



\*80-SBE-087\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FRED'DOWDLE )

For Appellant: Fred Dowdle, in pro. per.

For Respondent: Mark **McEvilly**  
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 Fred **Dowdle** against a proposed assessment of additional personal income tax in the amount of \$205.72 for the year 1976.

Appeal of Fred Dowdle

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

Appellant and his spouse separated during October 1976. At that time they had a son, Thomas. After the separation, Thomas spent most of his time with his mother. An interlocutory judgment of dissolution was obtained on November 17, 1976. Appellant filed his 1976 tax return as a head of household naming Thomas as the qualifying dependent. Respondent denied the claimed head of household status because Thomas did not reside with appellant for the entire year and because appellant was still legally married at the end of the year. Respondent, however, did allow an additional dependency exemption credit for appellant's son.

Section 17042 of the Revenue and Taxation Code provides that, in order to claim head of household status, an individual must be unmarried and maintain as his home a household that is the principal place of abode of an individual who is within specified classes of relationship. In general, although a taxpayer is separated from his spouse, he is still considered as being married for **purposes of** claiming head of household status, unless, at the close of the taxable year, he was legally separated from his spouse under a final judgment of dissolution of marriage or legal separation. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.)

For years beginning on or after January 1, 1974, Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household where he lives separate and apart from his spouse during the entire year and maintains a home for a dependent child under certain conditions. In this appeal appellant, who was still legally married on the last day of 1976, cannot qualify as a head of household under section 17173 because his spouse lived with him during part of 1976. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978.)

We have considered appellant's arguments and find that they are not directed to the substance of this controversy and are entirely without merit. For the reasons set out above, respondent's action in this matter must be sustained.

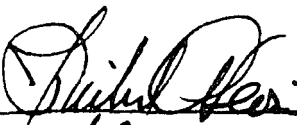
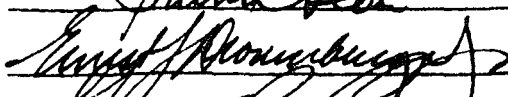
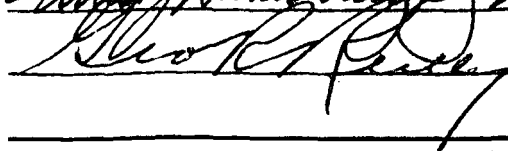
Appeal of Fred Dowdle

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 Fred Dowdle against a proposed assessment of additional personal income tax in the amount of \$205.72 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of August, 1980, by the State Board of Equalization.

	_____	, Chairman
	_____	, Member
	_____	, Member
	_____	, Member
	_____	, Member