84-SBE-012

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
STEPHEN C. AND LU ANN WEST)

For Appellants: Stephen C. West,
in pro. per.

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal was originally made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Stephen C. and LuAnn West against a proposed assessment of additional personal income tax in the amount of $1,316 for the year 1980. Subsequent to the filing of this appeal, appellants paid the proposed assessment in full. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, this appeal is treated as an appeal from the denial of a claim for refund.

The question presented is whether appellants are entitled to their claimed solar energy tax credit without reduction for the comparable federal credit.

In 1980 appellants installed a solar hot water heating system on their residence at a cost of $3,290. On their joint tax return for that year, appellants claimed a solar energy tax credit in the amount of $1,809.50, or approximately 55 percent of the cost of the solar heating system. Appellants' state tax liability before this credit was zero. However, since their adjusted gross income was less than $30,000, they qualified for a refund of the state solar energy tax credit. On this basis, appellants received a refund of the $1,809.50 claimed as a solar energy tax credit.

Respondent later had occasion to audit appellants' tax return, and discovered that appellants had not reduced their state solar energy tax credit by the amount of the analogous federal credit. Accordingly, respondent recomputed appellants' state solar energy tax credit and issued a proposed tax deficiency. Respondent's subsequent denial of appellants' protest led to this appeal.

In this appeal respondent argues that appellants' $3,290 solar energy system entitled them to a $1,316 federal tax credit. Respondent further contends that appellants' claimed state credit of $1,809.50 is required to be reduced by the amount of the federal credit. Appellants contend that since their federal tax liability for 1980 was $200, they were able to use only $200 of the $1,316 federal credit. Accordingly, appellants argue that their state credit should only be reduced by $200. For the following reasons, we agree with respondent.

Revenue and Taxation Code section 17052.5, as it read for 1980, stated as follows:

> (a)(1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (i)), an amount equal to the amount determined in paragraphs (2) and (3).
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> (2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges, monthly lease payments, and costs associated with the acquisition of a solar easement as specified in paragraph (7),

> but excluding interest charges) incurred by the taxpayer for any solar energy system installed on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand 'dollars ($3,000) per solar energy system as defined in paragraph (6) of subdivision (i).
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> (h) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed or allowable for a solar energy system as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provision's of subdivision (e).

For the year under appeal, Internal Revenue Code section 44C allowed a credit for qualified renewable energy source property (solar, system). The credit was available only to the extent of a claimant's tax liability and the excess was not refundable. However,, the unused portion of the credit could be carried over to succeeding taxable years. For solar systems such as that of appellants', the federal credit amounted to 40 percent of the cost, not to exceed $4,000.

Pursuant to section 44C, appellants were entitled to a federal tax credit for their solar energy system in the amount of $1,316. However, they claimed an actual federal credit for 1980 of only $200 since that was the extent of their federal tax liability. For that reason, appellants wish respondent's proposed reduction of their state solar' energy credit to be limited to the $200 amount they claimed in 1980 as a federal credit.

Appellants' reasoning is faulty and must be rejected. What appellants fail to consider is that the 55 percent maximum credit allowed by Revenue and Taxation Code section 17052.5 applies to any one energy system, not to any one year. (See Appeal'of Colby W. and Virginia L. Johnson, Cal. St. Bd. of Equal., March 31, 1982.) Under the carryover provisions applicable to the federal credit, appellants may continue to claim and receive the remainder of their federal credit in succeeding years until the

total amount is used, and they have through the year 1987 to do this. Because of that carryover availability, appellants' proposal that the adjustment of their state credit for 1980 be limited to the referenced $200 amount could result in their eventual receipt of a combined credit well in excess of 55 percent, for appellants would then receive a combined 55 percent credit for 1980 plus the remainder of the 40 percent federal credit ($1,316 - $200 = $1,116) in subsequent years. In light of the above, it is clear that even if appellants could not claim the entire $1,316 federal credit in 1980, they must reduce their state credit for that year by the full amount of the federal credit to which they were entitled. Respondent's action to that effect must be upheld.

Appeal of Stephen C. and LuAnn West

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Stephen C. and LuAnn West for refund of personal income tax in the amount of $1,316 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of January, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

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