

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }
MALCOLM L. AND LOIS M. **PEDERSEN** }

For Appellants: Malcolm L. Pedersen, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

These appeals are made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Malcolm L. and Lois **M.** Pedersen for refund of personal income tax in the amount of \$45.00 for each of the years 1973 and 1974.

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The issue presented in these appeals is whether appellants were entitled to the renter credit for 1973 and 1974.

Appellants owned a houseboat which they maintained as their principal residence throughout 1973 and until May, 1974, when the boat was sold. During this time they rented dock space and auxiliary facilities (i.e., bathroom and shower facilities, parking, etc.) for their boat in San Pedro, California.

Appellants claimed the renter credit on their 1973 state income tax return. Respondent initially disallowed **the** credit because appellants had claimed the homeowner's property tax exemption for their **boat** in 1973, but through an error the **credit** was later allowed and a refund thereof **was** given to the appellants. Later, respondent determined that it had **made** a mistake and issued a deficiency assessment to recover the refund. Appellants paid the assessment on November 25, 1975, and filed a claim for refund on December 3, 1975.

Appellants also claimed the renter credit on their 1974 return. Again, respondent disallowed the credit **because** appellants had claimed the homeowners' property tax exemption for their boat in 1974. Appellants filed a claim for **refund** of the 1974 credit, also on December 3, 1975. Respondent denied appellants' claims for both years and these appeals followed.

During **the** years in question, section 17053.5 of the Revenue and Taxation Code **allowed** "qualified renters" with adjusted gross incomes of \$8,000 or more to claim a \$45.00 annual credit against their personal income tax. **The** term "qualified renter" is defined in subdivision (c) of section 17053.5, which provides in part:

(c) For purposes of this section, a "qualified renter" means an individual who on **March** '1 of the taxable year-

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(1) was a resident of this state, as defined in section 17014, and

(2) on such date rented and occupied premises in this state which constitute his principal place of residence.

* * *

The term 'qualified renter' does not include an individual who has been granted or whose spouse has been granted the homeowners' property tax exemption during the taxable year.

Since appellants admit that they received the homeowner's property tax exemption during both **taxable** years in question, they were not "qualified renters". Therefore, they were not entitled to the renter credit for **either** of the years under the plain language of section 17053.5.

Finding no merit in the various contentions made by the **appellants**, we must sustain respondent's action.

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,

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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 claims of Malcolm L. and Lois M. Pedersen for refund of personal income tax in the amount of \$45.00 for each of the **years 1973** and 1974, be and the same are hereby sustained.

Done at Sacramento, California, this 3rd day of February, 1977, by the State Board of Equalization.

William C. Dwyer, Chairman
 Philip J. Dwyer, Member
 Jack Dwyer, Member
 Mrs. Dwyer, Member
 Mrs. Dwyer, Member

ATTEST:

ATTEST: W. W. Rumbop. Executive **Secretary**