

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JAMES M. AND SUSAN R. JACKSON )

For Appellants: James M. Jackson,  
in pro, per,

For Respondent: John A. Stilwell, Jr.  
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 James M. and Susan R. Jackson against a proposed assessment of additional personal income tax in the amount of \$632 for the year 1977.

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The issues presented by this appeal are whether appellants are entitled to a solar energy tax credit in an amount greater than allowed by respondent and to a casualty loss deduction for the year 1977.

On their 1977 California joint personal income tax return, appellants claimed a solar energy tax credit for the expense of installing wall and ceiling insulation in their home and of adding a solar heating unit to their swimming pool. Upon audit, respondent disallowed the portion of the credit attributable to the insulation. It made several other adjustments to appellants' 1977 return which are not in dispute. Respondent issued a notice of proposed assessment reflecting these adjustments. Appellants protested the disallowance of part of the solar energy tax credit, and at that time, claimed and submitted **documentation** regarding a casualty loss deduction not previously claimed. After consideration, respondent denied the claimed casualty loss deduction and **reaffirmed** the proposed assessment,, 'This timely appeal followed.

Revenue and Taxation Code section **17052.5**, as in effect for 1977, allowed a credit against tax in the amount of 55 percent of the cost of a solar energy system installed on the taxpayer's property. Energy conservation measures applied in **conjunction** with the solar energy system in order to reduce the system's cost or the required energy backup were considered to be part of the solar system, and, thus, to be eligible for the credit. (Rev. & Tax. Code, § 17052.5, subd. (a)(S).)

Since insulation is an energy conservation measure, it qualifies for the solar energy credit only **if** installed in conjunction with a solar energy system. Appellants have produced no evidence showing that the insulation was installed in conjunction with a solar energy system. The only solar energy system mentioned in the record is the one designed to heat appellants' swimming pool. **Clearly**, the wall and ceiling insulation neither reduced the cost of this solar system nor decreased its required energy backup. Therefore, appellants are not entitled to the claimed solar energy credit.

The casualty **loss** deduction claimed by appellant is for the expense of **repairing** the engine of their automobile, a 1976 Porsche. Appellants claim the damage was caused by unusually warm weather which rendered the air cooling system of the engine **ineffective** and resulted in mechanical breakdown.

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Deductions are a matter of legislative grace, and the taxpayer bears the burden of proving that he is entitled to the claimed deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)].) An individual is allowed a deduction for a loss of property not connected with a trade or business to the extent the loss exceeds \$100 if the loss arises from theft, fire, storm, shipwreck or other casualty and is not compensated for by insurance. (Rev. & Tax, Code, § 17206,) The term "casualty" has been defined as "an accident, a mishap, some sudden invasion by a hostile agency." Fay v. Helvering, 120 F.2d 253 (2d. Cir. 1941). A casualty loss deduction is not allowed for damage caused by the gradual deterioration of property. (Fay v. Helvering, supra.) Thus, a deduction is not allowed for damage to an automobile caused by a mechanical defect. (Glenn Ross Smith, ¶ 79,082 P-H Memo. T.C., affd., 608 F.2d 321 (8th Cir. 1979).

Appellants have failed to prove that a casualty caused the damage to their automobile. They assert that the engine failure was caused by hot weather, but have submitted no evidence to support this conclusion. Without evidence of weather severe enough to damage an automobile, it is reasonable to assume that the damage was caused either by a defect in or gradual deterioration of the automobile. In either case, appellants are not entitled to a casualty loss deduction for the damage to their car.

For the foregoing reasons, the action of respondent must be sustained.

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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 action of the Franchise Tax Board on the protest of James **M.** and Susan R. Jackson against a proposed assessment of additional personal income tax in the amount of \$632 for the year 1977, be and the same is hereby sustained.

**Done at** Sacramento, California, this **14th** day of October , 1982, by the State **Board** of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u></u>	, Member