

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J.M. and LINDA HEINEKE)

For Appell ants: J.M. Heineke ,
in pro. per .

For Respondent : Kathleen M. Morris
Counsel

OP 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 J.M. and Linda Heineke against a proposed assessment of additional personal income tax in the total amount of \$2,082.34 for the year 1978.

Appeal of J.N. and Linda Heineke

The issue presented by this appeal is whether appellants are entitled to a solar energy tax credit for 1978.

Appellants claimed a solar energy tax credit, on their 1978 joint personal income tax return based upon the cost of covering the glass located on the south side of their home with shutters and insulating film. Respondent requested information concerning the alleged "solar system" and appellants failed to respond to this request. Therefore, respondent disallowed the credit and issued a notice of proposed assessment which included a 25 percent penalty for failure to furnish information. Appellants protested the proposed assessment and provided the requested information. After consideration, respondent cancelled the penalty, but reaffirmed the proposed assessment. This timely appeal followed.

Respondent's determination is presumed correct and it is the taxpayer's burden to prove it incorrect. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) For the year 1978, ~~Paxson~~ and Taxation Code section 17052.5 allowed a tax credit of 55 percent of the cost of installing a solar energy system on premises owned by the taxpayer. (Rev. & Tax. Code, § 17052.5, subd. (a)(2).) During that year, a tax credit for energy conservation measures was allowed only if they *were* installed in conjunction with a solar energy system-in order to reduce the system's cost or backup energy requirements.

Solar shades or shutters, such as those installed by appellants, are energy conservation measures rather than a solar energy system. (Appeal of Francis R. and Gisele Pomeroy, Cal. St., Bd. of Equal., Aug. 19, 1981; Appeal of Benjamin J. and Harriet Auerbach, Cal. St. Bd. of Equal., March 31, 1982.) Therefore, these measures qualify for the tax credit only if they were installed in conjunction with a solar energy system.

Appellants assert that the film end shutters were installed in conjunction with a solar energy system consisting of a south-facing glass wall. We doubt whether by itself, such a wall constitutes a solar energy system; however, we need not decide that question in this appeal. Even if the wall qualified as a solar energy system, appellants would not prevail since they have produced no evidence concerning when the wall was installed. Without such evidence, we cannot determine whether the shutters were installed "in conjunction with" the wall as that phrase is employed in subdivision (a)(5) of section 17052.5. Since appellants have failed to prove that they are entitled to the claimed credit, respondent correctly disallowed the credit.

For the foregoing reasons, respondent's action must be sustained.

Appeal of J.M. and Linda Heineke

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 DEC'REEC, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of J.M. and Linda Heineke, against a proposed assessment of additional personal income tax in the amount of \$2,082.34 for the year 1978 be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____. Member

_____, Member