

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21118935
C. DE GRASSE AND)
C. DE GRASSE)
_____)

OPINION

Representing the Parties:

For Appellants: C. de Grasse

For Respondent: Natasha S. Page, Tax Counsel IV

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. de Grasse and C. de Grasse (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$7,056, and applicable interest, for the 2016 tax year.

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

ISSUE

Whether appellants have established that they are entitled to claim the solar energy credit or carryovers for the 2016 tax year.

FACTUAL FINDINGS

1. Appellants installed a residential solar system in 2016.
2. Appellants filed a joint California Resident Income Tax Return for 2016, which reported a solar energy credit carryover of \$7,056.

3. Respondent reviewed appellants' return and issued a Notice of Proposed Assessment (NPA) which disallowed the solar energy credit carryover and proposed additional tax of \$7,056, plus applicable interest.¹
4. Subsequently, appellants filed a protest wherein they asserted that they were not claiming a carryover credit, but rather were claiming the credit itself.
5. Respondent sent appellants a position letter, explaining respondent's position that the solar energy credit had expired prior to the 2016 tax year and inviting appellants to submit additional information to support their position.
6. When appellants did not respond, respondent issued a Notice of Action affirming the NPA.
7. This timely appeal followed.

DISCUSSION

A taxpayer has the burden of proving respondent's tax determination to be erroneous. (*Appeal of Quality Tax and Financial Services*, 2018-OTA-130P). Furthermore, tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*INDOPCO, Inc. v. Commissioner*, (1992) 503 U.S. 79, 84; *Appeals of Swat-Fame, Inc. et al.*, 2020-OTA-046P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P). In the absence of credible, competent, and relevant evidence showing error in respondent's determination, the determination must be upheld. (*Ibid.*) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Morosky*, 2019-OTA-312P.)

Former R&TC section 17052.5 allowed taxpayers to claim a credit for the cost of installing solar energy systems.² Taxpayers were able to claim a solar energy credit carryover in

¹ Appellants made a payment of \$8,584.18 on October 25, 2021. Respondent has indicated that this payment will be applied or refunded as appropriate at the conclusion of this appeal.

² Former R&TC section 17052.5 was originally enacted in 1976 and repealed effective January 1, 1987. This statute was reenacted to allow a solar energy tax credit for tax years 1990 through 1993 and was repealed again in 1994.

subsequent years for the cost of installing a solar energy system where the credit was allowed in the year the solar energy system was installed and that credit exceeded the net tax for that year.³

Here, appellants claimed a solar energy tax credit on their 2016 tax return for a system that was installed during that year. As the solar energy tax credit pursuant to R&TC section 17052.5 was repealed effective January 1, 1994, and was not operable during the 2016 tax year, appellants' system which was installed in 2016 does not qualify appellants for this credit. Further, appellants are not entitled to claim a solar energy credit carryover on their 2016 return, because the carryovers from this credit were only available for solar systems installed in tax years 1977 through 1986, and 1990 through 1993. Appellants have not presented any evidence to establish that they installed a solar energy system during any of these prior tax years.

While appellants assert that their tax professional believes that the solar credit is legitimate, these unsupported assertions are insufficient to meet appellants' burden to show that respondent's tax determination is erroneous. (*Appeal of Bindley, supra*). Nor are appellants' assertions sufficient to show that appellants are entitled to the claimed tax credits. (*INDOPCO, Inc. v. Commissioner, supra; Appeals of Swat-Fame, Inc. et al., supra*).

Moreover, we are unaware of any credits available to taxpayers for installation of a solar system during the 2016 tax year, and appellants have failed to provide any evidence or argument to show that any such credits were available. Thus, we find appellants have failed to establish that they are entitled to the claimed solar energy tax credit or carryovers for the 2016 tax year.

³ Former R&TC section 17052.5 was originally enacted in 1976 and amended in 1977 to add a provision allowing for the carryover of any unused portion of the tax credit for future tax year. (See Stats.1977, c. 1082, p. 3482, §1.5, amending c. 1079 and rewriting subdivision (h).) This version of former R&TC was repealed effective January 1, 1987, and reenacted for tax years 1990 through 1993 only. The version in effect for tax years 1990 through 1993 also allowed the carryover of any unused tax credit for future years. (See e.g., former R&TC, § 17052(h), (n) effective October 1, 1989.) Thus, pursuant to former R&TC section 17052.5, credit carryovers would be available for solar energy systems installed in tax years 1977 through 1986, and 1990 through 1993 only.

HOLDING

Appellants have failed to establish that they are entitled to the claimed solar energy tax credit or carryovers for the 2016 tax year.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 5/31/2022