

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
VERNEY C. CAESAR)

For Appellant: Verney C. Caesar, in pro. per.

For Respondent: James T. **Philbin**
Supervising 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 Verney C. Caesar against a proposed assessment of additional personal income tax in the amount of \$271.89 for the year 1976.

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The only issue in this appeal is whether appellant qualified as a head of household for 1976.

Appellant was separated from his wife prior to 1976 and did not live with her during that year. An interlocutory decree of dissolution was entered at some date prior to December 31, 1976; however, a final decree of dissolution or separate maintenance has never been entered. During all of 1976 appellant supported his mother as a member of his household. Appellant filed his 1976 personal income tax return as a head of household claiming his mother as his qualifying dependent. Respondent disallowed appellant's claimed head of household status since appellant was still legally married **at the** end of 1976.

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 ...

(b) Maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such father or mother 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.

An individual is considered as legally married unless separated from his spouse under a final decree of divorce or of separate maintenance at the close 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.,

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Sept. 14, 1972.) Since appellant was legally married throughout the year in issue, he is not entitled to head of household status 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 subdivision (c) (2) and (c)(3), respectively, of section 17173. However, appellant's qualifying dependent was his mother 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 status, we cannot conclude that during 1976 appellant was an individual who is not to be considered, as married.




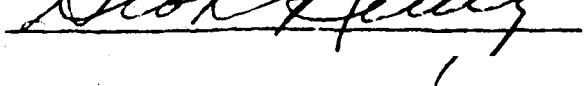
O R D E R

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 Verney C. Caesar against a proposed assessment of additional personal income tax in the amount of \$271.89 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of June , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member