



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN, S. BRINTNALL)

For Appellant: Marshall A. Staunton
Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel'
Israel Rogers, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of John S. Brintnall against proposed assessments of additional personal income tax in the amounts of \$36.00, \$42.99 and \$36.00 for the years 1959, 1960 and 1961, respectively.

Prior to 1956, appellant and his wife, Geralee Brintnall, resided in Texas. In 1956 or 1957, they separated and appellant agreed to pay his wife \$150 a month for the support of their two children. Mrs. Brintnall moved to California with the children in 1958 and obtained employment in Sunnyvale. Appellant joined her early in 1959; but they again separated in January of that year.. In August 1960, a court order was issued directing appellant to pay \$150 a month for the support of the children. He paid \$800 toward their support in 1959, \$1,200 in 1960, and \$1,575 in 1961.

Both appellant and Mrs. Brintnall claimed the children as dependents on their separate income tax returns. The Franchise Tax Board disallowed the dependency exemptions claimed by appellant.

Appellant estimates that the cost of supporting the children was \$2,478 for each of the years under appeal. He **attempts** to buttress his estimates with information reported by the Heller Committee for Research in Social Economics at the University of California which produced a budget for a San Francisco Bay area family **of four** with 1961 earnings of **\$6,777.59**. Mrs. Brintnall informed respondent that the cost of child support was \$2,492 in 1959, \$3,768 in 1960, and \$5,001 in 1961. During these years she earned a salary of about \$450 to \$500 per month.

During the years in question section 17181 of the Revenue and Taxation Code permitted an exemption of \$600 for each dependent of the taxpayer. A dependent, as defined in section 17182, includes a son or daughter over half of whose support was received from the taxpayer. This definition is substantially the same as found in 'section 152 of the '1954 **Internal Revenue Code..**

Appellant has offered no direct evidence regarding the total yearly amounts expended for the support of his children. Information such as that contained in the report of the Heller Committee does not establish the actual cost of their support. (James R. White, T.C. Memo., **Dkt. No. 57040**, Nov. 30, 1956.)

The case of Theodore Milgroom, 31 T.C. 1256, cited by appellant, is readily distinguishable. **There the** government had not determined that the taxpayer did not contribute more than half the cost of support. The taxpayer prevailed by establishing, in, part by stipulation and in part by undisputed testimony, the actual cost of support for the years immediately preceding the year in question together with the fact that the **standard** of living of the children was no higher in the year before the court.

Appellant has failed to prove that he supplied more than half **of the** support of both children and therefore he is not entitled to claim them as dependents. (Bernard C. Rivers, 33 T.C. 935.) Further, assuming that the amounts contributed **each** year constituted more than half of one child's support, we cannot sustain appellant's contention that he is entitled to claim at least one child as a dependent since he has failed to show that his payments were made for the support of one particular child, **to the exclusion of the other.** (Ollie J. Kotlowski, 10 T.C. 533.)

