

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. BERKOWITZ

) OTA Case No. 230713824
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OPINION

Representing the Parties:

For Appellant:

D. Berkowitz

For Respondent:

Caitlin S. Russo, Legal Assistant

For Office of Tax Appeals:

Louis Ambrose, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Berkowitz (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$3,138.00 and applicable interest for the 2019 taxable year.

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

ISSUE

Whether appellant has established error in respondent's proposed assessment for the 2019 taxable year.

FACTUAL FINDINGS

1. Appellant filed his 2019 California Income Tax Return (Form 540), claiming a solar energy credit carryover of \$3,138.
2. Respondent reviewed the return and disallowed the solar energy credit carryover, issuing a Notice of Proposed Assessment (NPA) imposing additional tax of \$3,138 plus interest.

- Appellant protested, asserting that he claimed the credit carryover for installation of solar panels and providing a copy of an executed installation contract dated October 24, 2019.
3. Respondent denied the protest, explaining that the solar energy credit was available only for taxable years 1985 through 1988 and had expired. Respondent also stated that the credit carryover was available only for installations made in those taxable years.
 4. Respondent affirmed the NPA, and appellant filed this appeal.

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. (*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 Davis and Hunter-Davis*, 2020-OTA-182P.) In the absence of credible, competent, and relevant evidence showing error in respondent's determination, the determination must be upheld. (*Ibid.*)

With certain exceptions not relevant here, under prior state law, individual taxpayers were generally allowed a California tax credit for the cost of installing solar energy systems prior to 1994, with a carryover of unused credits to subsequent taxable years until exhausted. (See e.g., former R&TC, § 17052.5.) Here, appellant reported a solar energy credit carryover on his 2019 Form 540. In support of the claimed solar energy credit carryover, appellant argues that "both my contractor who installed them and my tax preparer assured me I would get a credit to apply to my state income tax." However, appellant has not shown that he installed a solar energy system prior to 1994 and, thus, has not demonstrated that he was entitled to claim the solar energy credit for the cost of installing a solar energy system.¹

While appellant asserts that his contractor and tax preparer believed that he was entitled to the solar energy tax credit, the law provides otherwise, and this unsupported assertion is insufficient to meet appellant's burden to show that FTB's tax determination is erroneous. (*Appeal of Davis and Hunter-Davis, supra.*) Moreover, this panel is unaware of any credits available to taxpayers for installation of a solar system during the 2019 taxable year, and

¹ Appellant also claims that he is requesting a credit for solar panel installation, not the solar energy credit carryover. While the IRS did provide for a 30 percent credit for solar panels installed in 2019, California did not follow suit. (See Int.Rev. Code, § 25D(g).)

appellant has failed to provide any evidence or argument to show that any such credits were available. Thus, appellant has not established that he is entitled to the claimed solar energy tax credit or carryovers for the 2019 taxable year.

HOLDING

Appellant has not established error in respondent's proposed assessment for the 2019 taxable year.

DISPOSITION

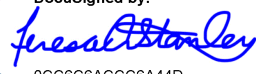
Respondent's action is sustained.

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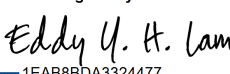
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Tommy Leung
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 7/25/2024