



## OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
C. M. COTTON

## Appearances:

For Appellant: Martin W. Erck, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;  
Mark Scholtz, Associate Tax  
Counsel; Paul L. Ross, Associate  
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of C. M. Cotton to proposed assessments of additional personal income tax in the amounts of \$52.52 for the year 1943 and of \$75.00 for each of the years 1944 and 1945, respectively.

Appellant, a married man living with his wife and supporting in his home a minor grandson, paid medical expenses in 1943 and 1944 exceeding 5% of his net income for each of those years and paid similar expenses totaling more than 5% of his adjusted gross income for 1945. He and his wife filed separate returns for those years, his returns setting forth deductions for medical expenses in the amounts of \$2,120.34 for 1943 and \$2,500 for each of the years 1944 and 1945. In making his claim, Appellant acted on the theory that he was the "head of a family" with respect to his grandson within the meaning of Section 8(q)(2) of the Personal Income Tax Act and Section 17319.5 of the Revenue and Taxation Code and, therefore, entitled to a medical deduction in the maximum amount of \$2,500. The Commissioner, however, allowed Appellant only \$1,250 for each year on the ground that that was the maximum permitted a married person filing a separate return.

The medical expense deduction introduced into the California Act in 1943 by the addition of Section 8(q) covers uncompensated expenses paid for the "medical care of the taxpayer, his spouse, or a dependent of the taxpayer." The amount that might be claimed is, however, limited. In the case of a husband and wife filing a joint return, the maximum is \$2,500 of the excess over 5% of their aggregate net income for 1943 and 1944 or adjusted gross income for 1945. An individual filing a separate return may deduct the excess over 5% up to a maximum of \$2,500 if he is the "head of a family," but only up to \$1,250 if he occupies any

Appeal of C. M. cotton

other status. Section 8(g), Personal Income Tax Act; Sections 17319.3 and 17319.5, Revenue and Taxation Code.

Notwithstanding the employment of the term "head of a family" in this connection, the Legislature has not expressly defined it. Appellant urges that its meaning can be ascertained by referring to the definition of the term incorporated in the Personal Income Tax Regulations for personal exemption purposes, that exemption being originally set forth in Section 10(a) of the Personal Income Tax Act and later in the codification thereof in Section 17951 of the Revenue and Taxation Code. Article 10-2 of the 1943 Regulations and the 1945 codification of that Article in Regulation 17951(b) of Subchapter 3, Chapter 3, Title 18 of the California Administrative Code are relevant in this regard. Each states that a "head of a family is an individual who actually supports and maintains in one household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation," Appellant contends that the term had the same meaning for medical deduction purposes during the years here in question and that in those years he met precisely all the conditions of the definition.

We concur in Appellant's view that the term "head of a family" had the same connotation for both medical deduction and personal exemption purposes. We do not believe, however, that it was intended for either purpose that a married man living with his wife could occupy the status of a "head of a family." Section 25(b)(1) of the Internal Revenue Code, the federal counterpart of Section 10(a) of our Act and after which the latter was modeled, has been so construed as to exclude the view that a married man living with his wife may also be the "head of a family" for federal personal exemption purposes. Robert A. Burns, 47 B.T.A. 34. While there are decisions in which a married man has been held entitled to a personal exemption as the head of a family (see, e.g., Lawrence W. Carpenter, 10 T.C. 64; Percival Parrish, 44 B.T.A. 144; Reifer J. Block, 37 B.T.A. 945; see also Claude S. Rucker, 42 B.T.A. 32), it has been expressly pointed out in each that he was separated or living apart from his wife. The amendment to Section 17951 of the Revenue and Taxation Code effected by Chapter 645, Statutes of 1945, operative for the taxable year 1945, which substituted "head of a family or a married individual" for "head of a family or a married person living with husband or wife" as respects the allowance of a personal exemption, offers no support to Appellant for it merely eliminated the requirement that a husband and wife live together for either to obtain the exemption of a married person and in no way broadened the meaning of the term "head of a family".

Since, then, Appellant was not a "head of a family" within the meaning of Sections 8(g)(2) and 17319.5, he was entitled only to the deduction of \$1,250 allowed thereunder in the case of an individual filing a separate return.

Appeal of C.M. Cotton

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of C. M. Cotton to proposed assessments of additional personal income tax in the amount of \$52.52 for the year 1943 and \$75.00 for each of the years 1944 and 1945, respectively, be and the same is hereby sustained.

Done at Sacramento, California this 17th day of May, 1950,  
by the State Board of Equalization.

Geo. R. Reilly, Chairman  
J. H. Quinn, Member  
J. L. Seawell, Member  
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary