

BEFORE THE STATE BOARD OF **EQUALIZATION**
OF THE STATE OF CALIFORNIA

in the Matter of the Appeal of)
)
VERNON D. AND MARY J. SMITH)

Appearances:

For Appellants: Vernon D. Smith,
 in pro. per.

For Respondent: Gary **M. Jerrit**
 Counsel

OPINION

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 Vernon **D.** and Mary J. Smith against a proposed assessment of additional personal income tax in the amount of \$336.63 for the year 3.978.

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

In 1977, appellants installed a **"thermo roof"** over the original roof of an addition to their house in order to equalize the temperature of the addition with the temperature of the rest of the **house**. On their 1978 California tax **return**, appellants claimed a solar energy tax credit in the amount of **\$336.63 (55%** of the cost of the **roof)**. Upon examination of appellant's return, respondent determined that appellants' purchase and installation of the new roof did not **entitle** them to a solar energy tax credit.

Revenue and Taxation Code section 17052.5, in effect for the year appellants claimed the solar energy tax credit **(1978)**, provided for a tax credit equal to 55 percent of the cost **of** certain solar energy devices installed on premises located in California owned and controlled **by** the taxpayer claiming the credit, up to a maximum credit of \$3,000. The same section also provided that the Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission") would be responsible for establishing guidelines **and** criteria for solar energy systems which were eligible for the solar energy tax credit. (Rev. & Tax. Code, § 17052.5, subd. (g).) Pursuant to subdivision (a)(5) of section 17052.5, energy conservation measures applied in conjunction with "solar energy systems" (as that term was **defined** in Revenue and Taxation Code section 17052.5, subdivisions (i)(6)(A) and (i)(6)(B)) to reduce the total cost or backup energy requirements of such systems were also eligible for **the tax** credit.

Appellants -contend that their, new roof solved a particular energy problem, resulting in energy conservation, and should be allowed **because** it comports with the energy-conservation **intent of** the 'solar energy tax credit statute. In order to substantiate their claimed solar energy tax credit, appellants provided respondent with data on the planning and construction of the roof. Respondent forwarded this information to the Energy Commission. **to** ascertain whether the roof constituted a "solar energy system" within the commission's **guidelines**. The Energy Commission reviewed the data and determined that the roof was not a solar energy system but rather a "conservation **device"** which would be eligible for the **solar energy** tax credit **only** if installed in conjunction with a solar energy system.

After reviewing the record on appeal, we must conclude that respondent properly **disallowed** appellants' claimed solar energy tax credit. Notwithstanding **the purported** energy saving **characteristics** of their new roof, appellants' conservation device, simply did not satisfy the statutory requirements for eligibility for the solar energy tax credit. The statutory requirements are specific in this regard:

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the solar energy tax credit is available only for solar energy systems or conservation measures installed in conjunction with a solar energy system. Energy Commission regulations in effect for the year in issue clearly provide that "thermo roofs" were not, by themselves, eligible for the tax credit and would qualify for the credit only when installed in conjunction with an eligible solar space heating system. (Former Cal. Admin. Code, tit. 20, reg. 2605, subd. (b) (1978) (amended **1979**.) Since it was not installed in conjunction with such a solar energy system, appellants' **"thermo roof"** simply did not satisfy the statutory eligibility requirements for the solar energy tax credit.

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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 Vernon D. and Mary J. Smith against a proposed assessment of additional personal income tax in the amount of \$336.63 for the year 1978, be and the same is hereby sustained.

Done at **Sacramento**, California, this 3rd **day** of January) 1983, by the State **Board of** Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett _____, Chairman
Ernest J. Dronenburgs. Jr. _____ Member
Richard Nevins _____, Member
_____, Member
_____, Member