BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LEONARD R. AND ELIZABETH M. HARPER)

Appearances:

For Appellants: Leonard R. Harper, in pro. per.

For Respondent: John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Leonard R. and Elizabeth M. Harper for refund of personal income tax in the amount of $217.90 for the year 1976.

The sole issue presented for determination by this appeal is whether respondent properly determined that appellants were not entitled to a solar energy tax credit for the year in issue.

Appellants claimed a solar energy tax credit in the amount of $217.90 on their joint California personal income tax return for the year 1976. In answer to respondent's request for additional information regarding their claimed tax credit, appellants stated that they had installed what they describe as a "hydro-electric plant" at their then part-time residence in the Santa Cruz mountains. Appellants also alleged that their plant supplied virtually all of their energy requirements and that at least 2,500 gallons of fuel would be needed to duplicate the energy it generated annually. Upon examination of the data supplied by appellants, respondent determined that the hydroelectric plant did not constitute a "solar energy device" which qualified for the solar energy tax credit. Appellants subsequently paid the additional tax resulting from respondent's determination and filed a claim for refund. Upon due consideration of their claim for refund, respondent reaffirmed its determination that appellants' hydroelectric plant did not constitute a "solar energy device," thereby resulting in this appeal.

Former Revenue and Taxation Code section 17052.5, subdivision (g), as operative for the year in issue, defined the term "solar energy device" as equipment which, among other things, used "solar energy to heat or cool or produce electricity. ..." In essence, appellants claim that their hydroelectric plant constituted a qualifying "solar energy device" because hydroelectric power is a derivative form of solar energy. Respondent, while conceding that hydroelectric power is a derivative form of solar energy, contends that the statute contemplated that only a **device** which directly utilized solar energy would constitute a qualifying "solar energy device."

A literal reading of former section 17052.5, subdivision (g), is not dispositive on the issue of whether a device using a derivative form of solar energy constituted a "solar energy device." When there exists doubt as to the legislative intent of a statute that has been adopted, recourse may be made to the history or purpose underlying its enactment. (County of Alameda v. Carleson, 5 Cal.3d 730 [97 Cal.Rptr. 385] (1971); app. dism., 406 U.S. 913 [32 L.Ed.2d 112] (1972); Rocklite

Products v. Municipal Court, 217 Cal.App.2d 638 [32 Cal.Rptr. 1831 (1963).) Former section 17052.5 was enacted by the adoption of SB 218 (Stats. 1976, Ch. 168) in 1976. A review of the legislative history of that statute reveals that the Legislature did not intend that devices utilizing derivative forms of solar energy would qualify for the solar energy tax credit. (See, e.g., Enrolled Bill Memorandum to Governor, SB 218, May 18, 1976; Enrolled Bill Report, SB 218, Department of Housing and Community Development, May 14, 1976; Enrolled Bill Report, SB 218, Employment Development Department, May 19, 1976.) The relevant documentation indicates that the Legislature intended a qualifying "solar energy device" to be equipment associated with the direct collection, transfer, distribution, storage, or control of solar energy, as set forth in regulations subsequently promulgated by the Energy Resources Conservation and Development Commission. (Cal. Admin. Code, tit. 20, regs. 2601-2607.)

It is an elementary rule of statutory interpretation that a statute must be construed with reference to the object sought to be accomplished so as to promote its general purpose or policy. (Dept. of Motor Vehicles v. Indus. Acc. Com., 14 Cal.2d 189 [93 P.2d 131] (1939); Candlestick Properties, Inc. v. San Francisco Bay Conservation Etc. Com., 11 Cal.App.3d 557 [89 Cal.Rptr. 897] (1970).) We have already observed that the Legislature did not intend that a device like the one in issue would qualify for the solar energy tax credit. Accordingly, while appellants' ingenuity and commitment to energy conservation are to be applauded, we must conclude that their interpretation of former section 17052.5, subdivision (g), is inconsistent with the purpose of that section and cannot be sustained.

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of Leonard R. and Elizabeth M. Harper

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 Leonard R. and Elizabeth M. Harper for refund of personal income tax in the amount of $217.90 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of March, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

Kenneth Cory, Member