



Appeals of Leslie E. Scher and Carol M. Scher
(formerly Carol M. Wilcox)

The question presented by these appeals is whether appellants were entitled to their claimed **solar** energy tax credit.

In 1977, appellants installed a "water wheel" to produce electricity from a creek on their **property**. On their separate tax returns for that year, each claimed one-half of the cost involved as a solar energy tax credit. Respondent disallowed the credits and issued proposed assessments reflecting the disallowance. After appellants' protests and hearing, the assessments were affirmed and these timely appeals followed.

For the year **1977**, Revenue and Taxation Code section 17052.5 allowed a tax credit for part of the cost of a solar energy system installed on premises in California. (Rev. & Tax. Code, § 1-7052.5, subd. (a).) That section also provided, in relevant part:—

(g) The term "solar energy system" means equipment--

(1) Which uses solar energy to heat or cool or produce electricity; and

(2) Which has a useful life of at least three years.

* * *

(i) On or before January 1, 1978, the Energy Resources Conservation and Development Commission shall, ... establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. . . .

Appellants contend that their water wheel constitutes a solar energy system within the meaning of section 17052.5. They present excerpts from books on energy and state that physicists acknowledge that hydro-electric power is a derivative form of **solar** energy.

In the recent Appeal of Leonard R. and Elizabeth M. Harper, decided by this board on March 3, **1982**, we held that a "hydra-electric plant," apparently similar to appellants' water wheel, did not qualify as a "solar energy device" under section 17052.5 as it read in 1976. In 1977, the statute was changed to refer to

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"solar energy system" rather than "solar energy device," but we can find no reason to interpret the intent of the statute differently because of this change.

In addition, the guidelines and criteria established by the Energy Resources and Conservation Commission ("the Commission") pursuant to the mandate of section 17052.5 do not include hydro-electric systems within the systems eligible for the solar energy tax credit. Even though the Commission's guidelines were not promulgated until January 1978, the clear intent of subdivision (i) of section 17052.5 was that those guidelines should be applicable in determining eligibility for the credit claimed for all solar energy systems installed on or after the operative date of the statute. **We**, therefore, defer to the judgment and technical expertise of the body which has been directed to set the standards for eligibility.

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

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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 actions of the Franchise Tax Board on the protests of Leslie E. Scher against a proposed assessment of additional personal income tax in the amount of \$386.04 for the year 1977 and Carol M. Scher, formerly Carol M. Wilcox, against a proposed assessment of additional personal income tax in the amount of \$253.00 for the year 1977, be and the same are 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
_____-I?-_____, Member