

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

In the Matter of the Appeal of: ) OTA Case No. 19105376  
S. MANDALAM AND )  
R. MANDALAM )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: S. Mandalam and R. Mandalam

For Respondent: Melisa Recendez, Legal Assistant

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Mandalam and R. Mandalam (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$3,000, plus interest, for the 2015 tax year.<sup>1</sup>

Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants are entitled to claim a Low-Emission Vehicles (LEV) credit carryover for 2015.

**FACTUAL FINDINGS**

1. Appellants filed a joint California income tax return (Form 540) for 2015, claiming a LEV credit carryover of \$3,000, which reduced their tax liability by that amount.

---

<sup>1</sup> During briefing, FTB sent a letter to appellants, with a copy to Office of Tax Appeals (OTA), acknowledging it had received a payment from appellants of \$3,000 in satisfaction of the principal amount of tax due. In that letter, FTB also indicated that appellants verbally requested a waiver of interest from FTB but it advised them to file a reply brief requesting such relief before OTA. Since appellants have not done so, we need not address whether they are entitled to interest abatement.

2. Subsequently, FTB issued a Notice of Proposed Assessment (NPA), disallowing the entire LEV credit carryover, resulting in additional tax of \$3,000, plus interest. The NPA explained that FTB had not received documentation to substantiate the credit carryover.
3. Appellants protested the NPA. They submitted a copy of a lease agreement with a Nissan dealership, indicating they had leased a new 2015 Nissan Leaf electric vehicle on November 28, 2014. They asserted the LEV credit was allowed by FTB “at that time.”
4. FTB denied appellants’ protest and thereafter issued a Notice of Action, affirming the NPA. This timely appeal followed.

### DISCUSSION

Taxpayers have the burden of proving entitlement to claimed credits. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Former R&TC section 17052.11 provided an LEV credit for the 1991 through 1995 tax years for qualified costs paid or incurred by a taxpayer during that period, and allowed any unused credits to be carried over to subsequent tax years. Here, appellants claimed an LEV credit carryover for 2015, and as proof, they submitted evidence they leased a vehicle in 2014. However, since the lease occurred in 2014 and not during the 1991 to 1995 period when the LEV credit was available, appellants are not entitled to any LEV credit that could potentially be carried over to their 2015 tax year.

Appellants also make the following argument: “The tax cannot be \$3,000, it only increases the [amount] taxed. The difference is not \$3,000.” This is incorrect. The LEV credit reduces a taxpayer’s tax liability dollar-for-dollar and is therefore not a deduction that reduces taxable income. Since appellants claimed an LEV credit carryover that reduced their income tax liability by exactly \$3,000, as shown on line 43 of appellants’ 2015 Form 540, FTB’s denial of the credit must also increase their tax liability by \$3,000.

Finally, appellants assert they are unable to pay the proposed assessment. OTA, however, does not have the statutory authority to adjust a taxpayer’s tax liability based on the taxpayer’s financial situation. OTA also cannot propose compromises or settlements, since the only power that we do have is to determine the correct amount of appellants’ California tax liability for the appeal year. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) Accordingly, we find no error in FTB’s proposed assessment.

HOLDING

Appellants are not entitled to claim an LEV credit carryover for 2015.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Kenneth Gast*  
FD75A3136CB34C2...  
Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*Cheryl Akin*  
17A8C8E38740B4D5...  
Cheryl L. Akin  
Administrative Law Judge

DocuSigned by:  
*Huy "Mike" Le*  
A11783ADD49442B...  
Huy "Mike" Le  
Administrative Law Judge

Date Issued: 7/10/2020