

**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION  by  TERRY GODDARD ATTORNEY GENERAL  December 3, 2003	No. I03-008 (R03-036)  Re: Availability of Tax Credit for Fees Paid for Dental Care Provided to Students at a Public School
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TO: The Honorable Slade Mead  
Arizona State Senate

**Question Presented**

You have asked whether fees paid for dental care that a private dental clinic that leases school property provides to students at a public school qualify for an educational tax credit pursuant to A.R.S. § 43-1089.01.

**Summary Answer**

Fees paid to a private dental care clinic that operates on land that the clinic leases from a public school are not fees paid for an "extracurricular activity" within the meaning of A.R.S. § 43-1089.01.<sup>1</sup> Therefore, the statutory tax credit is not available to taxpayers who pay for such services.

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<sup>1</sup>This conclusion applies with equal force to both school districts and charter schools. See *Ariz. Att’y Gen. Op. 198-007*.

## **Background**

A public school district may lease school facilities to a private company that provides dental services to children, provided that the school district governing board concludes that providing access to dental services is a civic purpose in the interest of the community under A.R.S. § 15-1105. *See* Ariz. Att'y Gen. Op. I02-003. Under such an arrangement, customarily, the cost of services not covered by Arizona Health Care Cost Containment System ("AHCCCS") or insurance is the responsibility of the individual receiving the services, who pays the provider. *Id.*

The Legislature enacted the public school fees tax credit law, A.R.S. § 43-1089.01, in 1997 to "provide a tax credit for taxpayers who paid fees to an Arizona public school to support the school's extracurricular activities" or "character education" programs. *See* Ariz. Att'y Gen. Op. I98-007. The requirements for qualifying extracurricular activities are: (i) the public school sponsors the activity, (ii) students are enrolled in the public school, and (iii) a fee is required for students to participate in the activity. A.R.S §§ 43-1089.01(F)(2).

Your question requires us to determine whether services that the private dental clinic provides to students qualify as an "extracurricular activity" within the meaning of A.R.S. § 43-1089.01.

## **Analysis**

Section 43-1089.01(A) entitles a taxpayer to a tax credit for the "amount of any fees or cash contributions made by a taxpayer during the taxable year to a public school located in this state for the support of extracurricular activities or character education programs of the public school."

Paragraph F(2) of A.R.S. § 43-1089.01 defines "extracurricular activities" as follows:

"Extracurricular activities" means school-sponsored activities that require enrolled students to pay a fee in order to participate including fees for:

- (a) Band uniforms.
- (b) Equipment or uniforms for varsity athletic activities.
- (c) Scientific laboratory materials.
- (d) In-state or out-of-state trips that are solely for competitive events. Extracurricular activities does not include any senior trips or events that are recreational, amusement or tourist activities.

"Fees" as used in these statutes primarily encompasses "legally authorized, non-state funded charges of public schools for privileges or services . . . beyond those required to complete the basic instructional program mandated by law." Ariz. Att'y Gen. Op. I98-007. Thus, pursuant to the statute, to qualify as an extracurricular activity, the school must sponsor the activity and the fees must be paid to the school. Under the arrangement at issue, the private dental clinic, not the school, provides the services and charges the fees.

Use of the term "including" in the definition of "extracurricular activities" indicates that items other than those specifically listed in the statute may be eligible for the tax credit. However, "any items that are construed to fall within the definition must be similar in nature to the listed items." *Keggi v. Northbrook Prop. and Cas. Ins. Co.*, 13 P.3d 785, 789, 199 Ariz. 43, 47 (2000). Dental care is not similar in nature to the equipment and travel related to the traditional student extracurricular activities that are on the list.

The dental services are not "school sponsored" and are not "extracurricular activities" within the meaning of A.R.S. § 43-1089.01. Therefore, the cost of dental care does not qualify for the tax credit that the statute allows. This conclusion is consistent with this Office's previous conclusion that payments to a third-party provider that leased space on a school campus for an extended-day

kindergarten would not qualify for the tax credit. Ariz. Att'y Gen. Op. I98-007.

**Conclusion**

A public school fees tax credit pursuant to A.R.S. § 43-1089.01 is not allowed for fees paid to a private dental provider for dental care that a private dental care provider that leases public school property provides to students at the school.

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