

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18011111
<b>KYLE GODFREY AND</b>	)	Date Issued: March 6, 2019
<b>SHEENA GODFREY</b>	)	
	)	
	)	

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**OPINION**

Representing the Parties:

For Appellants: Kyle and Sheena Godfrey

For Respondent: Lyn Gidding-Theobald, Legal Assistant

For Office of Tax Appeals: Neha Garner, Tax Counsel III

A. ROSAS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellants Kyle and Sheena Godfrey (Appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing an assessment of additional tax of \$1,569 plus interest for the 2011 tax year. Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Whether Appellants have shown error in FTB’s denial of the solar energy credit carryover.

**FACTUAL FINDINGS**

1. Appellants timely filed their California income tax return for the 2011 tax year. They reported federal adjusted gross income (AGI) of \$73,881 and claimed itemized deductions of \$11,558, for a taxable income of \$61,802 and tax of \$1,773. After applying exemption credits of \$204 and a claimed solar energy credit carryover of \$1,700, Appellants reported a total tax of zero. After applying withholding credits of \$2,690, Appellants requested a refund of \$2,690.

2. FTB examined Appellants' 2011 tax return and issued a Notice of Proposed Assessment (NPA). The NPA explained that Appellants were not entitled to claim the solar energy credit carryover because Appellants had not provided documentary substantiation of their eligibility. The NPA proposed additional tax of \$1,569, plus applicable interest.<sup>1</sup>
3. Appellants protested the NPA. In reply, FTB wrote to Appellants. FTB explained that the solar energy credit was an expired credit that was no longer available. FTB further explained that a taxpayer may claim a credit carryover for the costs of installing a solar energy system only if a carryover was available from tax years 1985 through 1988. The letter also explained that FTB disallowed the solar energy credit carryover because Appellants had not substantiated that they were entitled to the credit carryover.
4. FTB issued a Notice of Action, which affirmed the NPA. This timely appeal followed.

#### DISCUSSION

A taxpayer has the burden of proving FTB's tax determination to be erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers*, 2001-SBE-001, May 31, 2001.) Generally, the applicable burden of proof is by a preponderance of the evidence. (Evid. Code, § 115; *Appeal of Estate of Gillespie*, 2018-OTA-052P, June 13, 2018, at p. 4.) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) However, self-serving, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (See, e.g., *Appeal of Manriquez*, 79-SBE-077, Apr. 10, 1979; *Appeal of Walshe*, 75-SBE-073, Oct. 20, 1975.)

Former R&TC section 17052.5 provided for a tax credit carryover for the cost of installing solar energy systems, only if a carryover was available from tax years 1985 through 1988. Taxpayers were generally required to claim the credit in the tax year in which the solar energy systems were installed but, if the credit exceeded the "net tax" for that tax year, the excess could be carried over to offset the "net tax" in succeeding tax years until the credit had been exhausted. Further, only the owner of the premises on which the solar energy system was installed may claim the tax credit for costs incurred.

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<sup>1</sup> The NPA reflected interest charges that included a suspension of interest per R&TC section 19116.

Appellants have not provided any evidence concerning their eligibility for the claimed solar energy credit carryover. In terms of any credit to which they might have been entitled (arising from 1985 through 1988), Appellants failed to establish either that they did not utilize the credit or that it was available to be utilized in a prior year. As stated above, taxpayers must use this credit in the first year it is available to be utilized.

Appellants argue that their tax preparers were arrested for claiming false credits in preparing taxpayers' income tax returns, and that Appellants were unaware of their tax preparers' criminal scheme. Despite this, taxpayers are required to read and review a tax return prior to filing it. (*Prudhomme v. Commissioner*, T.C. Memo. 2008-83, citing *Metra Chem Corp. v. Commissioner* (1987) 88 T.C. 654, 662.) There is no evidence of whether Appellants read and reviewed their tax return prior to filing it. But had they done so, it may have revealed the error in their claimed credit.

Therefore, Appellants have not demonstrated error in FTB's proposed assessment.

HOLDING

Appellants failed to show error in FTB's denial of the solar energy credit carryover.

DISPOSITION

We sustain FTB's action in full.

DocuSigned by:  
*Alberto T. Rosas*  
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Alberto T. Rosas  
Administrative Law Judge

We concur:

DocuSigned by:  
*Daniel K. Cho*  
9CAF790C88DF4A5...  
Daniel K. Cho  
Administrative Law Judge

DocuSigned by:  
*Neil Robinson*  
8A2E23444DB4A6...  
Neil Robinson  
Administrative Law Judge