



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KENNETH J. APARICIO)

For Appellant: Kenneth J. Aparicio,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

OPINION

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 Kenneth J. Aparicio against a proposed assessment of additional personal income tax in the amount of \$175.00 for the year 1977.

Appeal of Kenneth J. Aparicio

The sole issue presented is whether appellant was entitled to claim head of household status for the year in issue.

For the appeal year appellant filed his California personal income tax return as head of household. In that return he indicated that Lisa Webb-Aparicio, who had resided with him and received over one-half of her support from him during the year, was the individual who qualified him for head of household filing status. Appellant also characterized Ms. Webb-Aparicio as his "common-law" wife. Respondent disallowed appellant's claimed head of household status on the ground that Ms. Webb-Aparicio, who was unrelated to appellant by blood or marriage, was not a qualifying dependent. (See Rev. & Tax. Code, §§ 17044, subd. (a), and 17056, subd. (i).) Respondent did, however, allow appellant an \$8.00 dependent exemption credit for Ms. Webb-Aparicio pursuant to section 17054; subdivision (c), of the Revenue and Taxation Code. Appellant's protest was denied and this appeal followed.

The facts of this case are substantially similar to those presented in prior appeals to this board. (See, e.g., Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.

In the Padwa appeal we sustained the action of respondent and held that the appellant therein was not entitled to head of household status based upon his living arrangement with a dependent female friend. The decision in that case was based upon section 17044 of the Revenue and Taxation Code, which precludes a taxpayer from being considered a head of household when the individual otherwise qualifying as a dependent of the taxpayer is unrelated by blood or marriage.

Since Ms. Webb-Aparicio was not a qualifying dependent, it is clear that appellant does not qualify as a head of household. Nevertheless, appellant argues that he should be allowed head of household status because the Internal Revenue Service allowed it to him. If the Service investigated appellant's filing status, and it is not clear that they did, their decision is most unusual. Federal law is the same as California on the point in issue here (compare Int. Rev. Code of 1954, §§ 2, subd. (b) (3) (B) (i) and 152, subd. (a) (9), with Rev. & Tax. Code, §§ 17044, subd. (a) and 17056, subd. (i)), and on the admitted facts appellant simply does

Appeal of Kenneth J. Aparicio

not qualify as a head of household. In any event, we are satisfied that respondent's determination comports with the law.

For the reasons expressed above, respondent's action in this matter must be sustained.

ORDER

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 Kenneth J. Aparicio against a proposed assessment of additional personal income tax in the amount of \$175.00 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of November, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

_____, Member