82-SBE-231

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BRIAN K. TARKINGTON)

For Appellant: Brian K. Tarkington,
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 Brian K. Tarkington against a proposed assessment of additional personal income tax in the amount of $1,190.29 for the year 1978.

Appeal of Brian K. Tarkington

The sole issue presented for our determination by this appeal is whether respondent properly disallowed appellant's claimed solar energy tax credit for the year in issue.

In 1978, appellant purchased a house in' Davis, California; the house was the subject of a study by the National Solar Data Program of the United States Department of Energy. The builder of appellant's residence had previously claimed solar energy tax credits for the various solar energy systems installed in the house, including a credit for a passive thermal system. During the year in issue, appellant installed quarry tiles in various rooms of his house at a cost of $3,819. On his, California personal income tax for the year 1978, appellant calculated a solar energy tax credit in the amount of $2,100 (55% of the cost of the tiles) and claimed an available credit in the amount of $1,190; the remaining $910 was claimed as a carryover for future years.

Upon audit, respondent determined that appellant's purchase and installation of the quarry tiles did not entitle him to the claimed solar energy tax credit. Specifically, respondent's conclusion was based upon the following alternative bases: (i) appellant had not installed a solar energy system as required by subdivision (a)(2) of section 17052.5; and (ii) the builder of appellant's home had previously claimed the tax credit for the passive thermal system. As further explained below, respondent's first objection to appellant's claimed tax credit'is sufficient to sustain the subject proposed assessment; this conclusion obviates the necessity of addressing respondent's alternative argument.

Revenue and Taxation Code section 17052.5 provides for a tax credit equal to 55 percent of the cost incurred by the taxpayer for any solar energy system installed on premises located in California which are owned and controlled by the taxpayer claiming the credit, up to a maximum credit of $3,000. The same section also provides that the Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission") is responsible for establishing guidelines and criteria for solar energy systems which are eligible for the solar energy tax credit. Pursuant to subdivision (a)(S) of section 17052.5, energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems are also eligible for the tax credit. During the year in issue, subdivision (a)(2) of section 17052.5

provided that if an owner-builder or owner-developer of a new home irrevocably elected not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system was installed would be eligible to claim the tax credit,

Upon careful review of the record on appeal, we must conclude that respondent properly disallowed appellant's claimed solar energy tax credit, Notwithstanding tbe energy conservation characteristics of quarry tile, appellant's purchase and installation of such tile simply did not satisfy the statutory requirements for eligibility for the solar energy tax credit. The statutory requirements for the year in issue were specific in this regard;[1] the solar energy tax credit was available only for solar energy systems installed by the taxpayer or for energy conservation measures installed in conjunction with such a system. Energy Commission regulations in effect for 1978 clearly provided that quarry tile constituted thermal mass. Thermal mass, in and of itself, constitutes neither a solar energy system nor an energy conservation measure. (Former Cal. Admin. Code, tit. 20, reg. 2604, subd. (g), see also Cal. Admin. Code, tit. 20, reg. 2604, subd. (b)(2)(C).) Pursuant to the above cited' former regulation, thermal mass constituted only part of an eligible passive thermal system, and qualified for the credit only when the taxpayer installed the balance of such a system. Accordingly, since appellant did not install a solar energy system, respondent properly concluded that he was not entitled to the subject tax credit.

Appellant has argued that he is entitled to the claimed credit pursuant to the provisions of subdivision (a)(2)(C) of section 17052.5. This contention is without merit. The cited subdivision pertains only to taxable years beginning on or after January 1, 1980, and before January 1, 1984, and therefore is irrelevant to this appeal.

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

1/ AB 2036 (Stats. 1980, Ch. 903), operative for taxable years beginning on or after January 1, 1980, and before January 1, 1984, substantively amended section 17052.5.

Appeal of Brian K. Tarkington

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 Brian K. Tarkington against a proposed assessment of additional personal income tax in the amount of $1,190.29 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of September, 7982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

______________________, Chairman

______________________, Member

______________________, Member

______________________, Member

______________________, Member