

Appeal of Henry T. and Nancy B. Taylor'

The question presented by this appeal is whether appellants are entitled to a solar energy tax credit for 1977.

Revenue and Taxation Code section 17052.5 permits a solar energy credit of 55 **percent** of the cost of certain solar energy systems installed on the taxpayer's premises in California, up to a maximum credit of \$3,000. Subdivision (a)(5) of section 17052.5 permits solar energy credit for "[e]nergy conservation measures applied in conjunction with solar energy **systems** to reduce the total cost or backup energy requirements of such systems. . . ."

On their income tax return for 1977, appellants claimed a solar energy tax credit of \$2,420, approximately 55 percent of the cost for the installation of wood stoves, house insulation, double **windows**, tile floor and ceiling fans. Respondent disallowed the claim because, the credit was not available for energy conservation measures which were not installed in conjunction- with a solar' **energy** system. Appellants paid the deficiency then assessed by respondent.

On the basis that they had constructed a qualifying solar **energy** system in the form of a solar greenhouse-, appellants then filed a claim for refund of tax based on the costs of a tile floor heat sink (**\$912**), extra insulation (**\$75**), double glazed windows (**\$100**), paddle blade ceiling fan (**\$131**), **techfoam** window insulation (**\$28**), and an architectural consultant (\$40).

Since Revenue and Taxation Code section 17052.5 charges the Energy Resources Conservation and Development Commission (Energy Commission) with the duty of establishing the guidelines and criteria for those solar energy systems which are eligible for the solar tax credit, respondent requested the opinion of the Energy Commission's staff with respect. to whether the solar greenhouse described by appellants was within those guidelines and criteria. The Commission's staff determined: (1) that the cost of the architect, the cost of the ceiling fan and perhaps some portion of the cost of the tile floor could be eligible upon completion of a (passive) solar energy system such as solar glazing **or**' a solarium (solar greenhouse); (2) that the taxpayer's drawings indicated the existence of a solar greenhouse; (3) that the energy conservation costs could only be eligible for solar energy credit in the tax year in which the solar energy. system, such as a solar greenhouse, was completed; and (4) that the information supplied by the **taxpayer** suggested that the solar greenhouse was not completed until **after** 1977. The Commission's staff observed that if the solar greenhouse was not completed in 1977, the energy **conservation** costs of the **architect**, the ceiling fan, and the tile floor could not be eligible in that year but could be **eligible** in a later tax year **in which** a qualifying solar energy system was completed.

Appeal of Henry T. and Nancy B. Taylor

Respondent then requested appellants to document when the solar energy system (solar greenhouse) was completed and to document the prices of the energy conservation measures which the Energy Commission has said could qualify for credit for the year the solar energy system was fully installed and functioning. Appellants responded that the solar greenhouse was an original planned part of their house, but that they had built that part themselves after the house had been completed and inspected, and so they could not document the completion of the system greenhouse. Specifically, appellants did not *state* when the solar greenhouse was completed.

It is well settled that respondent's determination of tax is presumed correct, and the burden is, on, the taxpayer to prove the determination is in error. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

In failing to prove they had completed their greenhouse in 1977, appellants necessarily failed to sustain their burden of proving that respondent was wrong in its denial of their claim for the 1977 credit for costs of the energy conservation measures ancillary to their solar energy system. Accordingly, we have no alternative but to *sustain* respondent's action.

