

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal Of)
IDA B. ANDERSON) NO. 85A-338-VN
)

For Appellant: Ida B. Anderson,
in pro. per.

For Respondent: Patricia I. Hart
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 Ida B. Anderson
against a proposed assessment of additional personal
income tax in the amount of \$708 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 issue presented for our decision is whether appellant was entitled to the **energy conservation** tax credit claimed on her personal income tax return for 1982.

In August 1982, **appellant** decided that she wanted to install energy-efficient, double-paned windows in her San Francisco residential flat. She **solicited bids** from four different contractors who assured her that the windows were eligible for the energy conservation tax credit. Thereupon, appellant hired one of the contractors to install "thermal" windows in her residence at a cost of \$4,939.

On her California personal income tax return for 1982, appellant claimed an energy conservation tax credit of \$708 for installation of the windows. After reviewing the return, the Franchise Tax Board determined to disallow the credit on the ground that appellant had failed to obtain a report from a Residential Conservation Service (RCS) audit recommending installation of the "bronzed-baked enamel" windows. Appellant filed this timely appeal after respondent denied her protest against the resultant proposed deficiency assessment..

For the year in question, section **17052.4^{2/}** 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).**) Among the measures included within this generic **category** were thermal windows for the exterior of dwellings and heat absorbing or heat reflective

2/ All of our references are to former section 17052.4, &titled, "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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glazed windows. (Rev. & Tax. Code, § 17052.4, subd. (h)(6)(H)(iii).) The Energy Resources Conservation and Development Commission (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).)

Under the regulations promulgated by the Energy Commission, any 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).) ^{3/} Thermal windows were specifically included among the category of measures that were eligible for the 1982 tax credit if they complied with predetermined material and installation standards and *were* recommended by an RCS audit. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (aj); reg. 2615, subd. (c); Appeal of Jeffrey A. and Judith Gough, Cal. St. Bd. of Equal., Nov. 6, 1985.) ^{4/} Heat absorbing and heat reflective window materials were likewise eligible for the credit so long as they conformed to certain glazing or coating coefficient standards and received the **recommendation of** an RCS auditor. (Cal. Admin. Code, ^{5/} tit. 20, reg. 2614, subd. (a); reg. 2615, subd. (3).) ^{5/} Both thermal windows and heat

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).

4/ Thermal window was defined as a window unit with improved thermal performance due to the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces: it may include an insulating frame and sash. (Cal. Admin. Code, tit. 20, reg. 2612, subd. (1).)

5/ Heat reflective and heat absorbing window materials **were** defined as window glazing materials with exceptional heat reflective or heat absorbing properties or reflective or absorptive films and coatings applied to an existing window which resulted in the same properties. (Cal. Admin. Code, tit. 20, reg. 2612, subd. (o).)

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absorbing or reflective window materials were exempt from the RCS audit requirement only in the event that the taxpayer resided in a region of the state where no RCS plan provided energy audits. (Cal. Admin. Code, tit. 20, reg. 2614, subd. (a).) Where it was required, the RCS audit must be conducted prior to the installation of the energy conservation measure. (Appeal of Richard M. Nederostek and Catherine C. Carney, Cal. St. Bd. of Equal., Oct. 9, 1985.)

It is well settled that determinations of the Franchise Tax Board in regard to the imposition of taxes are presumptively correct, and appellant bears the burden of proving that respondent's decision to disallow her claimed credit was erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Here, the parties have described appellant's energy device as either dual or double-paned windows or bronzed-baked enamel windows. Whether they are termed thermal windows or heat absorbing window material, however, it is clear both types of energy devices required an RCS audit to be eligible for the credit. Respondent adds that energy audits were available in San Francisco in 1982. Thus, appellant was required, in either case, to have obtained a prior RCS audit recommending installation to qualify for the 1982 energy conservation tax credit.

Appellant has argued that the credit should be allowed in her case despite the lack of a prior RCS audit because none of the contractors advised her that an audit was necessary. She further contends that it is discriminatory to require that she have obtained an **RCS audit** to be eligible for the credit when it would not have been mandatory if she lived in a different region where RCS audits were not available. Finally, in support of her claimed credit, appellant has submitted a letter from the manufacturer attesting to the energy efficiency of the windows installed in her home. While we can sympathize with appellant's plight, this board has heard similar arguments in other recent appeals dealing with the energy conservation tax credit and has found them to be unconvincing and insufficient to satisfy a taxpayer's burden of proof in this type of case. (See, e.g., Appeal of Ladislav and Noeleen Snyder, Cal. St. Bd. of Equal., May 8, 1985; Appeal of Paul D. and Katherine Y. McAfee, Cal. St. Bd. of Equal., Aug. 20, 1985.) The fact of the matter is that the law and regulations governing the **energy** conservation tax credit required that a taxpayer

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obtain a prior RCS audit to qualify the windows or window materials in question for the 1982 credit. Since ~~appel-~~lant did not comply with this critical requirement, it was entirely proper for respondent to have disallowed the claimed credit. **Accordingly,** we have no choice but to sustain respondent's action in this matter.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ida B. Anderson against a proposed assessment of additional personal income tax in the amount of \$708 for the year 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of February, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman
Conway H. Collis, Member
William M. Bennett, Member
Ernest J. Dronenburg, Jr., Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9