



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LOC HUYNH)

Appearances:

For Appellant: **Loc** Huynh, in pro. per.
For Respondent: Kendall E. Kinyon
 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 Board on the **protest of LOC** Huynh against a proposed assessment of additional personal income tax in the **amount of** \$157.00 for the year 1976.

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The sole issue for determination is whether appellant qualified as a head of household for 1976.

In April 1975 appellant emigrated to the United States from Vietnam while his wife remained in **that country**. Appellant remained separated from his wife for the rest of 1975 and all of 1976. During the appeal year appellant provided the sole support for his brother-in-law. Appellant filed his 1976 California personal income tax return as a head of household naming his brother-in-law as the individual qualifying him for that status. Respondent disallowed the claimed head of household status and computed appellant's tax liability on the basis of a married person filing a separate return. Appellant brings this **appeal from** respondent's determination.

The term "head of household" is defined in section 17042 **of the** Revenue and Taxation Code which provides, in pertinent part:

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, and . . .

(a) **Maintains as his home a household which constitutes for such taxable year the principal place of abode**, as a member of such household, of--

* * *

(2) Any other person who is a dependent **of** the taxpayer, if the taxpayer is entitled to a credit for the **taxable year** for such person under **Section 17054**;

* * *

For purposes of this section, an individual who, under subdivision **(c)** of Section 17173 is not to be considered as married, shall **not be** considered as married.

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A brother-in-law is a qualifying dependent under subdivision (a) (2). (See Rev. & Tax. Code, §§ 17054 and 17056(h).)

'An individual is considered as legally married unless separated from his spouse under a final decree of divorce or of separate maintenance at the end **of the** taxable year. (See Appeal of Enis V. Harrison, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Mohammed M. Siddiqui, Cal. St. Bd. of Equal., Sept. 14, 1972.) Since appellant was legally married throughout the year in issue, he is not **entitled** to file as a head of household for that year unless he can qualify as "an individual who, under subdivision (c) of Section 17173 is not to be considered as married." Subdivision (c) of section 17173 provides:

If --

(1) An individual who is **married...** and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who ... is a son, stepson, daughter, or stepdaughter of the individual, and (B) **with** respect to whom such individual is entitled to a credit for the taxable year under Section 17054,

(2) Such individual furnishes over half of the **cost of** maintaining such household during the taxable year, and

(3) During the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married. (Emphasis added.)

Appellant did furnish over half the cost of maintaining the household during the taxable year and his spouse was not a member of the household for the entire year as required by subdivisions (c)(2) and **(c)(3)**, respectively, of section 17173. However, appellant's qualifying dependent was his brother-in-law and not a son, stepson, daughter or stepdaughter as required by subdivision (c)(1) of section 17173. Therefore, for **purposes of** determining head of household

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status, we cannot conclude that during 1976 appellant was an individual who is not to be considered as married.

Appellant argues that he should be allowed to file as a head of household since the Internal Revenue Service allowed him to claim that filing status on his federal income tax return. We cannot agree. Appellant was allowed to file his federal income tax return as a head of household because the California and federal definitions of "not married" differ in one respect. For federal purposes, a person is considered "not married" if that person was married but his spouse was a nonresident alien at some time during the taxable year. (See Int. Rev. Code of 1954, **§2(b)2(c).**) California law contains no similar provision. Therefore, the reason appellant could properly file his federal income tax return as a head of household was because his wife, a **noncitizen of** the United States, was living in Vietnam during the year in issue. However, since there is no similar provision in the California law, the fact that appellant's wife was a nonresident alien during the appeal year does not authorize him to claim head of household status for purposes of the California personal income tax.

Appellant also contends that respondent's filing instructions accompanying the 1976 personal income tax return were misleading and incomplete, and argues that he should be treated as if he qualified as a head of household. In prior appeals we have resolved **similar contentions adversely to the taxpayers.** (See **Appeal of Rebecca Smith Randolph, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.**) For the reasons set out in those decisions, we conclude that appellant's argument must be rejected.

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,

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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 **Loc Huynh** against a proposed assessment of additional personal income tax in the amount of **\$157.00** for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of February , 1980, by the State Board of Equalization.

John A. ... , Chairman
Robert ... , Member
... , Member
William W. ... , Member
_____ , Member