

Appeal of Benjamin J. and Harriet Auerbach

The issue for determination is whether appellants are entitled to their claimed solar energy tax credit for 1977.

In 1977, appellants Benjamin J. and Harriet Auerbach installed interior blinds in their residence to block sunlight. On their personal income tax return for that year, appellants claimed a solar energy tax credit of \$237.00, which represented 55 percent of the cost of the blinds. Respondent found that the blinds neither were a solar energy system, nor were installed in conjunction with a solar energy system, as required by Revenue and Taxation Code section 17052.5. Respondent accordingly disallowed the credit and issued a proposed assessment, which was affirmed after protest. The Auerbachs appeal, arguing that the blinds were designed to reduce the building's heating and air conditioning needs.

Revenue and Taxation Code section 17052.5 permits a taxpayer generally to take a credit of 55 percent of the cost of certain solar energy systems installed on the taxpayer's premises in California, up to a maximum credit of \$3,000. (Rev. & Tax. Code, § 17052.5, sctbd. (a)(2).) Subdivision (i) of this section, as it read in 1977, directed the Energy Resources Conservation and Development Commission ("Energy Commission") to "establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section." An examination of the guidelines effective for 1977 indicates that the blinds, by themselves, are not a solar energy system as that term has been defined by the Energy Commission. (Former Cal. Admin. Code, tit. 20, § 2602, subd. (k) (repealer and new section filed May 16, 1978, Register 78, No. 20).)

Revenue and Taxation Code section 17052.5, subdivision (a)(5), provides a solar energy credit for "[e]nergy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems" The required Energy Commission regulations effective for 1977 permitted certain types of blinds to qualify as such a measure, but only if they possessed specific physical characteristics. (Rev. & Tax Code, § 17052.5, subd. (a)(5); former Cal. Admin. Code, tit. 20, §§ 2606 and 2608, subd. (b) (repealers and new sections filed May 16, 1978, Register 78, No. 20).) Thus, appellants' blinds might qualify for a credit, but only if, after meeting technical physical requirements, they were installed in conjunction with an eligible solar energy

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system. The record indicates that **appellants installed** no solar energy system which **incorporated the blinds**.

After the filing of this **appeal, respondent** submitted appellants' data on the blinds to the Energy Commission... The Commission's General Counsel's Office reported:

The subject **blinds are** not a solar energy system. ... **[T]hey** will qualify for the credit only when installed in conjunction with an eligible solar system. ...

Installations such as these are eligible for the solar tax credit as a method of glazing control only when installed as part of an eligible solar space conditioning system, such, as solar glazing, and then only if certain performance criteria are met. The Auerbachs' installation does not qualify **as [such a]** system because the required solar glazing is lacking (i.e., no costs were incurred for the installation of glazing) and hence costs incurred for glazing control are ineligible.

The Energy Commission is the agency responsible for determining which energy saving devices qualify for the tax credit. The **Commission's regulations**, as well as its statement **to respondent**, enunciate its decision that the blinds do not by themselves constitute a solar energy system, and were not applied in conjunction with a solar energy system. (Appeal of George H. and Alyce P. Bratt, Cal. St. Bd. of Equal., Sept. 29, 1981.) Our **conclusion** must therefore be that the blinds do not qualify for a solar energy credit. (Appeal of Francis R. and Gisele Pomeroy, Cal. St. Bd. of Equal., Aug. 19, 1981; Appeal of Richard G. and A. Margaret Jones., Cal. St. Bd. of Equal., Aug. 19, 1981.)

For the reasons above, we will sustain respondent's action.

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ORDER

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 Benjamin J. and Harriet Auerbach against a proposed assessment of additional personal income tax in the amount of \$237.01 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member