

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. PEN

) OTA Case No. 220911348
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: P. Pen

For Respondent: Caitlin S. Russo, Tax Technician

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Pen (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,000 and applicable interest for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) 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 a recycling equipment (RE) credit carryover for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return (return) for the 2017 tax year. On her return, appellant reported an RE credit carryover of \$2,000.
2. FTB audited appellant’s return and disallowed the claimed RE credit carryover. FTB issued a Notice of Proposed Assessment (NPA) disallowing the credit and proposing additional tax of \$2,000 and applicable interest.

3. Appellant protested the NPA.¹
4. On August 22, 2022, FTB issued a Notice of Action affirming the NPA.
5. This timely appeal followed.

DISCUSSION

FTB’s determinations are generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Vardell*, 2020-OTA-190P.) 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 (Swat-Fame)* 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. (*Swat-Fame, supra*; *Dicon Fiberoptics, Inc. v. FTB* (2012), 53 Cal.4th 1227, 1235.) Thus, appellant bears the burden of showing that RE credit carryover requirements are satisfied.

Former R&TC section 17052.14 permitted a tax credit for certain qualified recycling property. (See Stats. 1989, ch. 1090; Stats. 1994, ch. 48.)² Former R&TC section 17052.14(a)(1) provided that, “For each taxable year beginning on or after January 1, 1989, and before January 1, 1994, there shall be allowed as a credit against the ‘net tax’ (as defined in R&TC section 17039), an amount equal to 40 percent of the cost of qualified property purchased and placed in service on or after January 1, 1989, and before January 1, 1994” “Qualified Property” generally meant machinery or equipment located within California used exclusively to manufacture finished products composed of at least 50 percent secondary waste material of which at least 10 percent is composed of postconsumer waste generated in California. (Former R&TC, § 17052.14(d).)³ Former R&TC section 17052.14(g) allowed any excess 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 exhausted. Finally, former R&TC section 17052.14(j) stated, “This section shall remain in effect only until December 1, 1994, and as of that date is repealed..... ”

¹ A copy of appellant’s protest is not in the record.

² The statute was enacted on September 30, 1989, and repealed by its own terms in 1994. References to “former R&TC section 17052.14” refer to the version of the statute as amended by Chapter 48 of Statutes of 1994.

³ Former R&TC section 17052.14(d)(2)-(9) further defined relevant terms.

Here, appellant does not contend that she meets the requirements to claim the RE credit carryover. She primarily questions why the tax software she utilized permitted her to take the credit for the 2017 tax year if the credit had long been expired.⁴ Appellant also claims she relied on government authorized websites.⁵

As noted above, former R&TC section 17052.14 was enacted on September 30, 1989, and repealed by its own terms on December 1, 1994. (See former R&TC, § 17052.14(j).) Thus, the RE credit, allowed pursuant to former R&TC section 17052.14, was only applicable to eligible qualified property purchased while this statute was in effect (i.e., during tax years 1989 through 1994). Appellant does not argue that she purchased any qualified property during the time the statute was operative. Although appellant questions why her tax software allowed her to claim RE credit carryovers during the 2017 tax year, OTA notes that former R&TC section 17052.14(g) specifically permitted unused credits to be carried over to succeeding tax years indefinitely, or until fully used.⁶ Further, appellant generally claims she relied on tax software and/or government authorized websites, but 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.)

On appeal, appellant raises the issue of financial hardship. Although FTB in certain instances may consider a taxpayer's inability to pay,⁷ no statute or provision authorizes OTA to take any action based on appellant's assertion of financial hardship.

⁴ Appellant does not identify the tax software she used or provide evidence to support her assertion that it gave her the option to take the credit (as opposed to her manually inputting the information regarding the RE credit into the software or form).

⁵ Appellant does not specifically identify the government authorized websites she utilized.

⁶ The tax software may permit taxpayers to claim such credit carryover because there is a possibility, however slim, that a taxpayer may have an unused credit carryover from tax years occurring many years prior.


⁷ FTB may consider appellant's inability to pay under its payment arrangement or offer-in-compromise programs. If appellant is experiencing difficulties in paying his liabilities once the decision in this appeal is final, she may contact FTB to discuss payment options. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

HOLDING

Appellant is not entitled to a RE credit carryover for the 2017 tax year.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

D17AEDDCAAB045B
Asaf Kletter
Administrative Law Judge

Date Issued: 3/23/2023