85-SBE-094

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 83A-401
PHILIP W. AND RENATE TUBMAN)

For Appellant: Philip W. Tubman, in pro. per.

For Respondent: Elleene K. Tessier
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Philip W. and Renate Tubman against proposed assessments of additional personal income tax in the amounts of $860, $161, and $110 for the years 1979, 1980, and 1981, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

The issue on appeal is whether respondent properly disallowed appellants' claimed solar energy tax credits for the years in question.

Appellants are husband and wife. Beginning in 1979, appellants began to upgrade the energy efficiency of their Berkeley residence by a plan which included structural changes, weather stripping of doors and windows, installation of a solar water-heating system, painting the southern exposure of the roof black, and installing ceiling and wall insulation. As appellants were on a limited budget, they decided to implement these improvements over a three-year period, Appellants believed that all of their improvements qualified for solar energy tax credits on their tax returns for the years at issue. Accordingly, attached to appellants' 1979 tax return was a projection of how long it would take appellants to complete the energy conservation work as well as a plan to take solar energy credits for the "work in progress" completed by the end of each year of the appeal years. Before filing their tax returns for 1979 and 1980, appellants contacted several of respondent's employees and allegedly confirmed that they were correctly reporting the solar credits for their "work in progress." Appellants' plan was completed in 1981 when the water heater became operational and appellants took their last solar energy credit.

Upon review of appellants' 1981 return, respondent requested more information pertaining to their home's energy improvements. Based upon the above information, respondent agreed with appellants that they installed a qualifying solar energy water-heating system. However, respondent determined that the structural improvements appellants made to their home did not qualify as a solar space-heating system as appellants claimed. Further, respondent ruled that since taxpayers could only take a credit for expenses incurred in the year a solar project was finished, appellants could not claim any credits for their "work in progress." As none of appellants' refurbishing work was completed until 1981, all of the credits for 1979 and 1980 were disallowed. Appellants were assessed accordingly.

Subsequently, respondent reviewed its decision.. As part of the review process, appellant-husband met with an auditor employed by respondent. Following the meeting, the auditor issued a report which agreed with appellants' position. Thereafter, respondent received an opinion from the Energy Resources Conservation and Development

Commission (Energy Commission) which agreed with the Franchise Tax Board's position that the structural changes in the home did not qualify as a solar space-heating unit. As a result,, respondent disagreed with the audit report and reaffirmed its assessments. This appeal followed.

We begin by noting that section 17052.5 provided for a tax credit equal to 55 percent of the costs incurred by the taxpayer for any solar energy system installed on premises located in California which were owned and controlled by the taxpayer claiming the credit, up to a maximum credit of $3,000. Pursuant to subdivision (a)(5) of section 17052.5, "[e]nergy conservation measures applied in conjunction with solar energy systems to reducethe total cost or backup energy requirements of such systems" were also eligible for the tax credit. The same section also provided that the Energy Commission was 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).)

With respect to appellants' claims that they installed a qualifying space-heating unit, the Energy Commission determined that "[s]tructural modifications and black paint [on the roof] are insufficient" to constitute any of the passive solar energy systems detailed in California Administrative Code, title 20, regulation 2604. (Resp. Br., Ex. N.) The Energy Commission agreed, however', that the solar water-heating system qualified for the tax credit. Because it is the responsibility of the Energy Commission to establish the criteria for solar energy system qualification, we have consistently deferred.. to that body's determinations of the eligibility of a system for credit, (See, e.g., Appeal of Murray A. and Patricia M. Webster, Cal, St. Bd. of Equal., Feb. 28, 1984; Appeal of Leslie E. and Carol M. Scher, Cal. St, Bd. of Equal., Mar. 31, 1982.) Therefore, we defer to the Energy Commission's determinations in this matter.

The next question is in which of the appeal years may appellants take credit for the quaiified solar water-heating system. Section 17052.5, subdivision (a)(2)(B), provided that solar energy credits were to be claimed in the taxable year in which the energy system was installed. "Installed" was defined in section 17052.5, subdivision (i), as "placed in position in a functionally operative state."

By appellants' own admission, their solar water heater became fundtional in 1981. Therefore, all. of the "work in progress" on the solar water heater during 1979 and 1980 was ineligible for the solar credit. Accordingly, respondent's action'limiting the credit for the. solar water-heating system to 1981 will be upheld,

Finally, appellants argue that respondent should be bound by its employees' determinations which were favorable to appellants and should be estopped from issuing the 'assessments in question. First, appellants point out that a field audit determined that appellants did not owe the additional tax claimed in the deficiency. notices and that opinions provided over the telephone by respondent's employees allegedly agreed with appellants that all of the solar credits during the appeal years were reported correctly. Secondly, appellants note that they submitted a'plan in 1979 which explained how the repairs on the house would proceed and how a percentage of the-costs would be taken as credits over a three-year. period. Appellants apparently feel that respondent should have rejected the plan in 1979 and, by failing to do so, respondent has, in fact, agreed to the plan.

We note that estoppel will be invoked against a government agency only in rare and unusual circumstances. (California Cigarette Concessions v. City of Los Angeles, 53 Cal.2d 865 [3 Cal.Rptr. 6751 (1960).) It is well settled that informal opinions by respondent's employees on questions of taxability are insufficient to create estoppel against the taxing agency, (Appeal of Mary M. Goforth, Cal. St. Bd. of Equal,, Dee, 9, 1980; Appeal of Richard W. and Ellen Campbell, Cal. St, Bd. of Equal., Aug. 19, 1975.) Detrimental reliance must be shown. (Appeal of Frank F. and Vee 2. Elliott, Cal, St. Bd. of Equal., Mar. 27, 1973.)

Appellants did not rely upon respondent's employees in planning and implementing their energy 'conservation measures. The circumstances which created their tax liability already existed before they contacted any of respondent's employees for advice on how to report that liability. Consequently, appellants have not shown that they even relied upon the employees' advice, let alone detrimentally relied.

Consequently, appellants have not shown any error in respondent's determination. Accordingly, respondent's action in this matter will be sustained.