BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 84R-1374
JAMES AND LINDA FITHIAN	)	

For Appellants: Nancy A. Heiss
Enrolled Agent

For Respondent: Lazaro L. Bobiles
Counsel

O P I N I O N

This appeal is made pursuant to section 18601.1[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of James and Linda Fithian for refund of the renter's credit for the year 1983.

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

At issue in this appeal is whether appellants are entitled to a renter's credit for 1983.

Appellants lived in a house at 9791 Indiana Street, Riverside, California, until April 1, 1982. Until then, the house was their principal place of residence. They had applied for and received a homeowner's exemption, which was in effect for the house during 1982. In April 1982, appellants moved to a rented apartment at 6819 East 72nd Street, Paramount, California. Thereafter, appellants made neither tax nor mortgage payments for the Riverside house, which was repossessed in October 1983.

Appellants claimed a renter's credit on their personal income tax return for 1983. When the Franchise Tax Board inquired of appellants whether they had received a homeowner's exemption (for the Riverside house) in 1983, appellants' representative replied that they were unable to provide verification from the Riverside County Assesor's office that they had not received such an exemption, but contended that they did not receive the benefit of the homeowner's exemption because they had not paid any taxes on the house for that year and, therefore, could not have benefited from the homeowner's exemption by paying a lesser amount of taxes than they would have otherwise paid.

Section 17053.5 provides for the renter's credit in the Personal Income Tax Law. That credit is extended to certain "qualified renter[s]." But the section also provides, in pertinent part, that: "The term 'qualified renter' does not include an individual who has been granted or whose spouse has been granted the homeowner's property tax exemption during the taxable year." Thus, to rule in favor of the appellants, we would have to conclude that the homeowner's exemption had not been granted to either of them for 1983. (Appeal of Waldo R. and Rachel M. Tobler, Cal. St. Bd. of Equal., Jan. 17, 1984.)

We know appellants were granted the homeowner's exemption for 1982. Appellants do not allege that they filed a termination of the homeowner's exemption for 1983 with the Riverside County Assessor. Appellants contend only that they did not pay any taxes on their property for 1983. We cannot conclude from this that the amount of taxes due on their property for 1983 was not a lesser amount because of the continued application of the homeowner's exemption previously granted to appellants.

Thus, we cannot conclude that the appellants had not been granted the homeowner's exemption for 1983.

We are not persuaded by appellants' argument that they did not receive the benefit of the homeowner's exemption because, instead of paying taxes reduced by the exemption, they paid no taxes at all. Accordingly, respondent's action must be sustained.

Appeal of James and Linda Fithian

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 in denying the claim of James and Linda Fithian for refund of the renter's credit the year 1983, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9