

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ROBIN L. AND HELENE Y. SCHAEFFER )

For Appellant: Robin L. Schaeffer,  
in pro. per.  
For Respondent: Kathleen M. Morris  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Robin L. and Helene Y. Schaeffer for refund of personal income tax in the amount of \$174.00 for the year 1978.

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

Appellants claimed a solar energy tax credit in the amount of \$300 on their joint California personal income tax return for the year 1978. In answer to respondent's request for additional information regarding their claimed tax credit, appellants stated that they had installed a solar energy system to heat their swimming pool. Appellants informed respondent that their "solar energy system" consisted of the application of black paint to the pool's surface in conjunction with use of a solar pool cover. Upon examination of the information supplied by appellants, respondent disallowed that portion of the tax credit attributable to the cost of the black paint; the pool cover was determined to be eligible for the tax credit.

Revenue and Taxation Code section 17052.5 provides for a tax credit equal to 55 percent of the cost of certain solar energy devices on premises located in California which are owned and controlled by the taxpayer claiming the credit, up to a maximum credit of \$3,000. The same section also provides that the Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission") is responsible for establishing guidelines and criteria for solar energy systems which are eligible for the solar energy tax credit. Pursuant to subdivision (a)(S) of section 17052.5, energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems are also eligible for the tax credit. Those energy conservation measures which are eligible for the tax credit when applied in conjunction with solar energy systems are defined by the Energy Commission as part of the solar energy system eligibility criteria.

In essence, appellants argue that the black pool bottom constituted an "energy conservation measure" which, when applied in conjunction with the installation of their pool cover, was eligible for the solar energy tax credit. They also maintain that their claimed tax credit should be allowed because the energy savings achieved through use of the black pool bottom in conjunction with the solar pool cover is greater than that

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which would have been obtained through use of the pool cover alone.

Notwithstanding the purported energy conservation characteristics of black bottom pools, we must conclude that respondent properly disallowed that portion of appellants' claimed solar energy tax credit which was attributable to the cost of the black paint. The statutory requirements are specific in this regard; the subject tax credit is available only for solar energy systems or qualified energy conservation measures installed in conjunction with a solar energy system. The Energy Commission is the agency responsible for determining which energy conservation measures qualify for the tax credit when applied in conjunction with a solar energy system, (Rev. & Tax Code, § 17052.5, subd. (a)(5).) The Energy Commission has never defined black pool bottoms as an "energy conservation measure." indeed, the Energy Commission's Committee for Solar Implementation and Coordination has determined that black pool bottoms are not eligible for the tax credit because their energy conservation characteristics are negligible. No discretion is placed either in respondent or in this board to review that decision.

