



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS LEGGIT) No. **84A-1263-PD**

Appearances:

For Appellant: Dennis Leggit,
in pro. per.

For Respondent: Kendall E. Kinyon
Assistant Chief Counsel

O P I N I O N

This appeal is made pursuant to section **18593^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dennis Leggit against proposed assessments of additional personal income tax in the amounts of \$895 and \$230 for the years 1981 and 1982, respectively.

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

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The issue presented by this appeal is whether respondent properly disallowed part of appellant's claimed energy conservation tax credit for 1981 and 1982.

On his 1981 return, appellant claimed a \$1,317 energy conservation credit for the installation of insulation and the installation of a replacement heating and air conditioning system. He used \$1,087 of the credit to offset 1981 taxes and carried over \$230 to 1982. ~~pon~~ ~~\$2042~~ ^{pon} audit of his 1981 return, respondent allowed \$2042 as an energy conservation credit attributable to the installation of the insulation and the installation of an intermittent ignition device which replaced a gas pilot light. Respondent disallowed the balance of the claimed energy conservation credit because appellant failed to obtain a Residential Conservation Service (RCS) audit **recommending** the installation of the **replacement** heating and air conditioning system before that system was installed. Respondent issued notices of proposed assessment for 1981 and 1982 which reflected the disallowance. Appellant protested, and this appeal followed.

Section 17052.4^{3/} 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 is 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

2/ Respondent now concedes that the **correct** amount of **the** 1981 assessment should be \$885 instead of \$895.

3/ 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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furnaces and air conditioners, 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 and air conditioners are not included as a measure eligible for a tax credit without being recommended by an RCS audit.

Appellant argues that he would have had a prior RCS audit had he known that one was specified by the law and regulations, that he did have several recommendations from heating and air conditioning professionals that he replace his furnace and air conditioning unit, that the energy consumption of his house dropped after the installations, and that, in substance, he merited the credits. But to find in appellant's favor, we would simply **have** to ignore the requirements set forth in the statute and regulations. (Cf. Appeal of John and Linda Coreschi, Cal. St. Bd. of Equal., Nov. 14, 1984.) This we cannot do. We have no alternative but to sustain respondent's action.

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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 **HERESY** 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 Dennis Leggit against proposed assessments of additional personal income tax in the amounts of \$895 and \$230 for the **years** 1981 and 1982, respectively, be and the same is hereby modified in accordance with respondent's concession. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of May , 1986, by the **State** Board of Equalization, with Board **Members** Mr. Nevins, Mr. **Collis**, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Ernest J. Dronenburg, Jr. , Member
Walter Harvey* . Member

*For Kenneth Cory, per Government Code section 7.9