



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE **OF** CALIFORNIA

In the Matter of the Appeal of)
FRANCIS R. AND GISELE POMEROY)

For Appellant: Francis R. Pomeroy,
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 Francis R. and Gisele Pomeroy against a proposed assessment of additional personal income tax in the amount of \$294.02 for the year 1978.

Appeal of Francis R. and Gisele Pomeroy

The question presented is whether appellants are entitled to a solar energy tax credit.

Appellants claimed a solar energy tax credit on **their** joint personal income tax return for 1978 based on the cost of installation of exterior shutters for their windows. Upon examination of their return, respondent determined that appellants were not entitled to the solar energy tax credit since the shutters (technically known as "shades") were not installed in conjunction with a solar energy system as defined by the Energy Resources Conservation and Development Commission. A proposed assessment was issued disallowing **the** credit: the assessment was affirmed following appellants' protest, and this timely appeal was filed.

The controlling statute, Revenue and Taxation Code section 17052.5, provides in relevant 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.... 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.) (Rev. & Tax. Code, § 17052.5, subd. **(a)(5).**)

Under this statute "energy conservation measures" qualify for the tax credit only when installed in conjunction with a solar energy system. Although appellants' shades are energy conservation measures under the applicable guidelines (Cal. Admin. Code, tit. 20, §§ 2601-2608), no evidence has been presented to show that they were installed in conjunction with a solar energy system. Therefore, since the taxpayer bears the burden of showing that respondent's determination is erroneous (Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976), and has not done so, respondent's disallowance of the solar energy tax credit must be sustained.

Appeal of Francis R. and Gisele Pomeroy

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 Francis R. and Gisele Pomeroy against a proposed assessment of additional personal income tax in the amount of \$294.02 for the **year** 1978, be and the same is **hereby** sustained.

Done at Sacramento, California, this 19th day of August , 1981, by the State Hoard of Equalization, with Board **Members** Mr. Dronenburg, Mr. Nevins and Mr. Bennett present.

Ernest J. Dronenburg, Jr., Chairman
Richard Nevins, Member
William M. Bennett, Member
_____, Member
_____, Member