

Appeal of William E. and Deborah A. Elmbald

On their joint return for the year 1978, appellants claimed a solar energy credit with respect to the cost of installing tinted **window film** in their home at a net cost of \$170. Respondent disallowed the claimed credit and issued a notice of proposed assessment **against** appellants because the window film was not installed in conjunction with the installation of a solar energy system. Appellants alleged that the window film has resulted in energy savings and protested the proposed assessment. Respondent affirmed its action and this appeal followed.

It is well settled that income tax deductions are a matter of legislative grace and that the burden of proving the right thereto is upon the taxpayer. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934).]) The taxpayer must show that he comes within the terms of the applicable statute. (New Colonial Ice Co. v. Helvering, supra; Appeal of William E. and Eunice M. Klund, Cal. St. Bd. of Equal., April 6, 1977.)

Section 17052.5, subdivision (a)(5), of the Revenue and Taxation Code provides in part:

Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. . . . Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, **and** floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with **solar** water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria. (Emphasis added.)

Under the above statutory provision, conservation measures such as window film **for** a home

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must be applied in conjunction with a solar energy system in order to be eligible for the state solar energy tax credit. This was not done in the instant **case**. It is an accepted principle that there is no room for the exercise of discretion in the face of a clear statutory provision. (Appeal of Dorothy Shinder, Cal. St. Bd. of Equal., **Aug. 30, 1967**; Appeal of Seymour and Arlene Grubman, Cal. St. Bd. of Equal., April 22, 1975.) **Under the circumstances**, we must sustain the action of respondent.

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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 on the protest of William E. and Deborah A. **Elmbald** against a proposed assessment of additional personal income tax in the amount of \$93.90 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of May , **1981**, by the State Board of **Equalization**, with all **Board** members **present**.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member