

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**M. RIVAS**

) OTA Case No. 220911428  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: M. Rivas

For Respondent: Kristin K. Yeager, Program Specialist

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Rivas (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$999, and applicable interest, for the 2018 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 the Low Emission Vehicle Carryover Credit for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant filed a timely California income tax return for the 2018 tax year. On the return, appellant claimed a Low Emission Vehicle Carryover Credit of \$999, reducing his tax liability to zero.<sup>1</sup> After applying withholding credits, appellant claimed a refund of \$5,134. Respondent accepted appellant’s return as filed and issued the refund.

---

<sup>1</sup> Appellant filed a joint return with his spouse, and the Notice of Proposed Assessment was issued to both appellant and his spouse. However, because appellant’s spouse did not join the appeal, only appellant will be referred to in this discussion.

2. Thereafter, respondent reviewed appellant's return and disallowed the Low Emission Vehicle Carryover Credit.
3. On February 9, 2022, issued a Notice of Proposed Assessment (NPA) for \$999 of tax, plus interest. Appellant protested the NPA. According to FTB records, appellant contended that he was entitled to the credit for an electric vehicle purchased in 2018, and stated that he provided a receipt to FTB as proof of purchase of the vehicle.
4. By letter dated July 18, 2022, respondent explained that the Low Emission Vehicle Carryover Credit is only available for vehicles purchased during the years 1991 through 1995. Respondent explained that appellant's electric vehicle did not qualify for the credit because he purchased the vehicle in 2018. Respondent provided appellant thirty days to respond.
5. Appellant did not respond. On August 23, 2022, respondent issued a Notice of Action affirming the NPA. 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 sections 17052.11 and 23603 provided low emission vehicle credits 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, FTB disallowed appellant's claimed Low Emission Vehicle Carryover Credit. Appellant protested the disallowed amount based on the contention that he bought an electric vehicle during 2018, a year that is not included under former R&TC sections 17052.11 and 23603. As such, appellant is not entitled to the Low Emission Vehicle Carryover credit because that credit only applies to credits earned during tax years 1991 through 1995, which were carried forward to 2018.

On appeal, appellant does not provide any argument with respect to the Low Emission Vehicle Carryover Credit. Instead, appellant provides an amended 2018 federal income tax return. However, the federal return does not have any bearing on appellant's claimed Low Emission Vehicle Carryover Credit which is a California credit (as opposed to a federal credit).<sup>2</sup>

---

<sup>2</sup> The amended return states that a Qualified Electric Drive Motor Vehicle Credit was added. However, California does not conform to that credit, which is under Internal Revenue Code section 30D.

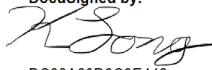
Further, appellant contends that he purchased the electric vehicle in 2018, and the record indicates he provided a receipt showing the purchase occurred in 2018. Appellant has not provided any evidence that he earned credits during tax years 1991 through 1995, which were carried forward to 2018. Accordingly, appellant has not met his burden of proof.

HOLDING

Appellant is not entitled to claim the Low Emission Vehicle Carryover Credit.


DISPOSITION

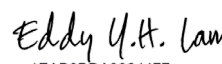
Respondent’s action is sustained.

DocuSigned by:  
  
DC88A60D8C3E442...

\_\_\_\_\_  
Keith T. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
  
0C6C6A6CC6A44D...  
\_\_\_\_\_  
Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
  
1EAB8BDA3324477...

\_\_\_\_\_  
Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 5/11/2023