

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. VINCENT

) OTA Case No. 21057799
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OPINION

Representing the Parties:

For Appellant: G. Vincent

For Respondent: Kristina Pehur, Graduate Student Assistant

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Vincent (appellant)¹ appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,500, and applicable interest, for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to claim a Low-Emission Vehicle (LEV) credit carryover for the 2017 tax year.

FACTUAL FINDINGS

1. In 2017, appellant and her former spouse purchased a 2018 BMW 580e.
2. Appellant and her former spouse filed a joint 2017 California income tax return claiming a \$1,500 LEV credit carryover.
3. Subsequently, FTB issued a Notice of Proposed Assessment (NPA) to appellant and her former spouse disallowing the claimed LEV credit carryover, resulting in additional tax

¹ FTB issued a Notice of Action to both appellant and her former spouse. However, only appellant filed an appeal with the Office of Tax Appeals; therefore, “appellant” will refer only to G. Vincent for purposes of this appeal.

- of \$1,500, plus interest. The NPA explained that FTB had not received documentation to substantiate the claimed credit carryover.
4. Appellant and her former spouse protested the NPA and provided a copy of a sales contract for the BMW 580e indicating that appellant's former spouse purchased the vehicle on December 16, 2017.
 5. In response, FTB sent a letter explaining that the LEV credit had expired and was no longer available. The letter further explained that while the LEV credit had a carryover provision, the carryover is only available from tax years 1991 through 1995.
 6. FTB issued appellant and her former spouse a Notice of Action affirming the NPA.
 7. This timely appeal followed.

DISCUSSION

Taxpayers have the burden of proving entitlement to claimed credits. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Former R&TC section 17052.11 provided an LEV credit for the 1991 through 1995 tax years for qualified costs paid or incurred by taxpayers during that period, and allowed any unused credits to be carried over to subsequent tax years. Here, appellant and her former spouse claimed an LEV credit carryover for 2017, and as proof, submitted evidence that appellant's former spouse purchased a vehicle in 2017. However, since the purchase occurred in 2017 and not during the 1991 to 1995 period when the LEV credit was available, appellant is not entitled to any LEV credit that could potentially be carried over to the 2017 tax year. There is no evidence that appellant or her former spouse purchased a qualified LEV during the 1991 to 1995 period or that they have any LEV credits that might otherwise be carried forward. Accordingly, we find that appellant is not entitled to claim an LEV credit carryover for the 2017 tax year.

Appellant does not argue that she or her former spouse are entitled to the LEV carryover credit based on a vehicle she purchased in 2017. Instead, appellant argues that title to the vehicle at issue was solely in her now former spouse's name and, therefore, she should not be liable for the additional tax. R&TC section 19006(b) provides that spouses are jointly and severally liable for the amount of tax due when they file a joint tax return. Therefore, each individual who signs the joint return consents to be liable for the entire amount of tax, penalties, and interest that arise from the joint return. Accordingly, FTB may collect the entire tax liability from either individual who signed the joint tax return, or may collect the tax liability from both people, regardless of

which individual was responsible for the income (or here, disallowed claimed credit) that led to the unpaid tax liability.² Appellant filed a 2017 joint California return with her former spouse claiming the disallowed LEV credit carryover. Therefore, appellant is jointly and severally liable for any tax due associated with the 2017 return, regardless of whose name is on the title of the nonqualifying vehicle for which the LEV carryover credit was claimed.

HOLDING

Appellant is not entitled to claim an LEV credit carryover for the 2017 tax year.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

DocuSigned by:

Andrea L.H. Long

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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

Tommy Leung

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Tommy Leung
Administrative Law Judge

Date Issued: 4/22/2022

² For joint returns, to the extent FTB's position is sustained, FTB will issue a bill to both parties who filed the joint return and can collect the liability from either party or both.