

Appeal of E. J. Saal, Jr., and Dorothy Saal

The sole issue presented for our determination by this appeal is whether respondent properly disallowed appellants' claimed solar energy tax credit for the year 1978.

In 1978, appellants installed sun screens known as "Pella Slimshades" on their residence at a cost of \$5,193.00. On their 1978 joint California tax return, appellants claimed a solar energy tax credit equal to their California tax liability of \$423.90.

Upon examination of appellants' return, respondent; determined that appellants' purchase and installation of the sun screens did not entitle them to a solar energy tax credit. Therefore, respondent issued a notice of proposed assessment disallowing the credit. Appellants protested, contending that the sun screens qualified as an eligible Direct Thermal (Passive) System (as that term was used in former Cal. Admin. Code, tit. 20, reg. 2604 (1978) (amended 1979)) and that an employee of the California Energy Resources Conservation and Development Commission (hereinafter referred to as "the Energy Commission") verbally confirmed this position. Appellants also provided information consisting of a building loan inspection sheet, an itemized invoice for the sun screens, and test data for the sun screens. Thereafter, respondent forwarded appellants' information to the Energy Commission' to ascertain whether the expense incurred in the purchase and installation of the sun screens qualified for the solar energy tax credit. The Energy Commission reviewed the data and responded that the appellants' sun screens did not qualify for the solar energy tax credit because it was not a solar energy system nor was it installed in conjunction with a solar energy system. However, in its conclusion, the Energy Commission indicated that if appellants provided information concerning the eligibility of their sun screens as a passive thermal system, the Energy Commission would consider this claim. Appellants did not provide any additional information on this claim. Respondent, therefore, affirmed the assessment, and this timely appeal followed.

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 4141 (1949)]; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Unsupported assertions or unconvincing evidence are insufficient to sustain this burden. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.)

Revenue and Taxation Code section 17052.5, as it read in 1978, 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

Appeal of E. J., Jr. and Dorothy Saal

claiming the credit. (Rev. & Tax. Code, § 17052.5, subd. (a)(2).) The same section also provided that the Energy Commission was responsible for establishing guidelines and criteria for solar energy systems (as that term was defined in Revenue and Taxation Code section 17052.5, subdivision (h)(6)) which were eligible for the solar energy tax credit. (Rev. & Tax. Code, § 17052.5, subd. (g).) One such guideline made passive thermal systems eligible for the solar energy tax credit. However, in order for a system to qualify as a passive thermal system, it had to comply with certain criteria mandated in the guideline. (Former Cal. Admin. Code, tit. 20, reg. 2604 (1978) (amended 1979).)

After reviewing the record on appeal, we must conclude that respondent properly disallowed appellants' claimed solar energy tax credit. The Energy Commission's opinion concluded that the data submitted by appellants failed to provide sufficient information for a determination of whether the sun screens qualified as a passive thermal system and that additional information specified in the opinion had to be submitted for consideration before such a determination could be made. Appellants were informed of the need for additional information and were requested to respond. They have not done so and, therefore, have failed to rebut the presumption that respondent's determination of tax was correct. Respondent's disallowance of the solar energy tax credit where taxpayers have failed to provide evidence to substantiate their eligibility for the credit has previously been upheld. (Appeal of Lawrence D. and Cristy J. Hoffman, Cal. St. Bd. of Equal., July 26, 1982; Appeal of Albert I. and Ruth Kaufman, Cal. St. Bd. of Equal., Feb. 1, 1982.)

Finally, appellants apparently felt that verbal statements made by an employee of the Energy Commission should have estopped respondent from disallowing the solar energy tax credit.

As a general rule, the doctrine of equitable estoppel will be applied against the state in tax matters only where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal.2d 384 [303 P.2d 1034] (1956); Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) We have refused to invoke estoppel in previous cases where taxpayers understated their tax liability on their returns in alleged reliance on erroneous statements made by employees of respondent. (Appeal of Virgil E. and Izora Gamble, Cal. St. Bd. of Equal., May 4, 1976; Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Tirzah M. G. Roosevelt, Cal. St. Bd. of Equal., May 19, 1954.) In view of the decisions in these cases, an anomalous holding would result if we estopped respondent where the claim of estoppel arose from statements made by employees of a different agency. This board, therefore, must decline to estop respondent in this appeal.

Appeal of E. J., Jr. and Dorothy Saal

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

