

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of: LAUREN BYRNE) OTA Case No. 18011087)) Date Issued: May 14, 2018))))
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OPINION

Representing the Parties:

For Appellant:	Lauren Byrne
For Respondent:	Lyn Gidding-Theobald, Legal Assistant
For Office of Tax Appeals:	Sheriene Anne Ridenour, Tax Counsel III

G. THOMPSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Lauren Byrne appeals an action by the Franchise Tax Board (FTB or respondent) denying her claim for a refund of \$399.31 for the 2011 tax year and a refund of \$716.52 for the 2012 tax year.

Appellant did not request an oral hearing or respond to a letter asking if she wished to request an oral hearing. Accordingly, this appeal is being decided based on the written record.

ISSUE

Is appellant entitled to a low-emission vehicle (LEV) credit carryover for the 2011 and 2012 tax years?

FACTUAL FINDINGS

1. In 2011, appellant purchased a 2001 Toyota Prius.
2. Appellant claimed LEV credit carryovers on her 2011 and 2012 tax returns, which resulted in refunds.
3. The FTB audited the tax returns, disallowed the credit carryovers, and issued Notices of Proposed Assessment (NPAs) proposing additional tax of \$396, plus interest, for the

¹ Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

- 2011 tax year, and additional tax of \$622, plus interest, for the 2012 tax year.
4. Appellant did not protest the NPAs, so the proposed assessments became final.
 5. The FTB issued billing notices reflecting \$399.31 of tax and interest due for the 2011 tax year and \$721.66 of tax and interest due for the 2012 tax year.
 6. Appellant paid the \$399.31 amount shown as due for the 2011 tax year. For the 2012 tax year, she paid \$716.52 of the \$721.66 amount shown as due, and the FTB wrote off the difference of \$5.14.
 7. Appellant then claimed a refund of the amounts paid for the 2011 and 2012 years.
 8. The FTB denied appellant's refund claim, and appellant filed this timely appeal.

DISCUSSION

Taxpayers have the burden of proving entitlement to claimed credits. (*Dicon Fiberoptics, Inc. v. Franchise Tax Board* (2012) 53 Cal.4th 1227, 1235.) Former Section 17052.11(a) provided a LEV tax credit for tax years 1991 through 1995 for certain vehicles purchased in that period, and allowed for unused LEV credits to be carried over to subsequent tax years.

Here, appellant claimed LEV credit carryovers for 2011 and 2012. Appellant argues that she is entitled to the credit on the basis of a vehicle she purchased in 2011. As the vehicle was not purchased during the 1991 to 1995 period when the LEV credit was available, the purchase of the vehicle cannot entitle appellant to any LEV credit that could potentially be carried over. There is no evidence that appellant purchased a qualified LEV during the 1991 to 1995 period or that she has any LEV credits that might otherwise be carried forward. Accordingly, we find no error in the FTB's action denying appellant's refund claim.

HOLDING

Appellant is not entitled to a LEV credit carryover for the 2011 and 2012 tax years.

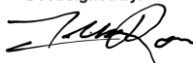
DISPOSITION

The FTB's action is sustained.

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Grant S. Thompson
Administrative Law Judge

We concur:

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Alberto T. Rosas

Administrative Law Judge

DocuSigned by:



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Linda C. Cheng

Administrative Law Judge