



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILLIAM C. FAY)

Appearances:

For Appellant: William C. Fay, in pro. per.

For Respondent: Lawrence C. Counts, 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 protest of William C. Fay against proposed assessments of additional personal income tax in the amounts of \$43.49 and \$45.61 for the years 1961 and 1962, respectively,

The sole question to be decided is whether appellant was entitled to claim his four children as dependents in the years 1961 and 1962. The same factual situation giving rise to this appeal, and stated hereinafter, also gave rise to the Appeal of Kathleen Flyer, decided this same day.

Appellant was formerly married to Kathleen Fay' (now Kathleen Flyer, and hereafter referred to as "Kathleen"). They were the parents of four children: Brian, born October 5, 1943; Barry and Alan, twins, born July 1, 1945; and Eileen, born March 25, 1948. During the years in question appellant and Kathleen were both employed, he as a teacher and she as an escrow clerk.

In late August of 1961 appellant and Kathleen were separated and Kathleen filed an action for divorce. At an order to show cause hearing on September 12, 1961, Kathleen was awarded temporary custody of the children and appellant was ordered to pay \$160 per month (\$40 per child) as child support, with payments to commence October 15, 1961.

Appeal of William C. Fay

On January 26, 1962, an interlocutory decree of divorce was entered granting Kathleen a divorce from appellant. Under the terms of that decree custody of the four children was awarded to Kathleen, subject to appellant's right of reasonable visitation and his right to have the children with him on alternate Sundays and on Wednesday evenings. Appellant was ordered to pay \$200 per month (\$50 per child) in child support, commencing January 15, 1962. In addition, the interlocutory decree ordered that appellant maintain a \$10,000 insurance policy on his life with the children named as irrevocable beneficiaries, and that he carry all four children as beneficiaries under his medical and hospital insurance plan.

The four Fay children resided with their mother during the latter part of 1961 and throughout 1962, although they did visit appellant on the days specified in the divorce decree. Appellant paid Kathleen a total of \$600 as child support in the last three months of 1961. In 1962 he regularly paid her \$200 per month (\$50 per child) as ordered by the decree. In addition, during 1961 appellant paid premiums totaling \$341.60 on the required life and medical insurance policies, \$300 for dental services rendered to Eileen Fay, \$108.03 for tuition and school uniforms, and various other smaller amounts. In 1962 appellant paid \$348.88 for the insurance premiums, \$350 on Eileen's dental bills, \$62.24 for clothing for the three boys, and \$11.50 for uncompensated medical expenses incurred by Alan Fay.

In response to an inquiry by respondent, Kathleen estimated the total cost of support of each child to have been \$1,425 in 1961 and \$1,675 in 1962. Of those amounts Kathleen concedes that appellant provided \$150 for each child, or a total of \$600, in 1961, and \$600 for each child, or a total of \$2,400, in 1962. In her appeal Kathleen contended that she contributed the remaining \$1,270 required to support each child in 1961, and the remaining \$1,075 required to support each child in 1962. It is our conclusion that Kathleen failed to substantiate her expenditure of those amounts in excess of the child support payments she received from appellant;

Appellant and Kathleen filed separate California personal income tax returns for 1961 and 1962. In his returns appellant reported adjusted gross income of \$8,576.00 and \$8,730.34 for the years 1961 and 1962, respectively. Kathleen's reported gross income was \$6,133.30 and \$8,400.00 in 1961 and 1962, respectively. In each year both appellant and Kathleen claimed all four children as dependents. Respondent requested supplementary information from appellant and Kathleen concerning their respective support contributions. Respondent ultimately denied the dependent deductions to both parties for lack of proof that either had provided more than half of the children's support in 1961 and 1962. That determination gave rise to this appeal and to the Appeal of Flyereen.

Appeal of William C. Fay

During the years in question section 171.81 of the Revenue and Taxation Code allowed a taxpayer a deduction for each dependent. Section 171.82 defined "dependent" to include the taxpayer's son or daughter who received over half of his support in the taxable year from the taxpayer.. The burden of proving this fact is on the taxpayer. In order to sustain that burden he must show the total cost of support, and that he provided over one-half of that total cost.

The estimates made by Kathleen are the only evidence in the record of the total cost of supporting the four children during the years in question. Since the children resided with her, however? we will assume that those estimates are fairly accurate, being based upon actual experience.

Appellant and Kathleen shared the same household until the end of August 1961, and both were employed throughout that year. Since appellant's reported gross income in 1961 was approximately \$1,500 more than Kathleen's it is logical to assume, in the absence of evidence to the contrary, that during the first eight months of 1961 the greater portion of the children's support was contributed by appellant.

Appellant and Kathleen were separated for approximately four months, or one-third, of 1961. Kathleen estimated the total cost of support of each child in 1961 to be \$1,425. Therefore one-third of that total, or \$475 per child, is the support allocable to that portion of the year in which appellant and Kathleen lived apart. One-half of \$475 is \$237.50. During the last four months of 1961 appellant contributed \$150 for each child's support. He has proven the expenditure of an additional \$794.63 during that time for the benefit of the children. We are convinced that appellant spent at least \$237.50 on each child's support during the last one-third, of 1961. We have already determined that appellant presumably contributed the greater part of their support during the first eight months of the year.

Kathleen estimated that the cost of support of each of the four children in 1962 was \$1,675, or a total of \$6,700. One half of those amounts is \$837.50 per child, or a total of \$3,350. During 1962 appellant paid Kathleen \$2,400 in child support (\$600 per child). He has proven additional expenditures on behalf of the children in 1962 totaling \$772.62. Furthermore the children spent numerous Wednesday evenings and Sundays with appellant throughout the year. During those visits he undoubtedly incurred expenditures for their food and entertainment, We are convinced that appellant's total expenditures in the entire year exceeded \$837.50 per child. On the basis of the evidence before us, we conclude that appellant provided more than half of the support of the children in 1962.

Appeal of William C. Fay


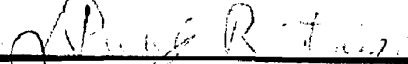
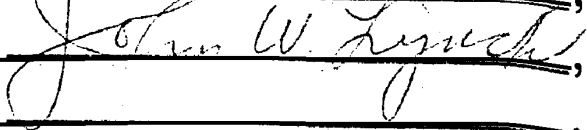
For the above reasons we find that appellant was entitled to claim all four children as dependents on his tax returns for the years 1961 and 1962. Respondent's action, based upon a contrary determination, must therefore be reversed.

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 Board on the protest of William C. Fay against proposed assessments of additional personal income tax in the amounts of \$43.49 and \$45.61 for the years 1961 and 1962, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 25'th day of March , 1968, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST:  _____, Secretary