



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of **the Appeal** of)
MOHAMMED M. SIDDIQUI)

For Appellant: Mohammed M. Siddiqui, **in pro.** per.
For Respondent: Crawford H. Thomas
Chief Counsel
James P. Corn
Counsel

O P I N I O N

This **appeal** is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the **Franchise Tax** Board **in** denying the claim of Mohammed M. Siddiqui for refund of **personal** income tax in the amount of \$129.08 for the year 1969.

The sole question for decision is whether **appellant** was entitled to the status of "head of house- &id" for purposes of filing his 1969 **California personal** income tax return.

Appellant was a California resident during 1969. On December 24, 1969, his then wife, Roswitha, obtained an interlocutory judgment of divorce. The interlocutory **decree** provided that the divorce would not become final until one year from November 15, 1969, the date of service of the summons and complaint upon **appellant**.

On his California personal income tax return for 1969 **appellant** indicated his status as "single." Subsequently he filed an amended return in which he claimed to be an "unmarried head of household," Respondent denied **appellant's** refund claim on the ground that his marital status as of December 31, 1969, prevented him from filing as head of household for that year.

Appeal of Mohammed M. Siddiaui

Section 17042 of the Revenue. and Taxation Code provides :

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year,...

The phrase "not married", as it is used here, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance...." (Emphasis added.)" (Rev. & Tax, Code, § 17043, subd. (b).)

In 1969, it was the law in California that an interlocutory decree of divorce would become final only after **one year** had elapsed from the commencement of the divorce proceedings, **i.e.** from the date of service of copy of summons and complaint upon the defendant spouse. (Civ. Code, § 132) Effective January 1, 1970, that one-year **waiting period** was reduced to **six months**. (Civ. Code, § 4514.) Using either time **period**, **appellant's** divorce could not have become final until after December 31, 1959. Consequently we agree with respondent that for purposes of section 17042 of the Revenue and Taxation Code, appellant was still married as of the close of his taxable year ended December 31, 1969, and he was therefore not **entitled to** claim head of household status in his 1969 tax return. This conclusion is consistent with our decision in Appeal of J. Albert and Augusta F. Hutchinson, Cal. St. Bd. of Equal., August 5, 1968.

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,

Appeal of Mohammed M. Siddiqui

IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED, .
pursuant to section 19060 of the Revenue and Taxation
Code, that the action of the Franchise Tax Board in
denying the claim of Mohammed M. Siddiqui for refund of
personal income tax in the amount of \$129.08 for the
year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day
of September, 1972, by the State-Board of Equalization.

_____, Chairman
Stallworthy _____, Member
High _____, Member
John _____, Member
_____, Member

ATTEST: *W. W. Amodeo* Secretary