



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THOMAS S. AND SARAH L. WALLACE)

For Appellants: Thomas S. Wallace
 in pro. per.

For Respondent: Kathleen M. Morris
 Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Thomas S. and Sarah L. Wallace against a proposed assessment of additional personal income tax in the amount of \$293.81 for the year 1977. Appellants have paid the assessment: therefore, pursuant to section 19061.1 of the Revenue and Taxation Code, this appeal is treated as an appeal from the denial of a claim for refund.

Appeal of Thomas S. and Sarah L. Wallace

Sometime after April 19, 1977, appellants installed a solar space conditioning system in their home at a cost of **\$1,813.00**. In June of 1978 appellants filed an amended California personal income tax return and claimed a solar energy tax credit in the amount of \$997.00, which was 55 percent of **\$1,813.00** cost. After an audit and the submission of supporting data,, respondent, in accordance with section **17052.5** of the Revenue and Taxation Code, allowed the credit but reduced the amount in view of the applicable federal credit so that the combined state and federal credits would not exceed 55 percent. Appellants then appealed. It is their contention that the subject state statutory provision is unconstitutional because it was made to **apply** retroactively.

Section 17052.5 is the statutory **authority** for the state's solar energy tax credit. In 1977, the section provided in pertinent part:

(a) **(1)** There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraph (2) **or** (3). (2) Except as provided in paragraph **(3)**, the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in **California** which are owned and controlled by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars (\$3,000).

* * *

(j) . . . **[I]f** a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installment of solar energy systems, then to the extent such credit **is** allowed for a solar energy system as defined in this section, the state credit provided by this section shall be reduced so that the combined effective credit shall not exceed 55 Percent of such costs, notwithstanding the carryover provisions of subdivision **(f)**.

The aforementioned provisions clearly provide that in the event a federal solar energy credit is

Appeal of Thomas S. and Sarah L. Wallace

enacted the combined state and federal credits for the same system shall not exceed 55 percent of the cost. Subdivision (j) was contained in Chapter 1082, Statutes 1977, which was enacted on September 26, 1977 and operative for all taxable years beginning in 1977. A federal income tax credit was enacted in 1978 and covered specified solar systems installed on or after April 20, 1977. (Pub.L. No. 95-618, 92 Stat. 3175 (1978), 26 U.S.C. § 44C.)

The law clearly provided that appellant's state credit had to be reduced by the amount of the federal credit. Based upon the facts before us, we do not find any retroactive application of the state law.

In addition, we see no merit to appellants' argument that interest should not have been applied to the deficiency. Specifically, we do not find where respondent was responsible for any undue delay after appellants filed additional information in support of their state solar energy credit. This board has previously held that the payment of interest on an assessed deficiency is mandatory pursuant to the clear language of section 18688 of the Revenue and Taxation Code. (Appeal of Allan W. Shapiro; Cal. St. Bd. of Equal., Aug. 1, 1974.) The interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) Thus, interest accrues upon the amount assessed as a deficiency regardless of the reason for the assessment.

Based upon the record before us, we must sustain respondent's action in this matter.

Appeal of Thomas S. and Sarah L. Wallace

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Thomas S. and Sarah L. Wallace for refund of personal income tax in the amount of \$293.81 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of June 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>George R. Reilly</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Richard Nevins</u>	, Member
_____	, Member