

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DAVID AND DARLENE G. ROCCAFORTE) No. **85R-293**

Appearances:

For Appellants: David Roccaforte,  
in pro. per.

For Respondent: Patricia I. Hart  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057,  
subdivision (a), 1 of the Revenue and Taxation Code  
from the action of the Franchise Tax Board in denying the  
claim of David and Darlene G. Roccaforte for refund of  
personal income tax in the amount of \$780 for the year  
**1982.**

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

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The sole issue presented for our resolution is whether respondent properly disallowed appellants' energy conservation tax credit claimed in the year 1982.

In March 1982, appellants entered into a contract for the insulation of the walls of their residence in *Daly City*, California. The cost for installing the wall insulation was \$2,700. On their joint California income tax return for 1982, appellants claimed an energy conservation tax credit of \$780 for the insulation work.

On October 4, 1983, respondent issued a notice of proposed assessment of additional tax, disallowing the credit in its entirety. Appellants protested the proposed assessment and submitted a report of a Residential Conservation Service (RCS) audit conducted at their home on October 25, 1983, by a Pacific Gas & Electric employee. Three months later, respondent denied the protest. Appellants paid the full amount of the proposed assessment but then filed an amended 1982 return which requested a tax refund in the sum of the proposed assessment. On April 30, 1984, respondent denied the refund claim and this timely appeal followed.

For the year 1982, section 17052.4<sup>2/</sup> provided for a tax credit in an amount equal to 40 percent of the costs incurred by a taxpayer for an energy conservation measure installed on the taxpayer's premises in California. The maximum allowable credit was \$1,500 for each premise. 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).) For existing dwellings, certain energy conservation measures were required to have been approved and adopted as part of a Residential Conservation Plan and recommended as the result of an audit conducted under the auspices of such a plan. (Rev. & Tax. Code, § 17052.4, subd. (h)(6)(H).) Insulation for floors and walls was included within this generic category of measures requiring an RCS audit. (Rev. & Tax. Code, § 17052.4, subd. (h)(6)(H)(vi).) The Energy Resources Conservation and Development Commission

<sup>2/</sup> 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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(Energy Commission) was authorized to establish the minimum standards regarding the eligibility of any item of a generic category of energy conservation measures. (Rev. & Tax. Code, § 17052.4, subd. (f).)

Regulations promulgated by the Energy Commission set forth three classes of energy conservation measures eligible for the tax credit when installed in existing residences in 1982.<sup>3/</sup> First, certain listed conservation measures, such as ceiling insulation, weatherstripping, and water heater insulation, qualified for the tax credit without an RCS audit when installed on any premise. (Cal. Admin. Code, tit. 20, reg. 2613.) Second, after January 1, 1982, other specified measures complying with predetermined energy standards required an RCS audit to be eligible for the tax credit unless the residence was located in a region of the state where home energy audits were not available through an RCS program. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a).) Third, all other energy conservation measures not specifically listed in the regulations 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).) An energy conservation measure was required to meet both the applicable definition and eligibility criteria set forth for the device. (Cal. Admin. Code, tit. 20, reg. 2612; reg. 2614, subd. (b).)

The Energy Commission listed wall insulation among the second category measures which were eligible for the tax credit if they conformed to established standards and were recommended by an RCS audit. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a); reg. 2615, subd. (k).) Regulation 2612, subdivision (v), defined wall insulation as "material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building or the outside." Materials for wall insulation were required to meet or exceed specifications set by state insulation quality standards. (Cal. Admin. Code, tit. 20, **reg.** 2615, subd. (k)(1).) Thus, under both the statute and the applicable regulations, it is clear that wall insulation qualified for the energy conservation tax credit in 1982 only if

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, amendment filed Feb. 11, 1982 (Register 82, No. 7).

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its installation was recommended by an RCS audit **report.**<sup>4/</sup> Based on the language of the statute and the interpretation thereof by the Energy Commission, we have held that the Legislature intended that an RCS audit be conducted prior to installation of the energy-saving device for it **to be** eligible for the credit. (Appeal of Richard M. Nederostek and Catherine C. Carney, Cal. St. Bd. of Equal., Oct. '9, 1985; see also Appeal of John and Linda Coreschi, Cal. St. Bd. of Equal., Nov. 14, 1984.)

It is well settled that determinations of the Franchise Tax Board in regard to the imposition of taxes are presumptively correct, and the taxpayer has the burden of demonstrating 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 this appeal, respondent contends that the credit was properly disallowed because appellants failed to obtain a prior RCS audit recommending installation of the wall insulation. Appellants concede that they were unaware of the prior audit requirement when they installed the wall insulation in 1982. Appellants argue that the credit should nevertheless be allowed in their case since the wall insulation substantially decreased the cost of heating their home despite the rising price of gas. It is appellants' position that they complied with the intent of the energy conservation tax credit law, which they contend was promulgated to encourage the installation of necessary and cost effective energy measures.

Appellants have presented in well-organized fashion information documenting the reduction in their usage of home-heating gas since they insulated the walls of their residence. Unfortunately, it was not sufficient that appellants merely install an energy-saving device. For appellants to have established the eligibility of the wall insulation for the 1982 energy conservation tax credit, it was mandatory that they receive an RCS audit recommendation before adding the wall insulation onto

4/ For taxable years beginning January 1, 1984, and ending December 31, 1985, wall insulation is eligible for the energy conservation tax credit without an RCS audit. (Rev. & Tax. Code, § 17052.8, as amended by Statutes 19.83, ch. 1164, section 1, No. 7 Deering's Advance Legislative Service, page 152; Cal. Admin. Code, tit. 20, reg. 2613, subd. (i), amendment filed Mar. 3, 1984 (Register 84, No. 9).)

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their home. Because appellants failed to comply with this critical requirement, we have no choice but to sustain respondent's determination to disallow their claimed tax credit.

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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,

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 David and Darlene G. Roccaforte for refund of personal income tax in the amount of \$780 for the year 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of November, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member
<u>_____</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9