



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
STEVEN M. AND ROBIN G. RUDY)

For Appellants: Steven M. Rudy, 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 Steven M. and Robin G. Rudy against a proposed assessment of additional personal income tax in the amount of \$1,203.00 for the year 1977.

Appeal of Steven M. and Robin G. Rudy

The sole issue presented for our determination by this appeal is whether respondent properly determined that **appellants were** not entitled to a solar energy tax credit in the taxable year 1977 for a solar energy device installed in 1976.

In August of 1976, appellants installed a solar energy device to heat their swimming pool. In accordance with Revenue and Taxation Code section 17052.5, as operative for 1976, appellants **claimed** a ten percent solar energy tax credit for the cost incurred for their solar energy device on their 1976 joint California personal income tax return. In 1977, section 17052.5 was amended (Stats. 1977, Ch. 1082) to provide, inter alia, for a 55 percent tax credit of the cost incurred by a taxpayer for any solar energy system on premises in California owned and controlled by him at the time of installation.

On their joint California personal income tax return for 1977, appellants claimed a 45 percent solar energy tax credit in the amount of \$1,203 (55 percent as provided for in section 17052.5, effective for taxable years beginning in 1977, less the ten percent credit appellants claimed in 1976) for the cost of the solar energy device installed in 1976. Appellants argued that they were entitled to this additional credit because it was unfair to allow them only the ten percent tax credit permitted in 1976. Upon examination of their 1977 return, respondent determined that appellants were not entitled to the claimed credit because the solar energy device had not been installed in 1977; the subject notice of proposed assessment was subsequently issued. Upon consideration of appellants' protest of its action, respondent reaffirmed the proposed assessment, thereby resulting in this appeal.

As previously noted, section 17052.5 was amended in 1977 to provide for a 55 percent credit for residential solar energy systems; in **accordance** with Revenue and Taxation Code section 17034, 1/ the

1/ Revenue and Taxation Code section 17034 provides as follows:

Unless otherwise specifically provided the provisions of any law effecting changes in the computation of taxes shall be applied only in the computation of taxes for taxable years beginning after December **31st**, of the year preceding enactment and the remaining provisions of any **such law shall become** effective on the date it becomes law,

Appeal of Steven M. and Robin G. Rudy

provision providing for a 55 percent solar energy tax credit became effective for taxable years beginning after December 31, 1976. (See **Ops. Cal. Legis. Counsel, no. 15991** (Sept. 22, 1977) Tax Credits: Solar Energy and Antipollution Devices (A.B. 1558).) Consequently, we must conclude that since appellants' device was installed before the subject amendment became effective, respondent's action in this matter was correct.

The legislative history behind the 1977 amendment to section 17052.5 supports our conclusion that appellants were not entitled to a 45 percent solar energy tax credit in the year in issue for the device installed in 1976. A review of that history reveals that the Legislature intended to encourage residential use of solar energy devices because of the potential oil and natural gas savings that would result from the use thereof (see, e.g., Enrolled Bill Report, AB 1558, Department of General Services, Sept. 26, 1977; Enrolled Bill Report AB 1558, Energy Resources Conservation and Development Commission, Sept. 20, 1977); that purpose would not have been served by granting a retroactive credit to those taxpayers who, like appellants, had already made a commitment to the use of solar energy devices.

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

Appeal of Steven M. and Robin G. Rudy

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 Steven M. and Robin G. Rudy against a proposed assessment of additional personal income tax in the amount of \$1,203.00 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of March 1 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