

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230914409
)
R. DIAZ AND)
M. DIAZ)
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)

OPINION

Representing the Parties:

For Appellants: R. Diaz

For Respondent: AnaMarija Antic-Jezildzic, Specialist

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Diaz and M. Diaz (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,500 and applicable interest for the 2019 tax year.

Appellants 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, § 30209.05(b).) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this appeal based on the written record.

ISSUE

Whether appellants have shown they are entitled to take the Low Emission Vehicle (LEV) credit carryover for the 2019 tax year.

FACTUAL FINDINGS

1. On March 31, 2019, appellants purchased a LEV.
2. Appellants timely filed their 2019 California income tax return. On their return, appellants claimed an LEV credit of \$2,500 to reduce their total tax.
3. FTB reviewed appellants' return and denied the LEV credit carryover. FTB issued a Notice of Proposed Assessment dated March 15, 2023.

4. Appellants protested the proposed assessment and provided a copy of a motor vehicle purchase agreement from Tesla, Inc. dated March 31, 2019.
5. FTB denied the protest and issued a Notice of Action dated August 24, 2023.
6. Appellants filed this timely appeal.

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 Former R&TC section 17052.11 (repealed by Stats. 1994, ch. 48, § 1, eff. Dec. 1, 1996) provided an LEV credit for the 1991 through 1995 tax years for qualified costs paid or incurred by a taxpayer during that period, and allowed any unused credits to be carried over to subsequent tax years.

Here, appellants claimed the LEV credit based on their purchase of an LEV in 2019. However, since their purchase of an LEV was not within the period of time specified in the statute (1991 through 1995), appellants did not qualify for the credit.

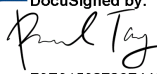
On appeal, appellants argue AB (Assembly Bill) 1341, an assembly bill introduced in 2017 proposing to implement a \$2,500 tax credit for battery electric vehicles purchased after January 1, 2018, and before January 1, 2006, allows them to take the credit for their 2019 LEV purchase. Appellants are mistaken in that the legislature failed to pass AB 1341. (Assem. Bill No. 1341, ordered to be filed with the Chief Clerk as a bill that has died pursuant to Article 4, section 10(c) of the Constitution, February 1, 2018, Assem. J. (2017-2018 Reg. Sess.) p. 3906.) Appellants do not provide other legal authority that would allow them to take the LEV credit in 2019 on these facts, and OTA also finds no such facts or authority. Consequently, appellants have not met their burden.

HOLDING

Appellants have not shown they are entitled to take the LEV credit carryover for the 2019 tax year.

DISPOSITION

FTB's action is sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 3/28/2024