



Appeal of Paul D. and Katherine Y. McAfee

The issue presented by this appeal is whether appellants were entitled to the energy conservation tax credit claimed on their personal income tax return for 1981.

During the year under **review**, appellants installed a new furnace in their Orange County residence. Prior to the purchase of the replacement furnace, appellants claim that they attempted to discover the eligibility requirements for the energy conservation tax credit but did not receive any relevant information from the personnel of various governmental agencies. Moreover, appellants assert that they were unable to obtain any literature explaining the guidelines for the tax credit. On their joint California tax return for 1981, appellants claimed an energy conservation tax credit of \$481.

Upon review of appellants' return, respondent disallowed the claimed credit in its entirety on the ground that appellants had failed to show that they obtained a report from a Residential Conservation **Service** (RCS) auditor recommending installation of the new furnace. Concurrently, respondent issued the proposed assessment of additional tax at issue in this appeal. Appellants filed this appeal after respondent denied their protest against the proposed assessment.

In 1980, the California Legislature promulgated section 17052.4<sup>2/</sup> to provide for a tax credit in an amount equal to 40 percent of the costs incurred by a taxpayer for an energy conservation measure installed on the taxpayer's premises in California. The maximum allowable credit was \$1,500 for each premise.

The term "energy conservation measure" was defined by subdivision (h) of section 17052.4 which read, in pertinent part, as follows:

(6) "Energy conservation measure" means any item with a useful life of not less than three years of one of the following generic

2/ All of our references are to former section 17052.4, entitled "Energy Conservation Tax Credit," which was enacted for taxable years beginning on January 1, 1981, by Statutes 1981, chapter 1137, section 1, page 4464. The section was subsequently renumbered section 17052.8 by Statutes 1983, chapter 323, section 83, No. 3 **Deering's** Advance Legislative Service, page 987.

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categories which meets the minimum standards as specified pursuant to subdivision (f):

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(H) For existing dwellings, such other measures or devices as may be designated "residential energy conservation measures" approved and adopted as part of an appropriate operational Residential Conservation Service Plan pursuant to the provisions of Section 210 of Title II of the National Energy Conservation Policy Act (92 Stat. 3206) and recommended as the result of an audit conducted under the auspices of such a plan. This generic category includes, but is not limited to:

(i) Electrical or mechanical furnace ignition systems which replace gas pilot lights; ...

In addition, for dwellings located in areas of the state where there was no RCS plan in operation or where the plan in effect did not provide energy audits, energy conservation devices included electrical or mechanical furnace ignition systems. (Rev. & Tax. Code, § 17052.4, subd. (h)(6)(1).) Under section 17052.4, subdivision (f), the Energy Resources Conservation and Development Commission (Energy Commission) was authorized to establish the minimum standards regarding the tax credit eligibility of any item of a generic category of energy conservation measures.

Regulations promulgated by the Energy Commission for 1981 set forth three classes of eligible energy conservation measures for existing dwellings.<sup>3/</sup> First, certain listed conservation measures, such as ceiling insulation, weatherstripping, and water heater insulation, qualified for the tax credit without a prior RCS audit when installed on any premises. (Cal. Admin. Code, tit. 20, reg. 2613.) Second, other specified measures for existing dwellings were eligible for the credit without being recommended by an RCS audit if installed prior to January 1, 1982. (Cal. Admin. Code,

3/ Unless otherwise specified, all references to regulations are to the California Tax Credit Regulations, California Administrative Code, title 20, chapter 2, subchapter 8, article 2, effective January 1, 1981.

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tit. 20, reg. 2614, **subd.** (a).) Included among these short-term exempt measures were electrical or mechanical furnace ignition systems, (Cal, **Admin.** Code, tit, 20, **reg.** 2615.) After 1981, these same measures required an RCS audit recommendation to receive the tax credit, (Cal. Admin. Code, tit. 20, **reg.** 2614, **subd.** (a),) Third, all other energy conservation measures must have been recommended for installation as the **result** of an RCS audit to be eligible for the credit, (Cal. Admin. Code, tit, 20, **reg.** 2614, **subd.** (b),) Replacement furnaces were not included as a measure eligible for the tax credit without an RCS audit recommendation under the applicable regulations adopted by the Energy Commission, (Appeal of John and Linda Coreschi, Cal. St, Bd. of Equal., Nov. 14, 1984; see also "California Conservation Tax Credit," California Energy Commission Publication P440-84-014, Nov. 1984,) In other words, to successfully establish the eligibility of a new furnace for the 1981 energy conservation tax credit, a taxpayer must demonstrate that installation of the furnace was recommended by an RCS auditor, (Appeal of Ladislov and Noeleen Snyder, Cal. St, Bd. of Equal., May 8, 1985.)

In the present case, appellants did not submit any proof with their return that they obtained an RCS audit recommendation prior to the installation of their replacement furnace, Respondent assumed that appellants did not receive the WCS audit and disallowed the claimed credit, Because **respondent's** determinations in regard to the imposition of taxes are presumptively **correct**, appellants bear the burden of showing that the decision to disallow their claimed credit was **erroneous**. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1919); Appeal of Myron E. and Alice Z. Gire, Cal. St, Bd. of Equal., Sept. 10, 1969.)

Appellants make the initial argument that the credit should be allowed because they made every reasonable effort to learn the qualifications for the energy conservation tax credit before replacing their old furnace in 1981. While we can appreciate how difficult it may sometimes be for a layperson to discover and then comprehend the rules and regulations concerning a new tax law, this does not mean that a taxpayer can be excused from complying with the legal requirements of a statute merely because he could not find out what the requirements were, Here, it appears that appellants were simply not aware of the requirement of a prior RCS audit when they installed their furnace and filed their claim for the tax credit., This board has previously dismissed as

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without merit the contention that a layperson bears no liability resulting from ignorance of the law. (Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

As an alternative argument, appellants contend that the language of the statute and regulations governing the energy conservation tax credit is sufficiently vague to permit a replacement furnace to qualify for the credit without an RCS audit. Because replacement furnaces were not listed among the eligible measures exempt from the RCS audit requirement for 1981, appellants reason that furnaces qualified notwithstanding the absence of the RCS auditor's recommendation since they were not "specifically excluded" from exemption.

We do not **find** the applicable regulations to be vague so as to permit the interpretation argued by appellants. The Energy Commission provided that only certain measures were eligible for the tax credit in 1981 without being recommended by an RCS audit and replacement furnaces were not included in that list of measures. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a), and reg. 2615.) The pertinent regulation was written in affirmative and not negative terms. Thus, the fact that furnaces were not included on that list of exempt measures obviously means that furnaces were not exempt from the audit requirement.

In support of the eligibility of their new furnace, appellants have stated that it is cost efficient, has the requisite useful **life**, and uses an electrical ignition system. Energy conservation devices were required, **however**, to meet both the applicable definition and eligibility criteria. (Cal. Admin. Code, tit. 20, reg. 2612.) While an energy conservation measure must have a useful life of at least three years (Rev. & Tax. Code, § 17052.4, subd. (h)(6); Cal. Admin. Code, tit. 20, reg. 2611, subd. (c)), it is clear that a replacement furnace was subject to the RCS audit requirement to be eligible for **the 1981** tax credit. Moreover, an electrical ignition device by itself does not qualify a furnace for the energy conservation tax credit if the device was not installed as a retrofit measure on an existing gas-fired furnace but merely incorporated on a new model to comply with state energy laws. (Appeal of Ladislov and Noeleen Snyder, supra.) In this case, appellants have not shown, that the electrical ignition system on their furnaces was a retrofit measure. Rather, it appears that the furnace was purchased with the ignition device attached.

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**Based** upon the foregoing, we find that appellants have not demonstrated that respondent's determination to disallow the credit was erroneous. Accordingly, **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 Paul D. and Katherine Y. McAfee against a proposed assessment of additional personal income tax in the amount of \$481 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August , 1985, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Nevins and Mr. Harvey present.

\_\_\_\_\_, Chairman  
Conway H. Collis, Member  
Richard Nevins, Member  
Walter Harvey\*, Member  
\_\_\_\_\_, Member

\*For Kenneth Cory, per Government Code section 7.9