy device Taxpayers installed in 2004 was not a replacement part for an existing system. It was independent of the existing 1997 system.
9. Arizona Department of Revenue Publication 543 provides that the maximum credit a taxpayer may take for all solar energy devices installed in the same residence cannot exceed \$1,000.00 in the aggregate.

10. The fact that Taxpayers had installed a prior solar energy device in 1997 does not disqualify Taxpayers from taking a credit for the device installed in 2004 as long as the total amount of the credit does not exceed \$1,000.00.
11. The total amount of the credit Taxpayers have taken for their residence has not exceeded \$1,000.00.
12. A.R.S. § 44-1762(C) requires a person who sells a solar energy device in this state to furnish a certificate to the buyer that the solar energy device complies with the requirements of A.R.S. § 44-1762.
13. Solar energy devices that are designed or installed by the final owner are exempt from the requirements of subsections A through E of A.R.S. § 44-1762. A.R.S. § 44-1762(F).
14. Taxpayers were not required to obtain a certificate referenced in A.R.S. § 44-1762(C).
15. Taxpayers were entitled to a carryover of their credit under A.R.S. § 43-1083 in the amount of \$[REDACTED] for tax year 2005.
16. Because Taxpayers paid the tax and interest protested, this matter is treated as a protest of a denial of a claim for refund. A.R.S. § 42-1118(I).
17. The Section's disallowance of Taxpayers' credit of \$[REDACTED] was not proper.
18. Taxpayers are entitled to a refund of the assessed amount they paid together with interest as provided by law.

DISCUSSION

Taxpayers installed a solar energy device in 2004 to provide power to a recently constructed 1,100 square foot dwelling on their property. Taxpayers took a credit on their 2004 Arizona income tax return in the amount of \$[REDACTED]. The maximum credit available was \$1,000.00. Since Taxpayers were not able to use the total credit in

tax year 2004, they carried the unused portion of the credit forward to 2005. Taxpayers used \$[REDACTED] of the credit in tax year 2005.

The Section reviewed Taxpayers' 2005 return and disallowed their solar energy device credit of \$[REDACTED]. Various reasons for disallowing the credit are found in the record. Three main reasons were addressed at the hearing:

- The items were replacement parts for an existing system and did not constitute a solar energy device under A.R.S. § 43-1083,
- Taxpayers took credits in excess of 25% of the cost of the device, and
- No certificate or receipts showing the cost of the system were submitted.

Did Taxpayers install a qualifying solar energy device in 2004?

Taxpayers live on a 40 acre parcel by [REDACTED], Arizona. Taxpayers' property does not have electrical service from a utility company. Taxpayers must therefore rely on alternate sources of energy. Taxpayers have therefore installed solar energy devices for their electrical needs.

In 1997 Taxpayers installed a solar energy device to power a 400 square foot dwelling. Taxpayers did not take any Arizona income tax credit for the device they installed in 1997.

Thereafter Taxpayers constructed a 1,100 square foot dwelling. The device Taxpayers installed in 1997 was not sufficient to provide power to the new dwelling and it was still needed to provide power to the 400 square foot dwelling. Taxpayers therefore designed and installed a separate solar energy device to provide power to the 1,100 square foot dwelling.

A solar energy device is defined by A.R.S. § 42-5001(15) as a series of mechanisms designed primarily to produce electrical power by means of collecting and transferring solar generated energy into such use. The device may also have the capability of storing solar energy for future use. The device designed and installed by Taxpayers in 2004 consisted of mechanisms to produce electrical power by collecting

(solar panels and bases) and transferring (inverters) solar generated energy. It was independent of the 1997 device. Taxpayers installed a qualifying solar energy device in 2004.

The system also had the capability of storing (batteries and charge controllers) the solar generated electricity for future use. The fact that Taxpayers had continued to use another solar energy device installed in 1997 does not by itself disqualify Taxpayers from the credit. Publication 543 contemplates the prospect of having more than one solar energy device installed in a residence. It is true that the 1997 device stored its electricity in the same batteries used by the 2004 device. The Section could argue that the batteries were not qualifying solar energy devices because they replaced the batteries that were previously used with the 1997 system. However, even if the cost of the batteries and charge controllers were excluded, the solar panels, bases and inverters would still qualify as a solar energy device under A.R.S. § 42-5001(15). The cost of those items alone was sufficient to allow Taxpayers to take the maximum allowable credit.

The solar energy device installed by Taxpayers in 2004 qualified as a solar energy device eligible for the credit under A.R.S. § 43-1083.

Did Taxpayers take credits in excess of 25% of the cost of the device?

The Section testified that the auditor's notes stated that Taxpayers had taken credits in excess of 25% of the cost of the device. First, the maximum allowable credit for a residence is \$1,000.00. The cost of the device installed by Taxpayers in 2004 was in excess of the amount necessary for Taxpayers to take the maximum allowable credit of \$1,000.00.

Taxpayers had not taken any credits for the solar energy device they installed in 1997. Therefore the maximum allowable credit of \$1,000.00 was still available in 2004. For tax years 2004, 2005 and 2006 Taxpayers claimed solar energy credits in the amounts of \$[REDACTED], \$[REDACTED] and \$[REDACTED], which total \$1,000.00.

Taxpayers did not take credits in excess of 25% of the cost of the device or in excess of the maximum allowable amount under A.R.S. § 43-1083.

Did Taxpayers establish the cost of the device and were Taxpayers required to obtain a certificate under A.R.S. § 44-1762(C)?

The Section had argued that Taxpayers failed to provide a certificate under A.R.S. § 44-1762(C) and failed to provide receipts showing the cost of the system. First, the listing from [REDACTED] was sufficient to establish the cost of the solar energy device Taxpayers installed in 2004. Second, Taxpayers were not required to obtain the certificate referenced in A.R.S. § 44-1762(C). Taxpayers testified that [REDACTED] designed and installed the device. A.R.S. § 44-1762(F) provides that solar energy devices that are designed or installed by the final owner are exempt from the requirements of subsections A through E of A.R.S. § 44-1762. Therefore, not having obtained a certificate under A.R.S. § 44-1762(C) does not disqualify Taxpayers from the credit.

Based on the foregoing, the Section's denial of Taxpayers' claim for refund of their payment of the Section's proposed assessment dated October 21, 2009 is reversed. Taxpayers' protest is granted.

DATED this 2nd day of December, 2010.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section