

Appeal of Ladislov and Noeleen Snyder

The issue raised by this appeal is whether appellants were entitled to a claimed energy conservation tax credit for the year in question.

In August 1981, appellants replaced the furnace for their Sunnyvale residence. Subsequently, appellants filed a joint California tax return for 1981 in which they claimed an energy conservation credit in the amount of \$243.75. On respondent's energy conservation credit schedule, appellants described the qualifying conservation measure as a new furnace outfitted with an intermittent ignition device, automatic flue damper, and high efficiency burners. Respondent disallowed the claimed credit on the basis that appellants had not obtained **the** recommendation of a Residential Conservation Service **(RCS)** audit prior to the installation of the furnace. In this appeal from respondent's action, appellants contend that an RCS audit recommendation was not required to establish the eligibility of their replacement furnace for the tax credit.

Section **17052.4^{2/}** provided for a tax credit in an amount equal to 40 percent of the costs incurred by a taxpayer for any energy conservation measure installed on the taxpayer's premises in California. The maximum allowable credit was \$1,500 for each premises. The term "energy conservation **measure**" was defined as any item with a useful life of at least three years falling within a specified generic category of measures which met the minimum standards established for that category. (Rev. & Tax. Code, § 17052.4, subd. (h)(6).) The Energy Resources Conservation and Development Commission (Energy Commission) was authorized **to** establish the minimum standards regarding the eligibility for the tax credit of any **item** of a generic category of energy conservation measures. (Rev. & Tax. Code, § 17052.4, subd. (f).)

2/ All of our references are to former section **17052.4**, entitled "Energy Conservation Tax Credit," which was renumbered section 17052.8 by Statutes 1983, chapter 323, section 83, No. 3 Deering's Advance Legislative Service, page 987.

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Regulations promulgated by the Energy Commission for 1981 set forth three general classes of eligible energy conservation measures for existing dwellings.^{3/} First, certain listed conservation measures, such as ceiling insulation, weatherstripping, and water heater insulation, qualified for the tax credit without a prior RCS audit when installed on any premises. (Cal. Admin. Code, tit. 20, reg. 2613.) Second, other specified measures for existing dwellings were eligible for the credit without being recommended by an RCS audit if installed prior to January 1, 1982. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a).) Included among these short-term exempt measures were electrical or mechanical furnace ignition systems and devices modifying the openings of heating systems. (Cal. Admin. Code, tit. 20, reg. 2615.) After 1981, these same measures required an RCS audit recommendation to receive the tax credit. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a).) Third, all other energy conservation measures must have been recommended for installation as the result of an RCS audit to be eligible for the credit. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (b).) In addition, any eligible energy conservation measures were required to meet both the applicable definition and eligibility criteria. (Cal. Admin. Code, tit. 20, reg. 2612.) Under the applicable regulations adopted by the Energy Commission, replacement furnaces were not included as a measure eligible for the tax credit without an RCS audit recommendation. (Appeal of John and Linda Coreschi, Cal. St. Bd. of Equal., Nov. 14, 1984; see also "California Conservation Tax Credit," California Energy Commission Publication P400-84-014, November 1984.)

It is well settled that respondent's determinations in regard to the imposition of taxes are **presumptively** correct, and the taxpayer has the burden of showing error in those determinations. (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 the instant matter, it is uncontroverted that appellants did not obtain a prior RCS audit recommending installation of a new or replacement furnace in their

^{3/} Unless otherwise specified, all references to regulations are to the California Tax Credit Regulations, California Administrative Code, title 20, chapter 2, subchapter 8, article 2, effective January 1, 1981.

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home. Since the regulations clearly require an RCS audit recommendation to qualify a new furnace for the energy conservation tax credit, appellants' failure to comply with this requirement is necessarily fatal to their case.

Moreover, while appellants' furnace may have been equipped with an intermittent ignition device and automatic flue damper, these devices by themselves did not qualify as energy conservation measures under section 17052.4. The ignition device was not an electrical or mechanical ignition system as that term was defined by regulation 2612, subdivision (h), for it was not "installed as a retrofit measure to an existing gas-fired furnace.,!! (See Appeal of John and Linda Coreschi, supra.) Nor was the automatic damper "installed" to modify the flue of a gas-fired furnace. (Cal. Admin. Code, tit, 20, reg. 2612, subd. (i)(1).) Both of these devices were energy efficient features of a brand-new furnace, not energy conservation measures installed to correct **an outdated** furnace or heating system. We observe that intermittent ignition devices have been required by law on residential gas appliances since 1975. (Pub. Res. Code, §§ 25960-25968,) The tax credit did not apply to energy conservation measures required by state laws and regulations at the time of installation. (Rev. & Tax. Code, § 17052.4, **subd. (e)**; Cal. Admin. Code, **tit. 20**, reg. 2611, subd. **(c).**)

Finally, appellants have claimed that they did **not have** access to the statute and pertinent regulations governing the energy conservation tax credit for 1981. **Appellants state** that they were compelled to rely solely upon respondent's instructions for completing the energy conservation credit schedule. Appellants' argument seems to be that respondent should be estopped from disallowing the credit due to ambiguities in the tax form instructions in regard to eligibility rules. When we review the instructions, however, **we** find no statements that might have misled appellants into believing that a replacement furnace was eligible for the credit. The instructions merely state that furnace ignition systems and vent dampers "may qualify" and directs the taxpayer to "more detailed information . . . to be found in the California Energy Commission's regulations." (Resp. Br., Ex. B.) In prior instances, this board has dismissed as without merit the contention that a lay person should bear no liability resulting from ignorance of the law. (Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.) We have no reason to deviate from this rule in

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the instant appeal since appellants have admitted that they **were** not aware of the applicable law when they claimed the credit.

Based upon the foregoing, we find that appellants have not demonstrated that respondent erred in disallowing their claimed energy conservation tax credit. Accordingly, we must sustain respondent's, action in this matter.

