



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MURRAY A. AND PATRICIA M. WEBSTER)

For Appellants: Murray A. and Patricia M. Webster,
in pro. per.

For Respondent: Elleene A. Kirkland
Counsel

OP IN I ON

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Murray A. and Patricia M. Webster against a proposed assessment of additional personal income tax in the amount of \$882.49 for the year 1977.

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At issue is whether appellants are entitled to their claimed amount of solar energy tax credit.

In 1977, appellants had a \$4,210 fiberglass paneled Rollamatic Roof installed over the atrium of their existing "A" frame house. In 1979, appellants filed an amended 1977 personal income tax return claiming a **refund** of tax resulting from a solar energy tax credit that they attributed to that installation. Shortly thereafter, they filed a re-amended return which recalculated and increased the claimed amount after changing the amount attributed to their allowable federal solar energy credit.

Later, respondent requested more information, which appellants supplied. Respondent determined that appellants' installation was a solarium within the meaning of the Energy Resources Conservation Commission (Energy Commission) regulation 2604(e), as it read in 1977. That subdivision stated:

(e) Solariums used as an integral part of solar space heating systems in HEATING or HEATING/COOLING climate areas are eligible in accordance with the criteria listed below.

(1) The glazing area shall equal at least half the solarium floor area and shall have a shading coefficient of 0.80 or greater per pane.

(2) Solariums shall be attached to the building and fully exposed to direct solar radiation during four daylight hours on December 21. The **system must** provide for a warm air flow into the building by controlled natural or forced convection. In the HEATING/COOLING climate **areas**, venting or full shading is required during the cooling season.

(3) The full cost of equipment needed for air circulation in the solarium shall be eligible. One-half of the remaining costs of the solarium shall also be eligible.

(Cal. Admin. Code, tit. 20, reg. 2604, subd. (e).)

Respondent also determined that the Rollamatic roof did not constitute equipment needed for air circulation in the solarium, but constituted other solarium equipment, so only one-half of the cost of the Rollamatic roof was eligible for the solar energy credit. Respondent

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recomputed the amount of the solar energy credit (which included the cost of a pool cover not at issue here), and issued a notice of proposed deficiency assessment.

Appellants protested, arguing that the Rollamatic roof did constitute equipment needed for air circulation within the meaning of the regulation, so its whole cost should be considered eligible for the solar energy credit. Respondent then requested an Energy Commission opinion whether the Rollamatic roof described by appellants constituted equipment needed for air circulation in the solarium within the meaning of the regulation. The Energy Commission replied that:

Equipment needed for air circulation has been interpreted to include only such mechanical devices which force the flow of warm air from the solarium into the building. Since the Rollamatic Roof is not a mechanical ventilation system, but rather relies upon a natural draft for air circulation ..., only one-half of the costs of the system are eligible for the solar tax credit.

Respondent then affirmed its proposed assessment and this appeal followed.

Appellants challenge respondent's determination as an after-the-fact interpretation of the Energy Commission regulation which is not supported by that regulation.

Revenue and Taxation Code section 17052.5, as it read in 1977, provided for a tax credit equal to 55 percent of the cost, up to a maximum of \$3,000, of certain solar energy devices installed on premises located in California and owned and controlled by the taxpayer claiming the credit. (Rev. & Tax. Code, § 17052.5, subd. (a)(2).) The same section also provided that the Energy Commission would be responsible for establishing guidelines and criteria for solar energy systems which were eligible for the solar energy tax credit. (Rev. & Tax. Code, § 17052.5, former subd. (i), now subd. (g).) One such guideline, established by the Energy Commission as a regulation to implement that statute, made passive thermal systems eligible for the solar energy tax credit and included solariums with the specifications and limitations quoted in the text of subdivision (e) of regulation 2604, set forth above.

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The text of the Energy Commission's regulation clearly made a distinction between equipment needed for air circulation in the solarium and the rest of the solarium. The Energy Commission's interpretation that only 50 percent of the cost of appellant's Rollamatic roof qualified for the credit simply applied that regulatory distinction to appellants' specific situation. Because it is the responsibility solely of the Energy Commission to establish the criteria for qualification, we have consistently deferred to that body's determinations of eligibility. (See, e.g., Appeal of Leslie E. Scher and Carol M. Scher, Cal. St. Bd. of Equal., March 31, 1982.) Although the Energy Commission's interpretation of this regulation is not as fully explained as we might like, we do not find that interpretation to be so inconsistent with the statute and regulations as to require us to overrule it.

It is well settled that respondent's determination of the proper tax is presumed correct and that the burden is on the taxpayer to prove the determination is in error. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellants have disagreed with this regulation and its application. But they have advanced no evidence or reasons which demonstrate error in that regulation or in the determination of respondent based upon it. Therefore, we can only conclude that respondent's action in this matter must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Murray A. and Patricia M. Webster against a proposed assessment of additional personal income tax in the amount of \$882.49 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of February, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr. Member

Conway H. Collis - _____, Member

Will M. Bennett _____, Member

Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code section 7.9