*85-SBE-049*

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the-Matter of the Appeal of )
)
MICHAEL MOSHE AND ZVIA UZIEL )

Appearances:

For Appellants: Michael Moshe Uziel, in pro. per.

For Respondent: Michael R. Kelly Counsel

## OPINION

This appeal is made pursuant to section 19061.1[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Michael Moshe and Zvia Uziel for refund of personal income tax in the amount of $910 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

The sole issue presented for our determination in this appeal is whether respondent properly disallowed appellants' claimed solar energy tax credit for the year in issue.

On their 1980 return, appellants claimed- a $910 solar energy tax credit for a.shading device over their patio. The device consists of wood grids which rest on columns on one side and attach to the west wall of appellants' house on the other side. The approximate size is 12 feet by 31 feet and is approximately 12 feet high. The cover physically blocks the sunlight from penetrating the large glass doors on the home's west wall. After a review of the information provided by appellants, respondent determined that the cover was not eligible for the solar energy tax credit on the grounds tnat a wooden solar screen did not constitute a solar energy.system under the guidelines set out by the California Energy Resources,' Conservation and Development Commission (Energy Commission). A proposed assessment reflecting this decision was issued by respondent.

Appellants protested the proposed assessment stating that the patio.cover qualified as an exterior shading device within the meaning of former section 2604(b)(2)(A)(2) of the Energy Commission's regulations, (Former Cal. Admin. Code, tit. 20, reg. 2604(b)(2)(A)(2), renumbering to 'reg. 2604(b)(1)(A)(4) filed Jan. 30, 1981 (Register 81, No. 5).) Appellants emphasized that the cover has removable bamboo curtains which allow appellants to adjust the amount of solar radiation that penetrates the house., They further stated that this cover resulted in considerable energy savings.

Respondent affirmed the proposed assessment on the grounds that shading devices are eligible for the solar energy tax credit only when installed as a part of, or in conjunction with, an eligible passive solar space conditioning system. Because the shading device was not so installed, it was held not to qualify for the credit. Appellants then paid the assessment and filed this appeal. Consequently, pursuant to section 19061.1, the appeal will be treated as an appeal from the denial of a claim for refund.

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 that 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, Cal. St, Bd. of Equal., Feb. 1, 1983.)

Section 17052.5, as it read in 1980, 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 owned and controlled by the-taxpayer claiming the credit. The same statute also provided that the Energy Commission was to be responsible for establishing guidelines for solar energy systems which were eligible for the credit. (Rev. & Tax. Code, § 17052.5, subd. (g).) One such guideline found in regulation 2604(b)(l)(A)(4) of title 20 of the California Administrative Code made exterior shading devices eligible for the credit. (Former Cal. Admin. Code, tit. 20, reg. 2604(b)(2)(A)(2).) Exterior shading devices, such as patio covers, were eligible for the tax credit only when such devices were. installed as a part of, or in conjunction with, an eligible passive thermal system. The only passive thermal systems eligible for the credit in 1980 were solar glazing, solaria, and thermal ponds.

Appellants contend that the patio cover in 'question solves a particular shading problem and-consequently the credit should be allowed. Evidence of energy conservation was submitted and respondent forwarded this information to'the Energy Commission. The commission responded that the patio cover was not one of the three system types which met the technical requirements and, hence, was not an eligible system.

After reviewing the record on appeal, we must conclude that respondent properly disallowed the solar energy tax credit. The patio cover did not satisfy the statutory eligibility requirements for the solar energy credit. It was neither solar glazing, a solarium, nor a thermal pond. In other words, the patio cover did not constitute a passive thermal system.

For the reasons stated, we must sustain respondent's action.

Appeal of Michael Moshe and Zvia Uziel

## ORDER

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Michael Moshe and Zvia Uziel for refund of personal income tax in 'the amount of $910 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of May, 1985, by the State Board of Equalization, with-Board Members Mr. Dronenburg, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9