

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN AND LINDA CORESCHI)

For Appellants: John Coreschi,
in pro. per.

For Respondent: Esther Low
Counsel

O P I N I O N

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 John and Linda Coreschi against a proposed assessment of additional personal income tax in the amount of \$872 for the year **1981**.

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The sole issue presented for our determination by this appeal is whether respondent-properly disallowed appellants' claimed energy conservation tax credit for the year 1981.

In 1981 appellants enlarged and remodeled their home and installed the following items: (i) insulation, (ii) a pilotless gas range, and (iii) a replacement furnace. On their joint California tax return, appellants claimed an energy conservation tax credit of \$1,116.

Upon examination of appellants' return, respondent allowed a \$244 credit for the insulation but determined that appellants were not-entitled to the claimed credit for the range and furnace. On December 29, 1982, respondent issued a notice of proposed assessment disallowing the credit. Appellants protested and this timely appeal followed.

Respondent disallowed the claimed credit for the range because it determined that a pilotless gas range has never qualified for an energy conservation tax credit. Appellants have provided no evidence in support of this portion of their claim other than the fact that the pilotless gas range replaced an older electrical range. After reviewing the record on appeal and the applicable laws and regulations, we can find no authority in support of appellants' claimed credit for their pilotless gas range.

Respondent disallowed the claimed credit for the furnace on the grounds that appellants failed to obtain a prior Residential Conservation Service (RCS) audit-recommending the installation of such a furnace prior to installation. Appellants cite three bases in support of their contention that the furnace was eligible for the claimed credit. First, that a California Energy Resources and Development Commission pamphlet entitled "California Conservation Tax Credit" states on page two that "[e]lectrical or mechanical furnace ignition systems which replace a gas pilot light" (App. Br. at 2.) are eligible for a tax credit without being recommended by an RCS audit. Second, that the eligibility of the furnace was established by an RCS auditor who told them in 1983 that she would have recommended the furnace if one had not already been installed. Third, that appellants were not informed by either the California Energy Resources and Development Commission (hereinafter referred to as the "Energy Commission") or by Southern California Edison or the City of Long Beach Gas Company that a RCS audit was mandatory prior to installation.

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Respondent submits that appellants have failed to demonstrate that its disallowance of the claimed energy credit was in error in that the furnace's ignition system was not installed as a retrofit measure, and appellants have presented no evidence supporting their contention that a replacement furnace, purchased without obtaining a prior RCS audit, qualified under Revenue and Taxation Code section 17052.4 for an energy conservation tax credit.

Revenue and Taxation Code section 17052.4 provides for a tax credit, not to exceed \$1,500, of 40 percent of the cost incurred by a taxpayer, for eligible energy conservation measures installed on premises in California owned by the taxpayer at the time of installation. (Rev. & Tax. Code, § 17052.4, subd. (a)(1) and (a)(2).) The same section also provides that the Energy Commission was responsible for establishing guidelines for determining what items qualify as eligible energy conservation measures (Rev. & Tax. Code, § 17052.4, subd. (f)) and defines the term "energy conservation measure." (Rev. & Tax. Code, § 17052.4, subd. (h)(6).)

The law provides for several types of energy conservation measures which may qualify for an *energy* conservation tax credit even though they are installed without a prior RCS audit; however, other items, such as furnaces, are only considered approved residential energy conservation measures when they are recommended as the result of an RCS audit. (Rev. & Tax. Code, § 17052.4, subd. (h)(6)(H).) Under the applicable regulations adopted by the Energy Commission (Cal. Admin. Code, tit. 20, §§ 2612-2614), furnaces are not included as a measure eligible for a tax credit without being recommended by an RCS audit.

After reviewing the record on appeal, for the reasons stated below, we must conclude that respondent also properly disallowed that portion of appellants' claimed energy conservation tax credit pertaining to the furnace. Appellants have failed to offer any evidence which shows that the furnace qualified for an energy tax credit as an electrical or mechanical furnace ignition system or without a prior RCS audit.

* The Revenue and Taxation Code contains two sections numbered 17052.4. All of our references are to the section 17052.4, which is entitled "Energy Conservation Tax Credit".

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We turn first to the question of whether the furnace qualified as an electrical or mechanical furnace ignition system which may be installed without a prior RCS audit. The term "electrical or mechanical ignition system" is defined as including any device which, when installed as a retrofit measure in a gas-fired furnace, automatically ignites the gas burner and replaces a gas pilot light. (Cal, Admin. Code, tit... 20, § 2612, subd. (h).) Although the furnace installed by appellants may have included an electrical or mechanical furnace ignition system, the system would not qualify as an energy conservation device because it was not installed as a retrofit measure to an existing gas-fired furnace.

Appellants' second basis for their contention that the furnace qualified for a tax credit is that an RCS auditor would have recommended the furnace had an RCS audit been performed prior to its installation. While we are sympathetic to appellants' position, the fact that an RCS auditor would have recommended the furnace does not alter the fact that the audit was not obtained prior to the installation of the furnace as required by the applicable law and regulations.

Finally, we turn to appellants' contention that the credit should be allowed because they were not informed by the Energy Commission or by Southern California Edison or the City of Long Beach Gas Company that an RCS audit was mandatory prior to installation of the furnace. In essence, appellants' argument is that the state should be estopped from disallowing the credit because of the failure on the part of these three entities to inform appellants of the necessity of an RCS audit.

As a general rule, the doctrine of equitable estoppel will only be applied in tax matters in those situations where the case is clear and the injustice is great. (United States Fid. & Guar. Co. v. State Bd. of Equal., 47 Cal.2d 384 [303 P.2d 1034] (1956); Appeal of E. J., Jr., and Dorothy Saal, Cal. St. Bd. of Equal., Feb. 1, 1983.) We have consistently refused to invoke the doctrine of estoppel in situations where taxpayers have understated their tax liability on tax returns in alleged reliance on erroneous statements of respondent's employees or because of the omission of some act or statement by respondent's employees. (Appeal of E. J., Jr., and Dorothy Saal, supra; Appeal of Escondido Chamber of Commerce, Cal. St. Bd. of Equal., Sept. 17, 1973.) In view of our previous decisions, an anomalous holding would result if we permitted the doctrine to apply in a

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situation where, as here, the doctrine arose as a result of the alleged failure on the part of employees of a different agency or agencies to inform appellants of the requirements of the law. In cases where, as here, the taxpayers do not meet the literal requirements of the law, the credit should be denied. "We cannot put an equitable gloss on the clear language of the [Personal Income Tax Law.]" (See Kleinsasser v. United States, 707 F.2d 1024, 1030 (9th Cir. 1983).) Accordingly, we decline to estop respondent in this appeal.

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 E. J., Jr., and Dorothy Saal, supra.) Unsupported assertions, without more, are insufficient to sustain this burden. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., 1977.) Appellants have failed to provide any convincing evidence upon which we could substantiate their claimed energy conservation tax credit for either the pilotless gas range or the furnace.

For the reasons stated above, we conclude that respondent's action in the above matter must be sustained.

