

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21017114
R. JIMENEZ)
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OPINION

Representing the Parties:

For Appellant: R. Jimenez

For Respondent: Paige Chang, Tax Counsel
Eric A. Yadao, Tax Counsel IV

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Jimenez (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$744, and applicable interest, for the 2016 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Ovsep Akopchikyan, Huy “Mike” Le, and Cheryl L. Akin held an oral hearing for this matter in Cerritos, California, on September 15, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for a decision.

ISSUE

Whether appellant has established error in FTB's disallowance of the water conservation credit carryover for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return for the 2016 tax year. On his return, appellant reported a water conservation credit carryover of \$744.
 2. FTB audited appellant's return and disallowed the claimed water conservation credit carryover. FTB issued a Notice of Proposed Assessment (NPA) disallowing the credit and proposing additional tax of \$744, plus applicable interest.

3. Appellant protested the NPA, contending that he had taken measures to conserve water and spent thousands of dollars in water conservation improvements to his property, including the installation of turf grass.
4. FTB issued a Notice of Action affirming the NPA. This timely appeal followed.
5. On appeal appellant stipulated that he did not have any water conservation credit carryover from the 1980 through 1982 tax years and that the water conservation improvements installed on appellant's property were not installed between January 1, 1980, and December 31, 1982.

DISCUSSION

FTB's determinations are generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of Vardell*, 2020-OTA-190P.) Income tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeals of Swat-Fame, Inc. et al.*, 2020-OTA-046P; *INDOPCO, Inc. v. Commissioner* (1992) 503 U.S. 79, 84.) Statutes granting tax credits are to be construed strictly against the taxpayer with any doubts resolved in FTB's favor. (*Appeals of Swat-Fame, Inc. et al.*, *supra*; *Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Thus, appellant has the burden of showing that the requirements for the water conservation credit carryover are satisfied.

Former R&TC section 17052.8, permitting a tax credit for the installation of certain water conservation systems, was enacted on July 26, 1980. (See Stats. 1980, ch. 693.)¹ Former R&TC section 17052.8(a)(1) provided, "There shall be allowed as a credit against the amount of 'net tax' (as defined in subdivision (e)), an amount equal to the amount determined in paragraph (2) or (3)." Former R&TC section 17052.8(a)(2) stated, "Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges but excluding interest charges and operation expenses) incurred by the taxpayer of any water conservation systems on single-family residences in California which are owned and controlled by the taxpayer at the time of installation. Such credit shall not exceed three thousand

¹ Chapter 693 of Statutes of 1980, showing the date of enactment and containing the specific language of former R&TC section 17052.8, will be sent to the parties with this Opinion.

dollars (\$3,000).² “Water conservation system” was defined as meaning: rainwater and greywater cisterns; shower and faucet flow-reducing devices; and toilet modification or replacement with “low-flush.” (Former R&TC, § 17052.8(a)(5)(A)-(C).) Former R&TC section 17052.8(g) allowed any unused credit (i.e., the amount of the allowable credit which exceeds the taxpayer’s “net tax” for that tax year) to be carried over to succeeding tax years until such credit is fully used. Finally, former R&TC section 17052.8(j) stated, “This section shall be in effect with respect to computation of taxes for taxable years ending before January 1, 1983, and as of such date is repealed”

Here, appellant contends that he took measures to conserve water and spent thousands of dollars in water conservation improvements to his property, including installing turf grass to reduce water consumption. Appellant does not specify when these improvements were made to his property but concedes that they were not made during the 1980 through 1982 tax years. Appellant further contends that he used TurboTax software to complete his 2016 taxes which permitted him to claim the credit. Appellant questions why the tax forms permit him to take the credit in the 2016 tax year if such credit was only available for improvements made during the 1980 through 1982 tax years, noting that these tax years are “some 34 to 36 years ago.” Appellant further notes that to date, FTB has not provided him with the relevant statutory provision or language supporting its position that the credit was only allowed for water conservation measures taken in the 1980 through 1982 tax years.

As noted above, former R&TC section 17052.8, which permitted a credit for certain water conservation measures, was enacted in July 1980, and repealed by its own terms on January 1, 1983. (See former R&TC, § 17052.8(j).) Thus, the water conservation credit, allowed pursuant to former R&TC section 17052.8, is only applicable to eligible water conservation measures taken while this statute was in effect (i.e., during tax years 1980 through 1982). Appellant states that he used TurboTax software to prepare his 2016 tax return, contends that TurboTax permitted him to claim the water conversation credit on his 2016 California tax forms, and questions why the tax forms would permit him to claim the water conservation credit

² Former R&TC section 17052.8(a)(3) applied to residences “other than single-family dwellings” and allowed a credit equal to the greater of \$3,000 or 25 percent of the cost of the water conservation system if the cost of that system exceeded \$6,000.

if it expired more than 30 years prior to the 2016 tax year.³ To the extent TurboTax and/or the tax forms allowed appellant to claim water conservation credit carryforwards during the 2016 tax year, OTA notes that former R&TC section 17085(g) specifically permitted unused credits to be carried over to succeeding tax years indefinitely, or until fully used.⁴ Additionally, administrative guidance contained in tax agency publications is not binding on the government and cannot change the plain meaning of tax statutes. (*Appeal of Dandridge*, 2019-OTA-458P.) Here, because appellant admits that the water conservation improvements at issue in this appeal were not installed between January 1, 1980, and December 31, 1982, it is clear that appellant does not have any credit carryovers from these tax years which he can claim on his 2016 tax return. Since the improvements at issue here were not made during the 1980 through 1982 tax years during which the statute permitting the water conservation credit was in effect, appellant is not entitled to any credit for water conservation related improvements he made to his property during the 2016 or prior tax years, including his installation of artificial turf.

Finally, appellant points to language which states, “It is the intent of the Legislature to provide an income tax credit for the purchase of outdoor water use efficiency improvements during the exceptional drought that California is facing.” Appellant contends that the credit he claimed in the 2016 tax year should be allowed based on this legislative intent. However, the language appellant points to is from California Assembly Bill 585, the Outdoor Water Efficiency Act of 2015, and California Assembly Bill 2040, the Outdoor Water Efficiency Act of 2016, both of which would have allowed personal income tax credits for certain outdoor water use efficiency improvements. However, these bills failed to pass and were not enacted by the California legislature.⁵ Thus, the language discussing the intent of these failed bills is

³ OTA notes that appellant describes the claimed credit as “WATRCSRV CO” on line 43 of his California income tax return (Form 540) and on Form 3540, Credit Carryover and Recapture Summary, which was attached to appellant’s 2016 return. In reviewing these forms, OTA does not note any preprinted language regarding the water conservation credit, and it is unclear whether appellant manually input the information regarding the water conservation credit into TurboTax or if TurboTax allowed appellant to select this credit carryover as an option when completing his California return.

⁴ While most taxpayers will not have remaining unused credit carryovers from tax years which occurred more than 30 years prior to the 2016 tax year at issue in this appeal, it remains a possibility, which is why the tax forms may permit taxpayers to claim such credit carryovers.

⁵ See https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB585 and https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201520160AB2040.

inapplicable here since the California legislature did not enact the tax credits contemplated in these bills, and appellant did not and could not claim these credits.

HOLDING

Appellant is not entitled to a water conservation credit carryover for the 2016 tax year.

DISPOSITION

FTB's action is sustained.

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Cheryl L. Akin

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Cheryl L. Akin
Administrative Law Judge

We concur:

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Huy "Mike" Le

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Huy "Mike" Le
Administrative Law Judge

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Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 11/8/2022

Volume 2

**STATUTES OF CALIFORNIA
AND DIGESTS OF MEASURES
1980**

Constitution of 1879 as Amended

**Measures Submitted to Vote of Electors,
Primary Election, June 3, 1980
and General Election, November 4, 1980**

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

1979-80 Regular Session



Compiled by
BION M. GREGORY
Legislative Counsel

In order to ensure that the registry of banked reductions in the emission of air contaminants accurately reflects the state of the title of the use of approved emission reductions, it is necessary that this act take effect immediately.

CHAPTER 693

An act to add and repeal Chapter 7 (commencing with Section 470) of Division 1 of the Water Code, and to add and repeal Section 17052.8 of the Revenue and Taxation Code, relating to water conservation.

[Approved by Governor July 26, 1980 Filed with
Secretary of State July 27, 1980]

The people of the State of California do enact as follows:

SECTION 1. Chapter 7 (commencing with Section 470) is added to Division 1 of the Water Code, to read:

CHAPTER 7. INCLUSION OF CISTERNS IN NEW AND EXISTING STRUCTURES

470. It is the intent of this chapter to establish a demonstration program to promote the inclusion of cisterns in new or existing structures for the purpose of insuring that the limited available supplies of water in this state will be put to beneficial use to the fullest extent of which they are capable.

471. The program established pursuant to this chapter shall be administered by the department consistent with the provisions of Section 17052.8 of the Revenue and Taxation Code. Any person may apply to the department for approval of a proposed project for the inclusion of cisterns in new or existing structures, and the department may approve one or more such projects. The department shall adopt rules and regulations necessary to carry out the purposes of this chapter.

472. The department shall report to the Governor and the Legislature not later than June 1, 1981, on the implementation of this chapter, together with recommendations concerning the future implementation of the program.

473. This chapter shall remain in effect only until January 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends such date.

SEC. 2. Section 17052.8 is added to the Revenue and Taxation Code, to read:

17052.8. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraph (2) or (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges but excluding interest charges and operation expenses) incurred by the taxpayer of any water conservation systems on single-family residences in California which are owned and controlled by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars (\$3,000).

(3) With regard to residences in California which are owned and controlled by the taxpayer, other than single-family dwellings, on which the cost (including installation charges but excluding interest charges) exceeds six thousand dollars (\$6,000), the amount of the credit allowed by this section shall be the greater amount of three thousand dollars (\$3,000) or 25 percent of the cost of the water conservation system.

(4) Condominium owners, who install water conservation systems on such California premises which is owned cooperatively by them, shall be eligible to receive the credit provided by this section, in proportion to the number of households served by the system. .

(5) On or before January 30, 1981, the Department of Water Resources shall, after one or more public hearings, establish guidelines, definitions, and criteria for water conservation systems which shall be eligible for the credit provided by this section. "Water conservation system" means the following:

(A) Rainwater and greywater cisterns. The appropriate uses of such cistern water shall be determined by the Department of Water Resources in conjunction with the State Department of Health Services.

(B) Shower and faucet flow-reducing devices.

(C) Toilet modification or replacement with "low-flush."

(6) The Department of Water Resources shall also prepare a study outlining incentive programs to encourage municipal and local district participation in water conservation, and shall report their findings to the Legislature by June 1, 1981.

(7) Tax credits for rainwater and greywater cisterns shall be restricted as follows:

(A) Cisterns shall be totally dedicated to water conservation uses. Multiple use facilities shall not be eligible.

(B) Cisterns shall not include earthen impoundments.

(C) The owner shall have received approval of the local department of health for any cistern.

(D) Any individual wishing to receive this tax credit for cistern cost shall notify the Department of Water Resources of the plan and location of the cistern being considered.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis.

(d) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) For the purposes of this section, the term "net tax" means the tax imposed under either Section 17041 or 17048 minus the credit for retirement income provided for in Section 17053, the credits for personal exemption provided for in Section 17054, and the credits for taxes paid other states provided for in Chapter 12 (commencing with Section 18001).

(f) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(g) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(h) Subject to the dollar limitations provided in paragraphs (2) and (3) of subdivision (a), if a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of water conservation systems, then to the extent such credit is allowed for a water conservation system as defined in this section, the state credit provided by this section shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f)

(i) The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section. The Franchise Tax Board shall report to the Legislature before January 15, 1983, as to the impact of this act, including the number and amounts of credits, an estimate of the distribution of the credit by income class, distribution of the credit between single-family dwellings and other premises, and the state revenue loss attributable to such credits.

(j) This section shall be in effect with respect to computation of taxes for taxable years ending before January 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends such date.

CHAPTER 694

An act to add and repeal Section 11011.8 of the Government Code, and to amend Section 118 of the Streets and Highways Code, relating to state property, and declaring the urgency thereof, to take effect immediately.

CHAPTER 904

An act to add and repeal Sections 17052.8, 17208.7, 23601.5, and 24349.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 17, 1980. Filed with Secretary of State September 17, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 17052.8 is added to the Revenue and Taxation Code, to read:

17052.8. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (h), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 40 percent of the cost (including installation charges, monthly lease payments but excluding interest charges) incurred by the taxpayer of any energy conservation measure on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed fifteen hundred dollars (\$1,500). The owner of the premises on which the energy conservation measure is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the energy conservation tax credit for any or all energy conservation measures installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for an energy conservation measure, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The energy conservation tax credit shall be claimed in the state income tax return for the taxable year in which the energy conservation measure was installed. However, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for an energy conservation measure, the original purchaser of the new home on which the energy conservation measure is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home.

A taxpayer who claimed the energy conservation tax credit in the state income tax return for the taxable year in which the energy conservation measure was installed, may in any subsequent year claim an energy conservation tax credit for additional energy conservation measures installed in that tax year.

(3) With regard to premises in California which are owned by the taxpayer, other than dwellings, on which the cost (including

installation charges but excluding interest charges) exceeds six thousand dollars (\$6,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the energy conservation measure.

(4) If an energy conservation measure serves two or more dwelling units, the owner or owners of the dwellings shall be eligible to receive the credit in proportion to the number of dwelling units served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the energy conservation system by the number of dwelling units served by the energy conservation measure, and applying the formula described in paragraph (2) to the per dwelling cost.

In the case of taxpayers who qualify for a refund provided for under this subdivision, whose credits exceed their tax liability computed under this part, minus all other credits provided for in this part, except the credits provided in Section 17061 and 1855.1, such taxpayer shall be allowed a credit to the extent of the taxpayer's tax liability plus a refund in excess of that amount up to, or combined credit and refund equal to, the credit otherwise provided in this section. For the purposes of this subdivision, a taxpayer qualified for a refund means an individual taxpayer whose adjusted gross income is less than fifteen thousand dollars (\$15,000) and married taxpayers filing joint returns whose adjusted gross income is less than thirty thousand dollars (\$30,000), in the taxable year in which the credit provided in this section is claimed.

(5) Taxpayers who partially own and partially lease an energy conservation measure from a utility or other lessor shall receive a tax credit equal to 40 percent of the purchased portion of the energy conservation measure (including installation charges, but excluding interest charges) and the principal recovery portion of the lease payments (excluding the interest charges) for the first three years of operation or until the energy conservation tax credit allowance terminates, whichever occurs first. Such credit shall not exceed one thousand five hundred dollars (\$1,500). In any one year, the tax credit shall apply only to the principal recovery portion of lease payments made during that year and to amounts expended on the purchased portion of the energy conservation measure (including installation charges) during that year. As used in this section, "principal recovery portion" means the cost incurred by the utility in acquiring the energy conservation measure. "Principal recovery portion" does not include interest charges, sales taxes, use taxes, or maintenance expenses.

(6) The basis amount of any energy conservation measure eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such energy conservation measure.

(7) The credit provided by this section shall be reduced by the amount of any grant or any nonreimbursable financial assistance provided by a utility or a public entity (other than interest charges).

(b) The basis of any energy conservation measure for which a credit is allowed shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(c) With the exception of a husband and wife, if there is more than one owner of a premises on which an energy conservation measure is installed, each owner shall be eligible to receive the energy conservation tax credit in proportion to his or her ownership interests in the premises. In the case of a partnership, the energy conservation tax credit may be divided between the partners pursuant to a written partnership agreement. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(d) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part. The tax credit provided by this section shall not apply to energy conservation measures required by state laws and regulations pursuant thereto, at the time of installation.

(e) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(f) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, adopt regulations which establish minimum standards which any item of a generic category of energy conservation measure, as defined by this section, must meet to be eligible for a conservation tax credit. Such standards shall include minimum provisions for effectiveness, safety and consumer protection which are consistent with standards established pursuant to the National Energy Conservation Policy Act and other applicable federal and state law. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section. Regulations adopted by the Energy Resources Conservation and Development Commission and the Franchise Tax Board, pursuant to this section, shall be in language which is easily understood by the general public.

(g) (1) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of energy conservation measures in dwelling units, then to the extent such credit is allowed or allowable for an energy conservation measure as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 40 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of energy conservation

measures in other than dwelling units, then to the extent such credit is allowed or allowable for an energy conservation measure as defined in this section, the state credit provided in paragraphs (2) and (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(h) For purposes of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Net tax" means the tax imposed under either Section 17041 or 17048 minus all credits except the credits provided by Section 17061 (relating to excess state disability insurance withheld), Section 18555.1 (relating to income tax withheld), and Section 17053.5 (relating to the renters' credit).

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises or a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title.

(4) "Premises" means land, buildings, or mobilehomes.

(5) "Dwelling" means a building used for residential purposes, and includes single-family residences and individual units of a condominium, cooperative, mobilehome, or apartment.

(6) "Energy conservation measure" means any item with a useful life of not less than three years of one of the following generic categories which meets the minimum standards as specified pursuant to subdivision (f):

(A) Ceiling insulation.

(B) Weatherstripping of all doors and windows which lead to unheated or uncooled areas so as to effectively and reliably limit air infiltration.

(C) An external water heater insulation blanket.

(D) Low flow devices on all accessible shower heads.

(E) Caulking or sealing of all major cracks and joints and other openings in building exterior to reduce the loss of heated or cooled air or the entry of outside air where feasible, and sealing of wall outlets.

(F) Insulating all accessible insulated transverse heating and cooling system ducts and plenums which enter or leave unheated or uncooled areas.

(G) Covers for swimming pools or hot tubs which transmit the sun's radiation energy into the water, reduce heat loss and water evaporation.

(H) Such other measures or devices as may be designated "residential energy conservation measures" approved and adopted as part of an appropriate Residential Conservation Service Plan pursuant to the provisions of Section 210 of Title II of the National Energy Conservation Policy Act (92 Stat. 3206) and recommended

as the result of an audit conducted under the auspices of such a plan. This generic category includes, but is not limited to:

- (i) Electrical or mechanical furnace ignition systems which replace gas pilot lights;
- (ii) Devices modifying the openings of heating and cooling systems which achieve increased efficiency;
- (iii) Storm or thermal windows or doors for the exterior of dwellings, multiglazed windows and doors, or movable insulation such as shutters or thermal drapes, which substantially reduce the energy needed for space heating and cooling;
- (iv) Heat pumps and water heating heat pumps (including those which use air, water or earth as a source or sink of heat) which replace electric resistance heaters, or are used in conjunction with a solar energy system;
- (v) Load management devices to reduce the direct or indirect use of natural gas or electricity through interruption, storage and load limiting;

(vi) Insulation for floors and walls.

(I) For premises, other than dwellings:

- (i) Electrical or mechanical furnace ignition systems which replace gas pilot lights;
- (ii) Services modifying the openings of heating and cooling systems which achieve increased energy efficiency;
- (iii) Storm or thermal windows or doors for the exterior of dwellings, ventilation cooling, heating, absorbing or heat reflective glazed windows and door materials, exterior shading devices, or movable insulation such as shutters or thermal drapes, which substantially reduce the energy needed for space heating and cooling or glazing materials (other than doors and windows), controls or automatic switching devices for effective use of natural light to replace electric interior lighting which result in a net energy savings.
- (iv) Heat pumps and water heating heat pumps (including those which use air, water or earth as a source of heat) which replace electric resistance heaters, or are used in conjunction with a solar energy system.
- (v) Load management devices to reduce the direct or indirect use of natural gas or electricity through interruption, storage and load limiting.
- (vi) Insulation of floors and walls.

Energy conservation measures in the generic categories of subsections (A), (B), (C), (D), (E), and (F) installed in multifamily dwelling units shall be ineligible as energy conservation measures and shall have no force or effect in the computation of taxes or taxable years and income years which begin after December 31, 1985.

Energy conservation measures in the generic categories of subsections (G), (H), and (I), shall be ineligible as energy conservation measures and shall have no force or effect in the computation of taxes or taxable years and income years which begin

after December 31, 1983, unless a later enacted statute which is chaptered before December 31, 1983, deletes or extends such date.

(7) The energy conservation tax credit provided by this section shall also apply to the cost of conducting energy audits and engineering feasibility studies resulting therefrom.

(i) In lieu of claiming the tax credit provided by this section, the taxpayer may, as an alternative to the credit, elect to take depreciation pursuant to Section 17208.7. Also, the taxpayer may take depreciation pursuant to that section for the cost of an energy conservation measure in excess of the amount of the tax credit claimed under this section.

(j) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the taxable year in which the energy conservation measure was installed or any prior taxable year as a solar energy system.

(k) No credit shall be allowed under this section if the amount would (but for this subdivision) be less than ten dollars (\$10).

(l) Notwithstanding the provisions of subdivision (d), a credit shall be allowed for energy conservation measures specified in subsection (h) (6) (G).

SEC. 3. Section 17208.7 is added to the Revenue and Taxation Code, to read:

17208.7. There shall be allowed as a depreciation deduction, a reasonable allowance for the cost of energy conservation measures over a 36-month period.

SEC. 4. Section 23601.5 is added to the Revenue and Taxation Code, to read:

23601.5. (a) (1) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax and the tax on preference income), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 40 percent of the cost (including installation charges and monthly payments but excluding interest charges) incurred by the taxpayer of any energy conservation measures on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed one thousand five hundred dollars (\$1,500). The owner of the premises on which the energy conservation measure is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the energy conservation tax credit for any or all measures installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for an energy conservation measure, the original purchaser of the new home on which the measure is installed may claim the credit, provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The energy conservation tax credit shall be claimed in the state

return for the income year in which the energy conservation measure was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for an energy conservation measure, the original purchaser of the new home on which the measure is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home. A taxpayer who claimed the energy conservation tax credit in the state income tax return for the taxable year in which the energy conservation measure was installed, may in any subsequent year claim an energy conservation measure installed in that year.

(3) With regard to premises in California which are owned by the taxpayer, other than a dwelling, on which the cost (including installation charges but excluding interest charges), exceeds six thousand dollars (\$6,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the energy conservation measure.

(4) If an energy conservation measure serves two or more dwelling units, the owner or owners of the dwellings shall be eligible to receive the credit in proportion to the number of dwelling units served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the energy conservation measure by the number of dwelling units served by the measure, and applying the formula described in paragraph (2) to the per dwelling cost.

(5) Taxpayers who partially own and partially lease an energy conservation measure from a utility or other lessor shall receive a tax credit equal to 40 percent of the purchased portion of the measure (including installation charges, but excluding interest charges); and the principal recovery portion of the lease payments (excluding the interest charges) for the first three years of operation or until the energy conservation tax credit allowance terminates, whichever occurs first. In any one year, the tax credit shall apply only to the principal recovery portion of lease payments made during that year and to amounts expended on the purchased portion of the energy conservation measure (including installation charges) during that year. As used in this section, "principal recovery portion" means the cost incurred by the utility in acquiring the energy conservation measure. "Principal recovery portion" does not include interest charges, sales taxes, use taxes, or maintenance expenses.

(6) The basis amount of any energy conservation measure eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such energy conservation measure.

(7) The credit provided in this section shall be reduced by the amount of any nonreimbursable financial assistance provided by a utility or a public entity (other than interest charges).

(b) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit. The basis adjustment shall be

made for the taxable year for which the credit is allowed.

In the case of a partnership, the energy conservation tax credit may be divided between the partners pursuant to a written partnership agreement.

The tax credit provided by this section shall not apply to any energy conservation measure required by state laws and regulations pursuant thereto, at the time of installation.

(c) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax and the tax on preference income) for the income year, that portion of the credit which exceeds such taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the tax on preference income) in succeeding income years, with respect to which this section shall remain in effect for purposes of carrying over excess credit; until such credit is used. The credit shall be applied first to the earliest years possible.

(d) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, adopt regulations which establish minimum standards which any item of a generic category of energy conservation measure, as defined by this section, must meet to be eligible for a conservation tax credit. Such standards shall include minimum provisions for effectiveness, safety and consumer protection which are consistent with standards established pursuant to the National Energy Conservation Policy Act and other applicable federal and state law. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section. Regulations adopted by the Energy Resources Conservation and Development Commission and the Franchise Tax Board, pursuant to this section, shall be in language which is easily understood by the general public.

(e) (1) If federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of energy conservation measures in dwelling units, then to the extent such credit is allowed or allowable for an energy conservation measure as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 40 percent of such costs, notwithstanding the carryover provisions of subdivision (d).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of energy conservation measures in other than dwelling units, then to the extent such credit is allowed or allowable for an energy conservation measure as defined in this section, the state credit provided in paragraph (2) and (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(f) The following definitions govern construction of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Owner" includes duly recorded holders of legal title, lessees

with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises or a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title.

(3) "Premises" means land, buildings, or mobilehomes.

(4) "Dwelling" means a building used for residential purposes, and includes single-family residences and individual units of a condominium, cooperative, mobilehome, or apartment.

(5) "Energy conservation measure" means any item with a useful life of not less than three years of one of the following generic categories which meets the minimum standards as specified pursuant to subdivision (d):

(A) Ceiling insulation.

(B) Weatherstripping of all doors and windows which lead to unheated or uncooled areas so as to effectively and reliably limit air infiltration.

(C) An external water heater insulation blanket.

(D) Low flow devices on all accessible shower heads.

(E) Caulking or sealing of all major cracks and joints and other openings in the building exterior to reduce the loss of heated or cooled air or the entry of outside air where feasible, and sealing of wall outlets.

(F) Insulating all accessible uninsulated transverse heating and cooling system ducts and plenums which enter or leave unheated or uncooled areas.

(G) Covers for swimming pools or hot tubs which transmit the sun's radiation energy into the water, reduce heat loss and water evaporation.

(H) Such other measures or devices as may be designated "residential energy conservation measures" approved and adopted as part of an appropriate Residential Conservation Service Plan pursuant to the provisions of Section 210 of Title II of the National Energy Conservation Policy Act and recommended as the result of an audit conducted under the auspices of such a plan. This generic category includes, but is not limited to:

(i) Electrical or mechanical furnace ignition systems which replace gas pilot lights;

(ii) Devices modifying the openings of heating and cooling systems which achieve increased efficiency;

(iii) Storm or thermal windows or doors for the exterior of dwellings, multiglazed windows and doors, ventilation cooling, exterior shading devices, or movable insulation such as shutters or thermal drapes, which substantially reduce the energy needed for space heating and cooling;

(iv) Heat pumps and water heating heat pumps (including those which use air, water or earth as a source of heat) which replace electric resistance heaters, or are used in conjunction with a solar

energy system;

(v) Load management devices to reduce the direct or indirect use of natural gas or electricity through interruption, storage and load limiting;

(vi) Insulation for floors and walls.

(I) For premises, other than dwellings:

(i) Electrical or mechanical furnace ignition systems which replace gas pilot lights;

(ii) Services modifying the openings of heating and cooling systems which achieve increased energy efficiency;

(iii) Storm or thermal windows or doors for the exterior of dwellings, ventilation cooling, heating, absorbing or heat reflective glazed windows and door materials, exterior shading devices, or movable insulation such as shutters or thermal drapes, which substantially reduce the energy needed for space heating and cooling or glazing materials (other than doors and windows), controls or automatic switching devices for effective use of natural light to replace electric interior lighting which result in a net energy savings.

(iv) Heat pumps and water heating heat pumps (including those which use air, water or earth as a source or sink of heat) which replace electric resistance heaters, or are used in conjunction with a solar energy system.

(v) Load management devices to reduce the direct or indirect use of natural gas or electricity through interruption, storage and load limiting.

(vi) Insulation of floors and walls.

Energy conservation measures in the generic categories of subsections (A), (B), (C), (D), (E), and (F) installed in multifamily dwelling units shall be ineligible as energy conservation measures and shall have no force or effect in the computation of taxes or taxable years and income years which begin after December 31, 1985.

Energy conservation measures in the generic categories of subsections (G), (H), and (I), shall be ineligible as energy conservation measures and shall have no force or effect in the computation of taxes or taxable years and income years which begin after December 31, 1983, unless a later enacted statute which is chaptered before December 31, 1983, deletes or extends such date.

(6) The energy conservation tax credit provided by this section shall also apply to the cost of conducting energy audits and engineering feasibility studies resulting therefrom.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24349.7. Also, the taxpayer may take depreciation pursuant to that section for the cost of an energy conservation measure in excess of the amount of the tax credit claimed under this section.

(h) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the taxable year in which the energy conservation measure was

installed or any prior taxable year as a solar energy system.

(i) No credit shall be allowed under this section if the amount would (but for this subdivision) be less than ten dollars (\$10).

(j) Notwithstanding the provisions of subdivision (b), a credit shall be allowed for energy conservation measures specified in subsection (f) (5) (G).

SEC. 5. Section 24349.7 is added to the Revenue and Taxation Code, to read:

24349.7. There shall be allowed as a depreciation deduction, a reasonable allowance for the cost of energy conservation measures over a 36-month period.

SEC. 6. For the fiscal year 1981-82, a sum not to exceed forty-two million dollars (\$42,000,000) is hereby transferred from the Energy and Resources Fund to the General Fund for the purposes of making the refunds provided for in this act and to replace revenues which will not be collected as a result of the enactment of this act. On July 1, 1982, and every July 1 thereafter through July 1, 1986, the State Treasurer shall transfer an amount as necessary, but not to exceed forty-two million dollars (\$42,000,000), from the Special Account for Capital Outlay to the General Fund for the purpose of making the refunds provided for in this act and to replace revenues which will not be collected as a result of the enactment of this act.

SEC. 6.5. In the event Assembly Bill 2973 is not chaptered, or the Energy and Resources Fund and the Special Account for Capital Outlay are not created, and, notwithstanding Section 66100 of the Education Code, if on June 30, 1981, there is an unencumbered balance available for appropriation in the Capital Outlay Fund for Public Higher Education in excess of one hundred fifty million dollars (\$150,000,000) the State Treasurer shall on July 1, 1981, and every July 1 thereafter through July 1, 1986, transfer such excess amount up to forty-two million dollars (\$42,000,000) to the General Fund for the purposes of refunds provided for in this act and to replace revenues which will not be collected as a result of the enactment of this act.

SEC. 7. The provisions of Sections 1, 3, 4 and 5 of this act, which respectively add Sections 17052.8, 17208.7, 23601.5, and 24349.7 to the Revenue and Taxation Code, shall have no force or effect in the computation of taxes or taxable years and income years which begin after December 31, 1986; provided, however, that any unused credit may be used beyond that date on the same basis and to the same extent as permitted under the law immediately prior to January 1, 1987. The provisions of Sections 1, 3, 4, 5, 6 and 6.5 of this act shall remain in effect only until January 1, 1987, and as of such date are repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

SEC. 8. The Franchise Tax Board shall report to the Legislature on or before October 1, 1983, on the effects of this act, including the revenue losses, the claims filed, the types of equipment which were purchased and, in cooperation with the Energy Conservation and